

## **Policing hate crime: the Kosovo and New South Wales experience**

A study note by the Police Service of Northern Ireland and the Northern Ireland  
Human Rights Commission

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NORTHERN  
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## INTRODUCTION

In January and February 2014, the Northern Ireland Human Rights Commission (NIHRC) and the Police Service of Northern Ireland (PSNI) travelled to Kosovo and New South Wales (NSW) to understand policing practice on hate crime. In particular, researchers sought to identify: (1) policing practices with the potential to improve the realisation of human rights; and (2) areas of common challenge.

To do this, the researchers conducted semi-structured qualitative interviews with officers and civilians from the Kosovo Police (KP) and the New South Wales Police Force (NSWPF). Further interviews were conducted with international organisations, national human rights institutions (NHRIs), non-governmental organisations (NGOs), academics and parliamentarians working on issues of hate crime in both destinations. Interviewees were informed of the purpose of the research and consented to the interview. No comments have been personally attributed.

This document is a dissemination of the initiatives and challenges encountered during both trips and presents the material within the human rights framework identified within the NIHRC 'Racist Hate Crime' investigation report known as the 'four Ps'.<sup>1</sup>

### Why Kosovo and NSW?

Prior to travel, it was not possible to identify one destination of 'best practice' for addressing hate crime.<sup>2</sup>

Kosovo<sup>3</sup> was chosen because it is of a similar size to NI, in terms of both the geographical area and population.<sup>4</sup> In addition, operating in the aftermath of sectarian conflict is a fundamental element of both the KP and the PSNI.<sup>5</sup> Further influencers included the significant presence of the Organisation for Security and Cooperation in Europe (OSCE) and the European Union Rule of Law

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<sup>1</sup> For additional information concerning the human rights framework used, see NIHRC, *Racist Hate Crime: Human Rights and the Criminal Justice System in Northern Ireland* (2013). Available at, [http://www.nihrc.org/uploads/publications/103141\\_NIHRC\\_Racist\\_Hate\\_Crime\\_4\\_Combined\\_%282%29.pdf](http://www.nihrc.org/uploads/publications/103141_NIHRC_Racist_Hate_Crime_4_Combined_%282%29.pdf).

<sup>2</sup> Conversations between NIHRC and OSCE (Email exchange: April and May 2013; and telephone conversation: 22 April 2013).

<sup>3</sup> The status of Kosovo is undetermined. Kosovo Assembly declared independence in 2008. It has been recognised by 109 of the 193 UN Member States and 23 of the 28 EU Member States. Serbia has not recognised Kosovo, however, their relationship is moving towards normalisation under the EU negotiated 2013 Brussels Agreement.

<sup>4</sup> According to the Kosovo Agency of Statistics, Kosovo's population is 1,815,606 (Dec 2012 estimate) and land area is 10,908 km<sup>2</sup>. See, <http://ask.rks-gov.net/eng/>. According to the NI Statistics and Research Agency, the NI population is 1,839,254 (June 2014 estimate) and according to the National Statistics Office it has a land area of c. 13,600 km<sup>2</sup>. See, [http://www.nisra.gov.uk/population\\_clock/ClockText.html](http://www.nisra.gov.uk/population_clock/ClockText.html) and <http://www.ons.gov.uk/ons/rel/regional-trends/region-and-country-profiles/key-statistics-and-profiles---august-2012/key-statistics---northern-ireland--august-2012.html>.

<sup>5</sup> The establishment of the KP was dictated by UN Security Council Resolution 1244 (1999). The PSNI was established in 2001 out of the reform of the Royal Ulster Constabulary.

Mission (EULEX) in Kosovo. At the time of travel, the OSCE had trained most KP officers and were preparing to train prosecutors on hate crime. Researchers did not consider the situation in North Kosovo which functions independently from the rest of Kosovo and where parallel institutions operate.

Australia offered researchers the opportunity to understand a police service less familiar to the PSNI than European or American counterparts but yet one which operates within a legal system similar to NI. Further, as a developed country and consequentially a target for new immigrants, Australia enabled researchers to observe the relationship between hate crime and immigration policy outside of a dominant sectarian context.

### **What is the 'four P' human rights framework?**

In September 2013, the NIHRC published the investigation report 'Racist Hate Crime: Human Rights and the Criminal Justice System in Northern Ireland'.<sup>6</sup> This report compiles the international human rights laws and standards applicable to the UK in the context of hate crime,<sup>7</sup> and presents them under the four broad duties of prevention, prohibition, prosecution and protection (the 'four P's'). These duties do not represent a hierarchy but should be understood to be overlapping, mutually dependent and reinforcing. This document sets out a synopsis of each 'P' before disseminating the findings of the study trip. Researchers prioritised the identification of practices aimed at preventing hate crime. The 'duty to prevent' section of the report is therefore the longest. The NIHRC report should be consulted for the detail of the human rights standards.

### **How did 'human rights' feature during the trip?**

Kosovo is not an official State party to any of the UN human rights treaties nor is it a member of the Council of Europe. Nevertheless, the Constitution of Kosovo, Article 22 makes a number of international human rights treaties, including the European Convention on Human Rights, directly applicable in Kosovo and gives them precedence over other domestic laws. The jurisprudence of the European Court of Human Rights has been heavily relied upon by Kosovo's courts. Interviewees acknowledged the difficulties for Kosovo's judges in applying ECtHR common law reasoning to a traditionally civil law system, along with the accompanying language barriers.<sup>8</sup>

Human rights is a key module in the KP 26 week officer training program.<sup>9</sup>

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<sup>6</sup> See above, fn 1.

<sup>7</sup> Although the report focused on racist hate crime, the majority of the standards apply in the broader hate crime context.

<sup>8</sup> The official languages of the ECtHR are French and English.

<sup>9</sup> The content of the module includes, among others, the topics of: non-discrimination; right to life; police behaviour before criminal element; rights of arrested persons; international treaties; Council of Europe and European Union; prohibition of ill-treatment and torture; right to freedom and personal security; right to freedom of expression and religion; right to freedom of assemblies; right to freedom of movement.

KP training on hate crime has been developed by the OSCE's Office of Democratic Institutions and Human Rights (ODIHR) and is known as the 'Training Against Hate Crimes for Law Enforcement' (TAHCLE).<sup>10</sup> OSCE field teams shadow the KP to monitor the KP's compliance with human rights. If systemic issues are identified, then a roundtable discussion and follow-up trainings are organised. In general, the KP are very familiar with the language of human rights. It was identified that over familiarisation could lead to apathy.

There was a feeling among the Kosovo Albanian community that the protections within the Council of Europe Framework Convention for the Protection of National Minorities (FCNM) do not apply to them.<sup>11</sup>

Australia is a State party to seven of the nine UN international human rights treaties.<sup>12</sup> However, there is no federal bill of rights and interviewees noted limited use of a language of rights. The predominant focus was on concepts of 'multiculturalism' and 'cultural diversity'.

### **What types of hate crime were identified?**

Interviewees identified that discrimination represents the start of the bias crime continuum and concerns were raised in both Kosovo and NSW. One common manifestation in NSW was discrimination against Aboriginals in the property rental market. Discrimination of the gay and lesbian community in accessing pubs and restaurants was identified in Kosovo.

The political climate influenced both the type of hate crime that occurred in Kosovo and NSW and the police response to those crimes.

In Kosovo, inter-ethnic hate crimes were infrequently referenced during interviews. Where crime between the Albania and Serbian communities was mentioned, it was suggested that such crimes were based on an economic motivation. It was suggested that for some, a failure of the authorities and citizens to recognise inter-ethnic hate crime was based upon the perception that this would hinder Kosovo's pathway to EU membership. The impression was that to identify hate crime against minority communities in particular would be to 'sell out' and deny Kosovo the benefits of EU membership.<sup>13</sup> Some police interviewees expressed gratitude on the role of the 'international partners' in Kosovo and resentment concerning the fact that Serbia was further along the EU membership process.

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<sup>10</sup> See, <http://www.osce.org/odihr/94898>.

<sup>11</sup> The FCNM does not contain a definition of a 'national minority'.

<sup>12</sup> All but the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>13</sup> Kosovo is part of the EU Stabilization Tracking Mechanism programme which looks at, *inter alia*, Kosovo's rule of law and protection of minorities structures.

A frequently referenced 'hate crime' occurred in 2013, when LGB NGO 'Kosovo 2.0' organized a promotional event for the "Sex" edition of the Kosovo 2.0 magazine. A series of assaults, threats and criminal damage offences were recorded during the promotional event and in the surrounding days. Although seven charges were brought by the KP, the charge under the incitement legislation was dropped during trial. It is not clear if an enhanced sentence was imposed.<sup>14</sup>

Further, the Pejë / Peć region in Kosovo is a major religious centre for the Serbian Orthodox church. During the installment of the Patriarch in 2010, thousands of Serbians come to Pejë / Peć in buses. Some buses had windows broken from stone throwing. A few persons were subject to light injury. This was regarded as a minor incident in light of Kosovo's history. No police reports were filed by alleged victims.<sup>15</sup>

In NSW, when asked about hate crime, officers identified three major public order incidents: Cronulla, Harris Park and Hyde Park.

Cronulla refers to the incident in December 2005 when Sydney's Cronulla beach was the scene of race riots between 'white' Australians and Lebanese Australians. Phrases such as '100% Aussie Pride' and 'We grew here, you flew here' were expressed and persons of Middle Eastern appearance were attacked. In the following days, Lebanese-Australian youth responded with a series of retaliations.<sup>16</sup> Harris Park also involved Australia's Lebanese population. In June 2009, the Indian community demonstrated in Harris Park about racial slurs and violence attacks they had suffered. Clashes broke out between them and the local Lebanese community. Most recently, in September 2012, violence erupted in Sydney's Hyde Park at an Islamic protest over a film portrayal of the prophet Mohammad. The protest turned violent and clashes occurred with police.

The prevalence in Australia of 'skin-head/neo-Nazi' style groups such as the 'Skins', 'The Retaliators' and 'Australian Defence League' was also highlighted. Radio 'shock-jocks' were further thought to play a role in stirring up racial tensions. Immigration issues and a desire to defend Australia's multi-cultural success story were apparent in how authorities addressed hate crime.

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<sup>14</sup> See, <http://www.eulex-kosovo.eu/en/pressreleases/0568.php>.

<sup>15</sup> Also referenced at, [http://www.state.gov/j/drl/rls/irf/2010\\_5/168319.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168319.htm).

<sup>16</sup> See SBS documentary, <http://www.sbs.com.au/cronullariots/documentary#chapters/reflections-on-cronulla>.

## FINDINGS

### 1. The Duty to Prevent

*"International human rights standards require governments to refrain from violating individuals' rights, but they also require positive actions to be taken to prevent private persons from abusing the rights of others. Reducing, and ultimately eradicating, the social conditions within which racism may exist and racist hate crimes are perpetrated should begin with measures to enhance community safety. These include initiatives that promote good relations between communities and which aim to foster tolerance, understanding and mutual respect. At the same time there should be a promotion of equality and non-discrimination. In order to monitor and evaluate the effectiveness of both the measures adopted and the occurrence of criminal offences, it is important that data is collected, and finally, that it is disaggregated to inform decisions regarding future interventions by the criminal justice agencies." (NIHRC, Racist Hate Crime, p 18)*

#### Community safety

The 28<sup>th</sup> June is St. Peter's Day, a Serbian Orthodox Church religious holiday. Many Serbians and Kosovo Serbians come to Gračanica/Gračanice to celebrate the event. The KP described to researchers the measures taken to ensure the past holiday was peaceful. These included: asking the Serbian Orthodox Church and municipality to appeal to pilgrims; identifying attendees with a criminal record; and educating the community on the ground as to the potential for escalations, including that hate crimes are serious and will be prosecuted. On the day, one pilgrim was wearing an offensive uniform. The KP held this pilgrim at the station. Members of the local Serbian community were informed of the situation by the KP and assured that the man would be released as soon as possible. After the event, the man was charged with incitement and then released.

A suggestion encountered in NSW was to apply the domestic violence, Multi-agency Risk Assessment Conference (MARAC) model used in the UK to the hate crime context. A MARAC involves the coming together of relevant agencies to share information and identify persons at a high risk of domestic violence for whom they can put protection measures in place.

## Promotion of good relations between communities

In Kosovo, the KP General Director can approve the establishment of a 'Local Public Safety Committee' (LPSC).<sup>17</sup> This occurs at the suggestion of a local station commander. According to the Law on Police, the LPSC is 'an advisory body within any specific area in each municipality which is in the best interests for effective work of community Police'.<sup>18</sup> Members of the LPSCs vary depending upon the issues particular to the community but typically include civil society/NGO representation, courts, prosecutors and the KP. While people do not typically refuse to sit, they are not remunerated which affects attendance.

LPSCs were generally portrayed as not fulfilling their full potential because of either a lack of utilisation by the KP or failure on behalf of the communities to set aside partisan agendas. In Gračanica/Gračanicë, however, LPSC members described the mechanism positively. It was perceived here as providing a previously unavailable conduit within which the Serbian and Albanian communities could cooperate on low security issues of joint concern. For example, the Gračanica/Gračanicë LPSC was working to address concerns about the high taxation imposed upon vehicles registered outside of Kosovo, an issue that impacted upon both communities. Another example cited was the six month long solicitation of the Istog/Istok LPSC for donations to address the issue of an illegal dumpsite. Donations were received and a legal dumpsite established to the benefit of both communities.

Further, although the KP do not provide mediation training as part of the general training program, the mediatory skills of officers were often referenced as being important and as something that would be developed as officers patrolled and engaged with the community 'out and about'. One projects officer described how the KP intervened in a dispute between a Kosovo Albanian student and a Kosovo Roma student. To ensure that the dispute did not spill over and become a community argument, the KP along with the deputy mayor and community representatives visited both families then organised a community meeting where they encouraged the families to voice their concerns and then 'forget' the incident, allowing the courts to deal with the dispute.

The NSWPF expressed that they would on occasion fund community reconciliation projects, such as building monuments. However, State funding, including by police of these projects, was not always welcomed.

In NSW and Australia generally, there exists a network of Police Citizens Youth Clubs.<sup>19</sup> These clubs were established in the 1930s by the Police Commissioner but are now largely independent. Part of their mission is to reduce crime committed by young people through developing their skills and sense of purpose.

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<sup>17</sup> Kosovo, Law on Police, Article 3, para 1.15.

<sup>18</sup> Ibid., Article 5, para 5.

<sup>19</sup> <https://www.pycnsw.org/>.



There were a number of interesting NGO programs identified in the context of good relations. For example, the Australian NGO All Together Now operates a program called 'Exit White Power'.<sup>20</sup> Exit white power is a website that produces arguments developed by psychologists which counter the arguments used in recruitment strategies by White Supremacists. These arguments are drafted at the reading level of the anticipated viewer. By using trojan advertising, the program ensures that if the term 'white power' is googled, the exitwhitepower.com website will feature high on the rankings. Online discussion forums through which psychologists engage with web users have also been established on REDDIT.

Further programs operated by All Together Now include 'Give Racism the Finger' and 'One Parramatta'. Both projects were aimed at encouraging people to speak out against racism. 'Give Racism the Finger' was a joint poster campaign project which involved the Body Shop, an international corporation espousing ethical principles. 'One Parramatta' was funded by the Australian Federal Government's Department of Immigration and Citizenship. It involved the making of short films detailing views on racism (VOXPOX) which were then played at the local cinema. All Together Now monitored the impact of the project through interviews as people exited the cinema.



All Together Now's 'Give Racism the Finger' campaign poster

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<sup>20</sup> <http://exitwhitepower.com>.

NDPBs and NGOs described that 'good relations' programs would often target the middle ground as opposed to extremist groups. This was justified on the basis of the need to ensure the majority does not become radicalised and a desire not to legitimise extremists. NGOs commonly attributed the success of their programs to strong personal relationships.

Recognising the link between external tensions and domestic hate crimes, the NSW Community Relations Commission identified that one of its key messages is 'do not import foreign conflicts to Australia'.

### Non-discrimination and the promotion of equality

Police use of language was identified in different forums as being important for establishing relationships with the community.

For example, in Kosovo the term 'RAE', used to denote the Roma, Ashkali and Egyptian communities by public institutions was perceived as disrespectful by some community groups. It was argued that the collective grouping undermined the distinct issues of three unique communities.

In the transgender context, the importance of police using the correct pronoun was highlighted. This should be the pronoun by which the person identifies and would assist with circumstances such as telephone conversations where, for example, the speaker identifies as a woman but sounds like a man. In situations of doubt, community advocates encouraged police to have the confidence to ask individuals how they would like to be addressed. While 'they' was not encouraged, it was regarded as more acceptable than 'it'. During discussions with advocates, we were introduced to new pronouns developed by transgender persons in a deliberate effort to be gender neutral: that of 'ze' and 'hir'. However, these were not regarded as mainstream and their use was not encouraged by police unless proactively sought by the individual.<sup>21</sup>

In the counterterrorism context, the NSWPF also highlighted language as a tool police can use to empower and disempower. They referenced the Victoria Police 'Lexicon of Terrorism' tool which guides officers on what language to use consistently when talking with community groups. This tool has two purposes: to ensure that broad ethnic groups are not labelled with terms that cause prejudice or misunderstanding, such as 'Islamic fundamentalist'; and to prevent the glorification of terrorism through the use of terms such as 'jihad' and 'war'.

More broadly, the use of the term 'racism' at the Australian Governmental level was seen as important for some NGOs. The fact that the current national

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<sup>21</sup> At the time of interview, the Transgender Anti-Violence Project (TAVP) were developing a fact-sheet for NSW police entitled 'How to be an ali'.

strategy is called 'Racism: It Stops with Me'<sup>22</sup> was identified as a positive use of language. The term 'racism' was seen as confronting reality and having a powerful impact. Some groups contrasted the name of the strategy with 'Harmony Day', the name given to the 21 March which marks a national day of 'cultural respect for everyone who calls Australia home'.<sup>23</sup> These groups suggested that using the language of 'harmony' could serve to aggravate tensions by denying realities.

In Kosovo, the Law on Police states as a guiding principle the 'commitment to employment, advancement and assignment of duties in [a] comprehensive, merit-based and non-discriminatory manner, by reflecting the multi-ethnic character' of Kosovo.<sup>24</sup> At the time of research, the composition of the KP was cited as 14% minority (9% of whom are Serbian), a level authorities are trying to maintain.

A KP Station Commander expressed difficulty in obtaining the Roma officers he needed to provide a representative service. The reasons identified included poor Roma education levels as well as Roma links with the Serbian community.

In Australia, the Federal Govt has committed to increase Aboriginal recruitment into the public sector to 2.6% by 2015. Researchers learned that the NSWPF are aiming for 7%.

To assist Aboriginal and Torres Strait Islander persons in joining the police, the NSWPF operate in conjunction with the Australian Government, the NSW State Government, NSW TAFE<sup>25</sup> and Charles Stuart University, the 'Indigenous police recruiting our way delivery' (Iprowd) program.<sup>26</sup> Iprowd is a full time course conducted for 21-24 hours per week for 18 weeks which provides students at the end with a Certificate that meets the entry requirements for the Associate Degree in Policing Practice offered by the Charles Stuart University for the NSW Police Academy. It does not guarantee the entry of Aboriginal applicants to the NSWPF but rather assists them in meeting the admissions criteria.

Although cultural specific trainings did occur, the NSWPF emphasis was on developing the officer skill base. A theme throughout the trip was the perceived inability of some junior officers to effectively communicate and use discretion. This lack of discretion was at times thought to be influenced by overly dictatorial police policy.

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<sup>22</sup> See, <https://itstopswithme.humanrights.gov.au/>. National strategy on racism developed by the Australian Human Rights Commission.

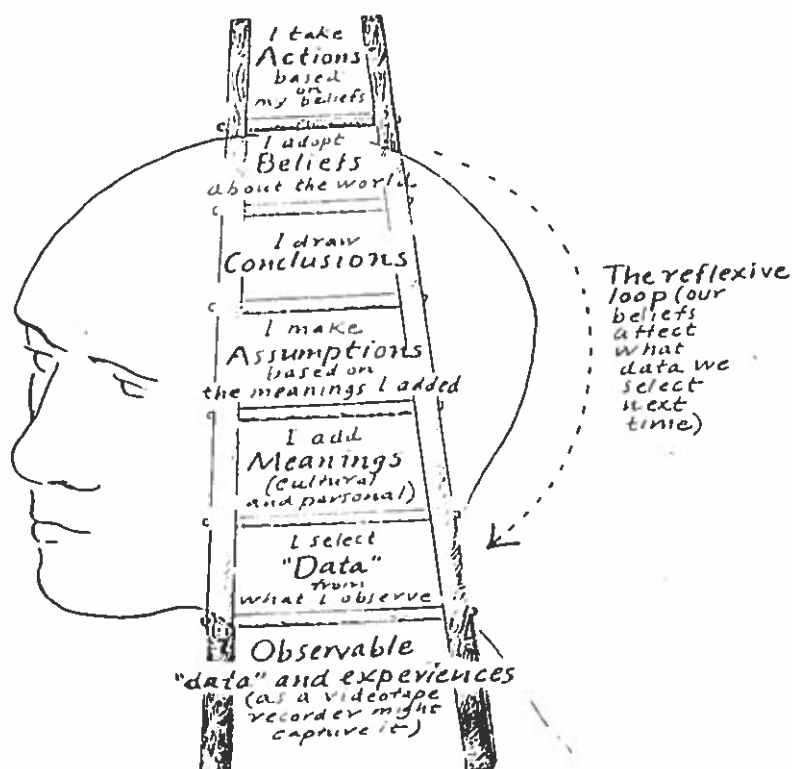
<sup>23</sup> See, <http://www.harmony.gov.au/>.

<sup>24</sup> Kosovo, Law on Police, Article 2, para 1.7.

<sup>25</sup> The New South Wales Technical and Further Education Commission (NSW TAFE) is a vocational education and training provider.

<sup>26</sup> See, <http://www.iprowd.tafensw.edu.au/>.

The NSWPF training programs of both the Cultural Diversity and Bias Crimes teams delivered to General Duty officers included a detailed discussion on 'perceptual sets'.<sup>27</sup> 'Perceptual sets' refer to unconscious bias. The purpose of the training is to assist police in identifying their assumptions about individuals based on their own set of perceptions. Police are taught to reframe these assumptions as questions so as to verify their veracity before they become released through interactions with the community. The concept is also influential in how NSW police record victim statements (see below).



The trainings include showing an officer a snap shot and asking them for their perception (image 1) before showing the officer the broader view of the image (image 2) to contrast with the perception. The example below is taken from the NSWPF Cultural Diversity team presentation materials.

<sup>27</sup> The work of U.S. Army Lt. Colonel David Grossman (retired) on perceptual sets was influential. See, <http://www.killology.com/bio.htm>.

Image 1



Image 2



© NSWPF

The Bias Crime trainings were assisted by the use of anonymous polling software. Such software could be seen to facilitate interaction by General Duty officers in the trainings and permitted the free expression of opinion.

The NSWPF Counter-terrorism Unit further expressed that they were developing a training package for General Duty officers similar to that given to negotiators. The Unit emphasised the need for officers to develop active listening skills, the ability to develop a rapport, and (in line with the perceptual sets training) the need to conduct themselves impartially.

As part of the NSWPF Superintendent program, police attend the Jewish Museum for one day. This day is intended to assist police in understanding the Jewish community's distrust of authorities.

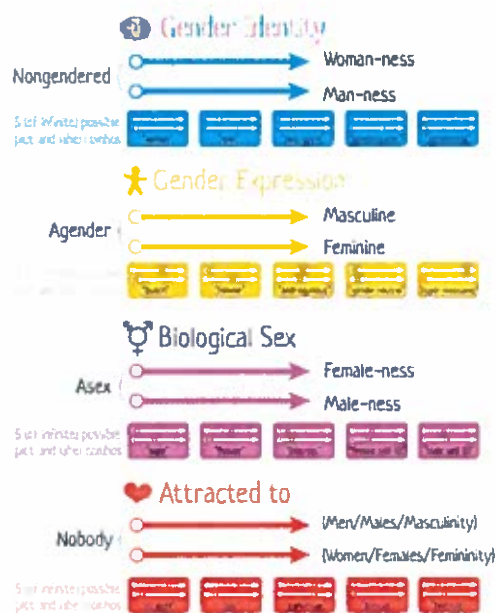
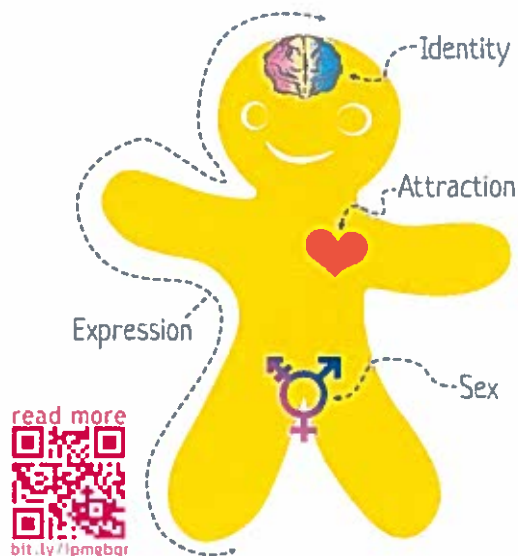
A common confusion identified in Australia was the difference between gender identity and sexual orientation. NSWPF use the 'Gender Bread Person'<sup>28</sup>, a tool developed by transgender persons to explain the issue.

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<sup>28</sup> The Gender Bread Person can be downloaded at <http://itspronouncedmetrosexual.com/2012/03/the-genderbread-person-v2-0/>

# The Genderbread Person v2.0 its pronounced METROsexual

Gender is one of those things everyone thinks they understand, but most people don't. Like Inception. Gender isn't binary. It's not either/or. In many cases it's both/and. A bit of this, a dash of that. This tasty little guide is meant to be an appetizer for understanding. It's okay if you're hungry for more.



In addition, the Australian NGO 'All Together Now' has developed an app called 'Everyday Racism' which has potential for use in police training programs as a form of experiential learning.<sup>29</sup> The app is a 7 day challenge to live a week in the life of an Aboriginal man, a Muslim woman, or an Indian student where people react to you based on this identity. The development of the app was funded by three universities in NSW and tested on 18 - 25 year old students.

There were mixed opinions concerning whether or not officers from local communities should be chosen to police those communities. In the Kosovo region of Gračanica/Graçanicë, the station commander identified that being from the community he policed was beneficial in reducing tensions. He described how this relationship enabled him to gain access to the mayor and the community leaders and to have an understanding of the history of the community that would otherwise have been difficult.

In other contexts, it was not recommended that officers originate from the local community they police. In NSW for example, officers identified that NSWPF Multicultural Community Liaison Officers (MCLO) would be recruited on the basis of their ability to 'work across communities'. It was suggested that recruiting on the basis of the ethnicity of the local population could subject the individual to community pressures and inhibit their ability to operate with impartiality.

The NSWPF Counter-terrorism Unit has also developed a Community Engagement Model which it makes a point of disseminating to community

<sup>29</sup> The app can be downloaded at <http://alltogethernow.org.au/news/campaigns/everydayracism/>.

organisations. The operational focus of the Unit is the orange and red section. In this way, the model is used to illustrate that: radicalised individuals are only a small proportion of the community; the unit is only targeting people likely to have been engaged in criminal activity and terrorism; and, the police want to engage the general community to solicit their assistance and support in implementing strategies to counter radicalisation.



NSWPF Counter-terrorism Unit Community Engagement Model  
© NSWPF

The NSWPF Counter-terrorism Unit further identified the practice of inviting third parties to discuss issues at community meetings. This could have a variety of benefits. For example, the Council for Civil Liberties was invited to analyse legislation. This helped communities understand the police service role as indifferent to the substance of legislation but required to enforce it. A second example cited was the invitation given to a well-known media personality to talk about media ethics. This allowed police to communicate a message indirectly.

The NSWPF have a second Community Engagement Model used for more general Operational Policing. This model focuses on empowering the community to lead crime prevention.



## Community Engagement for Operational Policing - a four step integrated model

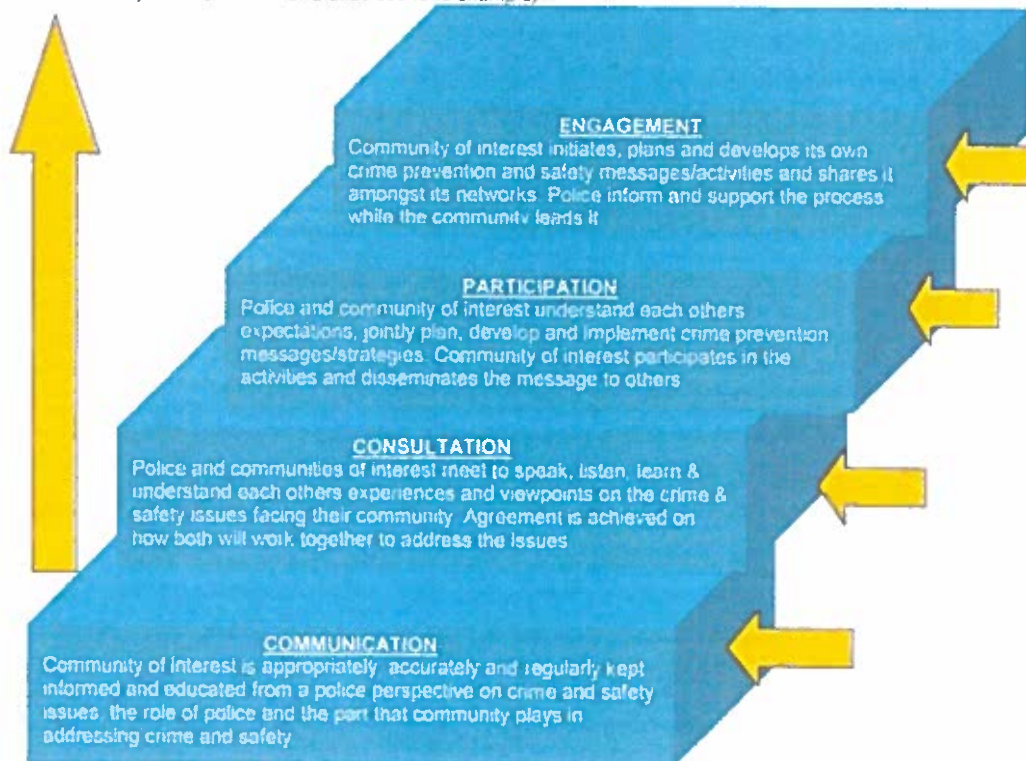
**Objective.** Begin a process with the Command of engaging different sections of the community to develop and maintain close relationships with police in order to jointly address local crime and safety issues.

This component looks at working towards true and effective community engagement rather than stand alone education campaigns and information sessions. Community engagement focuses on building trusting, co-operative relationships with the community where Police roles are better understood by the community, and the community becomes more aware of its own role in addressing safety and ultimately share the responsibility of crime prevention. The community gains a deeper understanding and this enables it to develop its own education processes which are relevant to the community; police participate in it, but is essentially and ideally driven by the community.

**Strategy:** Introducing and carrying out the four step community engagement process

The community engagement model shown below, illustrates community engagement as a process with various levels. Police engage at a number of levels with the community before a higher level of engagement can exist. Each level of contact lays the foundation for the next and provides support to the ongoing long term goal of building and maintaining strong, trusting relationships with the community. Effective community engagement is the point in the relationship when there is a shared responsibility in crime prevention, where the community understands and agrees on issues, and may ultimately develop its own education processes, relevant to its needs. Crime prevention and safety strategies may then involve police but are driven and led by the community

(Refer to TAB A for a case scenario example)





The NSWPF Customer Service Program operates the 'Community Awareness of Policing Program' (CAPP) which provides community leaders with an insight into policing by allowing participants to experience life as an officer.<sup>30</sup> Participants spend a number of evenings and/or days in Sydney and a day at the police training college during which they learn about the operations of policing, including: Local Area Command; The Public Order & Riot Squad; Marine Area Command; Tactical Operations Unit; Counter Terrorism & Special Tactics; Education & Training Command; State Crime Command; Forensic Services Group; Police Prosecutions; Communications Group; and State Protection Group.

Researchers witnessed a NSWPF initiated boxing program targeted at Aboriginal youth which involves training three times a week at 6am. The program has been driven by a local Superintendent and is designed to allow police to engage with the community and to instil discipline in the youth that participate. Missing training means missing matches. The success of this particular program has in part been achieved through the buy-in obtained from Aboriginal community leaders, including an Australian Human Rights Commission Commissioner.

The NSWPF have a Weibo account (social networking site akin to Twitter) which they use to disseminate information to the international student community. In a partnership with Macquarie University, police send social media updates to Chinese speaking students in English who then translate them to Chinese. In return, the students get university course credit. A similar program operates with Wollongong University where students develop police engagement campaigns for which they also receive credit.

NSWPF raised the issue of officers seeing communities as homogenous entities. By contrast, the Aboriginal community is very diverse. Thematic NGOs do not represent the whole of the community but more usually a small number of vocal activists. Further, transgender persons do not comprise a coherent community because of the common desire to quietly assimilate into the identified gender. It is therefore more appropriate to refer to the transgender 'population'.

### Collection and disaggregation of data

In Kosovo, the UNDP publishes 'Public Pulse Reports' detailing the perception of citizens on pertinent issues based upon opinion polls, targeted polls and focus groups in order to inform the decision-making process.<sup>31</sup> This includes the percentage of Kosovo Serbs and Kosovo Albanians that are satisfied with the KP. For example, in April 2013, the Report records that less than 30% of Kosovo

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<sup>30</sup> See, <https://www.police.nsw.gov.au/capp>.

<sup>31</sup> UNDP/USAID 'Public Pulse Report 6' (August 2013), available at, [http://www.ks.undp.org/content/dam/kosovo/docs/PublicPulse/PP6/PPR6\\_Anglisht%206.pdf](http://www.ks.undp.org/content/dam/kosovo/docs/PublicPulse/PP6/PPR6_Anglisht%206.pdf).

Serbs and more than 70% of Kosovo Albanians expressed satisfaction with the KP.<sup>32</sup>

## 2. The Duty to Prohibit

*"International human rights standards require governments to proscribe certain activities and behaviours. To fulfil the duty to prohibit racist hate crimes, specific and targeted domestic legalisation must be introduced that criminalises hate speech and racist violence by private actors. In addition racial discrimination by public authorities must be proscribed to ensure that the victims receive an effective and impartial investigation. The legal framework must then be effectively enforced, to ensure its deterrent effect. This requires the criminal justices agencies to understand the domestic laws and be competent in determining which is most appropriate to use and in what circumstances. Sanctions must be effective, proportionate and dissuasive, and racist motivation should be reflected in sentencing. It is also necessary to recognise that the victims of racist hate crimes are often subjected to acts of racism that may not amount to criminal offences. The repetitive nature or cumulative effect of these abuses should, however, be taken account of and the criminal law engaged as appropriate." (NIHRC, Racist Hate Crime, p 38)*

### Criminalisation of hate speech

Kosovo and NSW criminalise hate speech. The Anti-Discrimination Act (NSW) 1977 separates out the offences of racial vilification, transgender vilification, homosexual vilification and HIV/AIDS vilification.

#### **Article 147**

##### **Inciting national, racial, religious or ethnic hatred, discord or intolerance**

1. Whoever publicly incites or publicly spreads hatred, discord or intolerance between national, racial, religious, ethnic or other such groups living in the Republic of Kosovo in a manner which is likely to disturb public order shall be punished by a fine or by imprisonment of up to five (5) years.

Criminal Code of Kosovo, Article 147

#### **20C Racial vilification unlawful**

(1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.

(2) Nothing in this section renders unlawful:

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<sup>32</sup> Ibid., p 21-22.

- (a) a fair report of a public act referred to in subsection (1), or
- (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the *Defamation Act 2005* or otherwise) in proceedings for defamation, or
- (c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest.

**20D Offence of serious racial vilification**

(1) A person shall not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group by means which include:

(a) threatening physical harm towards, or towards any property of, the person or group of persons, or

(b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty:

In the case of an individual—50 penalty units or imprisonment for 6 months, or both.

In the case of a corporation—100 penalty units.

(2) A person shall not be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

Anti-Discrimination Act (NSW) 1977, selected extracts

The racial vilification provisions have never been used in NSW. This has resulted in a NSW Legislative Council inquiry into the law and in particular on section 20D.<sup>33</sup> Some interviewees attributed the limited use of the legislation to be a result of the high threshold for conviction. It was difficult, for example, to obtain language with enough specificity. Where language was not at issue, the act was often not disseminated to a large enough audience, for example, where it was made in closed chat rooms. Others identified that it was confusing to place a criminal provision within a civil code.

In reality, the Crime Prevention Act (NSW) 1916 is more commonly used where incitement is an issue.

**SECT 2**

Inciting to crimes

If any person incites to, urges, aids, or encourages the commission of crimes or the carrying on of any operations for or by the commission of crimes that person shall be guilty of an offence against this Act.

The Australian Federal Racial Discrimination Act 1975 makes hate speech unlawful but does not create a criminal offence.<sup>34</sup> During the trip, discussions were also active on the effectiveness of this legislation. Some government

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<sup>33</sup> See,

<https://www.parliament.nsw.gov.au/Prod/Parliament/committee.nsf/0/D15ADEF09EE12ACBCA257AD70011F5B1?open&refnavid=xhttp://www.parliament.nsw.gov.au/Prod/Parliament/committee.nsf/0/D15ADEF09EE12ACBCA257AD70011F5B1>.

<sup>34</sup> Complaints of racial vilification automatically go to the Australian Human Rights Commission for conciliation. Only if this fails, can court proceedings commence.

figures were suggesting that in the federal civil provision, freedom of expression had been compromised by the hate speech prohibitions.<sup>35</sup>

#### **SECT 18C**

##### **Offensive behaviour because of race, colour or national or ethnic origin**

- (1) It is unlawful for a [person](#) to do an act, otherwise than in private, if:
- (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another [person](#) or a group of people; and
  - (b) the act is done because of the race, colour or national or ethnic origin of the other [person](#) or of some or all of the people in the group.

Note: Subsection (1) makes certain acts unlawful. Section 46P of the *Australian Human Rights Commission Act 1986* allows people to make complaints to the Australian Human Rights [Commission](#) about unlawful acts. However, an unlawful act is not necessarily a criminal offence. Section 26 says that this Act does not make it an offence to do an act that is unlawful because of this Part, unless Part IV expressly says that the act is an offence.

- (2) For the purposes of subsection (1), an act is taken not to be done in private if it:
- (a) causes words, sounds, images or writing to be communicated to the public; or
  - (b) is done in a [public place](#); or
  - (c) is done in the sight or hearing of people who are in a [public place](#).
- (3) In this section:

**"public place"** includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

#### **SECT 18D**

##### **Exemptions**

Section 18C does not render unlawful anything said or done reasonably and in good faith:

- (a) in the performance, exhibition or distribution of an artistic work; or
- (b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
- (c) in making or publishing:
  - (i) a fair and accurate report of any event or matter of public interest; or
  - (ii) a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the [person](#) making the comment.

Racial Discrimination Act 1975, selected extracts

### Criminalisation of bias violence

Both the Criminal Code of Kosovo and the Crimes (Sentencing Procedure) Act 1999 (NSW) provide that when determining the punishment for the offender, the court shall consider a number of aggravating and mitigating factors including whether the offence was influenced by certain protected characteristics of the victim.

#### **Article 74**

##### **General rules on mitigation or aggravation of punishments**

1. The punishment imposed on a perpetrator is the punishment prescribed for the criminal offense, while a more lenient or severe punishment may be imposed only in accordance with the conditions provided for by this Code.
2. When determining the punishment the court shall consider, but not be limited by, the following aggravating circumstances:

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<sup>35</sup> For the debate, see Attorney-General's consultation, <http://www.ag.gov.au/consultations/Pages/ConsultationsonamendmentstotheRacialDiscriminationAct1975.aspx>

...  
2.12. If the criminal offence is committed against a person, group of persons or property because of ethnicity or national origin, nationality, language, religious beliefs or lack of religious beliefs, color, gender, sexual orientation, or because of their affinity with persons who have the aforementioned characteristics;

Criminal Code of Kosovo, Article 74

**21A Aggravating, mitigating and other factors in sentencing**

(1) General. In determining the appropriate sentence for an offence, the court is to take into account the following matters:

(a) the aggravating factors referred to in subsection (2) that are relevant and known to the court,

...  
(2) Aggravating factors

The aggravating factors to be taken into account in determining the appropriate sentence for an offence are as follows:

...  
(h) the offence was motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (such as people of a particular religion, racial or ethnic origin, language, sexual orientation or age, or having a particular disability).

Crimes (Sentencing Procedure) Act 1999 (NSW), section 21A

In discussions with the NSWPF, it was interesting to note that when asked about hate crime legislation, it was the vilification provisions of the Anti-Discrimination Act (NSW) 1977 that were cited and not the Crimes (Sentencing Procedure) Act 1999. The tendency to omit reference to the latter legislation could be influenced by the fact that it does not set the hatred aggravation apart but rather lists it as one of many aggravations to be considered.

In reality, the Crimes (Sentencing Procedure) Act 1999 has also proven difficult to implement. Referring to rules of evidence,<sup>36</sup> interviewees noted that evidence to establish the motivation for the offence could not be introduced until after the offence had been proven. In the absence of words or actions demonstrated during the commissioning of the offence (which could be raised at an earlier stage), bad character evidence may be required to prove motivation. In this regard stand-alone offences were suggested as a solution.

Furthermore, the Crimes (Sentencing Procedure) Act 1999 limits the enhanced sentence to circumstances where an offence was 'motivated' by hatred. Providing for an enhanced sentence where hatred had been 'demonstrated' at the time of the offence<sup>37</sup> was regarded by some as too punitive and an encroachment on the principle of freedom of expression. Others however welcomed the idea as the only means by which the legislation would become a viable deterrent for hate based violence.

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<sup>36</sup> Evidence Act (NSW) 1995.

<sup>37</sup> Cross reference with relevant NI legislation - Criminal Justice (No.2) (NI) Order 2004.

During the trips, debates were active as to the rationale for inclusion as a protected group within the legislation, for example, because they pertain to an immutable characteristic. The NSW legislation is not exhaustive (i.e. language of 'such as' is used) which has permitted the courts to hold that paedophiles could be included as a group.<sup>38</sup> Such judgments have been criticised and according to one academic 'rests upon [the courts] failure to acknowledge that the examples of groups in parentheses [in s 21A(2)(h)] have anything in common'.<sup>39</sup>

### Effectiveness of sanctions

The Crimes (Sentencing Procedure) Act 1999 (NSW) does not require that the judge state in open court whether or not the provision was used. It was therefore difficult for interviewees to ascertain to what degree the hate aspect, where proven, impacted upon the sentence.

## **3. The Duty to Prosecute**

*"International human rights standards require governments to guarantee an effective remedy to the victims of racist hate crimes. A key component of an effective remedy is the investigation of crimes to enable the prosecution of individuals who have committed a criminal offence. This is necessary to ensure an effective enforcement of the law. In order to enable the prosecution of racist hate crimes there must, first, be accessible reporting facilities for the victims and immediate recording by the relevant criminal justice agencies. Once a report has been made, there should be an effective, independent and expeditious investigation, and this includes a targeted examination of the suspected racist aspect associated with the crime. There must also be a consistent prioritisation of the prosecution of all racist hate crimes, regardless of the seriousness of the offences. Finally, it is important that during the criminal proceedings the victims have an opportunity to be heard and that both the hearing and subsequent judgment are within a reasonable period." (NIHRC, Racist Hate Crime, p 59)*

### The initial report

The perception test was not used by police in either Kosovo or NSW. The KP and the NSWPF publish official statistics only once the hate crime is definitive in legal terms. As a result, hate crime incidents were underplayed. This conservative

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<sup>38</sup> See, *Dunn v The Queen*, [2007] NSWCCA 312 (13 November 2007); and *R v Robinson*, [2004] NSWSC 465 (10 June 2004).

<sup>39</sup> See Gail Mason, 'Hate Crime Laws in Australia: Are They Achieving Their Goals?' (2009) 33 Criminal Law Journal 326, 339. See also, Gail Mason, 'Prejudice and Paedophilia in Hate Crime Laws: *Dunn v R*' (2009) 34 Alternative Law Journal 253.

approach to classification may be influenced by political factors (see above). The perception test was criticised by some officers in both Kosovo and NSW as overplaying the number of hate crime incidents.

In addition to the MCLOs, the NSWPF have a number of Gay and Lesbian Liaison Officers (GLLOs) and Disability Liaison Officers (DLOs). Although this role was welcomed, NGOs noted that a negative side-effect is that other officers do not take responsibility. For example, when a GLLO or DLO is on leave, it was suggested that other officers do not investigate awaiting the GLLOs return. A further issue is that it does not afford the opportunity for citizens to develop trust in the police service as a whole. The discussions suggested that these roles should perhaps be time-limited, a form of temporary special measure.

### The investigation

In terms of engaging with persons with disabilities, one of the problems identified is police officer assumption about capacity. It was also thought difficult for officers to identify certain disabilities, such as cognitive impairment and the question was raised as to whether it matters if a person was targeted because of a particular characteristic or because they were vulnerable. People with Disability Australia (PWDA) have previously given training to police on ways to collect evidence from disabled persons known as the 'JERT' training. The AHRC stated that they would like officers to be trained on cognitive, psychosocial and physical & sensory aspects of disability.

The NSWPF Bias Crimes training instructed that officers should have victims of crime write their own statement. This method is designed to improve accuracy of recount by minimising unconscious police bias and allow for statement analysis.

## **4. The Duty to Protect**

*"International human rights standards require governments to implement certain measures to ensure that the victims of racist hate crimes are safeguarded against repeat and secondary victimisation. In order to do this, victims must be able to access information concerning their rights and their case, and understand and be understood from the first point of contact with the criminal justice agencies. Where a victim is assessed as having a particular vulnerability, special protection measures must be available to: ensure, where necessary, the physical integrity of the victim and their family; ensure the dignity of victims during questioning and when testifying; and, enable avoidance of contact between victims and offenders at court. In accordance with their needs, victims should*

*have access to free and confidential support services. Finally, when implementing the above, governments are encouraged to develop 'sole points of access' or 'one-stop shops' in order to address the multiple needs of victims of racist hate crimes, including the need to receive information, assistance, support, protection and compensation." (NIHRC, Racist Hate Crime, p 83)*

### Access to information

The Australian Federal and State Governments have endorsed the World Wide Web Consortium (W3C), Web Content Accessibility Guidelines (WCAG) version 2.0. The NSW 10 year business plan for Government known as 'NSW 2021' emphasises the need for Government to communicate with customers, particularly online. NSW Govt. Circular C2012-08 mandates immediate review of the website portfolio in order to achieve 'AA' compliance by 31 December 2014 ('A' compliance having been already mandated by 31 December 2012).

The NSW police website has AUSLAN and Easy English 'fact-sheets'. Under the cultural diversity section there are multilingual documents. Responsible officers expressed the intent to upload a vodcast (in recognition of low literary levels) in 16 different languages.

Further, under the *Disability Discrimination Act 1992*, Australian Government agencies are required to ensure information and services are provided in a non-discriminatory accessible manner.

The Victims Rights and Support Act 2013 (NSW) brought into being a Charter of Victims Rights. During this trip, this was commonly seen all police station walls. There is then a Code of Practice for the Charter of Victims Rights.



## **CONCLUSION**

### **(I) Policing practices with the potential to improve the realisation of human rights**

1. Incorporating soft skills, such as active listening and rapport building, into the general officer training package. (p8, 11 and 13)
2. The development and dissemination of counter-arguments to tackle hate ideology or propaganda. (p9)
3. Partnership with influential businesses whose public relations agenda compliments an anti-hate message. (p9)
4. The creation of a culture that emphasises appropriate terminology as a critical tool with which the police can build trust as well as empower or disempower. (p10-11)
5. Assisting disadvantaged communities to meet the police entry criteria by running, in conjunction with tertiary education bodies, a tailored course. (p11)
6. Incorporating perceptual sets training and experiential learning into the general officer training package as well as the understanding that minority communities are not homogenous entities. (p12, 13, 14 and 17)
7. Operating in a transparent and accessible manner through the dissemination of police operational policy and 'day in the life of an officer' programs. (p14, 15 and 17)
8. Specialist training provision for general officers on how to gather evidence from disabled persons. (p23)
9. Implementation of a police website accessibility rating. (p24)

## (II) Areas of common challenge

1. Placing police officers within their home communities had advantages and disadvantages. The advantages included an enhanced understanding of the locality and previously established relationships. The disadvantages included being vulnerable to pressures which could lead to a reduction of authority. (p14)
2. The balance between hate speech legislation and the protection of freedom of expression was controversial. (p19-20)
3. The difficulty in proving the 'motivation' of a crime was noted. This was thought to be particularly difficult if it was an element of an aggravating factor and not a separate hate crime offence because of the bad character rule. (p21)
4. Whether or not an enhanced sentence should be imposed for offences where hostility or hatred is 'demonstrated' was controversial. Many felt that this would be too punitive a measure while others felt it was necessary to send an appropriate message. (p21)
5. There was a general lack of clarity as to the reasons why some groups would be 'protected' under the hate crime legislation. The debate centred on whether or not this should be limited to immutable characteristics. (p22)
6. The judiciary did not frequently articulate to what extent a hate motivation impacted upon sentencing. (p22)
7. The ideology of the perception test was not embraced in either destination. The main criticism was that it is inaccurate and will overplay the number of hate crime incidents. (p22-23)
8. The long-term merit in designating officers with specialised roles was critiqued. Some felt that while designated officers assisted with reporting they discouraged non-designated officers from taking responsibility and therefore were of limited benefit for enhancing trust in the police as a unit. (p23)
9. It is difficult to determine whether a person is targeted for opportunistic reasons because they are thought to be vulnerable or because they have a particular characteristic. Does this matter? (p23)

## Appendix 1: Translation to NI context - PSNI commitments

Keeping People Safe



18<sup>th</sup> December 2014

Dear [REDACTED]

Thank you for sight of this report which you have produced following visits to Kosovo and New South Wales, Australia, sponsored by the George Cross Foundation.

PSNI welcome the report and will seek to implement the recommendations although many overlap with existing work streams as I have highlighted below. That said there is no limit on learning so if we can make our products/services better as a result of your recommendations that is only for the good.

The report and how it is best implemented to complement existing work will be considered at the Hate Crime Gold Group chaired by my ACC Martin on the 22<sup>nd</sup> December.

Below is a synopsis of where your recommendations overlap with existing work streams.

Recommendation 1, The Police Training College, Garnerville is engaged with incorporating soft skills, such as active learning and rapport building, into the general officer training package.

Recommendation 2: The Unite Against Hate report titled "CHALLENGING RACISM: ENDING HATE" which was launched on 4<sup>th</sup> November 2014, has been shared with Corporate Communications Department to assist with responses or messaging aimed at developing and disseminating counter-arguments to tackle hate ideology or propaganda.

Recommendation 3: Local Policing Districts are engaged in partnership working with influential businesses on an on-going basis. For example in F District there is extensive contact with Moy Park, a company who has a percentage of their workforce from the migrant community.

Recommendation 4: Equality and Diversity Unit's Appropriate Language Guide assists with the creation of a culture that emphasis appropriate terminology as a critical tool with which the police can build trust as well as empower or dis-empower. This will also be refreshed as part of the implementation of the new Chief Constable's vision to embed policing with the community as the style of policing in Northern Ireland.

Recommendation 5, information workshops regarding policing as a career choice were held in disadvantaged communities in 2014 as part of the 2014 recruitment campaign.

Recommendations 6 and 8: This training could be taken forward by The Police Training College, Garnerville but will have to be agreed by our Training Group who has to prioritize many competing demands for officers to be trained in a variety of issues many of which are about statutory compliance issues.

Recommendation 7 will be addressed as part of an organisational review to widen workplace access for all groups underrepresented in PSNI.

Recommendation 9 will be addressed as part of a new website due to be launched in spring 2015.

As I said we at PSNI and particularly in Policing with the Community Branch who have policy lead for Hate Crime appreciate the fresh insights you have provided into addressing hate crime and together I'm sure we will improve our service to victims and reduce the likelihood of becoming a victim going forward.

Again thank you for your time and efforts in producing this report.

Best Wishes



Head of Policing with Community Branch  
Lisnasharragh

## **Appendix 2: Organisations interviewed**

### **Kosovo**

- OSCE
- EULEX
- UNMIK
- KP (Prishtinë/Priština)
- KP (Pejë / Peć)
- KP (Gračanica/Graçanicë)
- KP (Istog / Istok)
- MOCR member
- LPSC member
- Kosovo Ombudsperson
- QESH
- Parliamentarian

### **NSW**

- NSWPF, Counter Terrorism & Special Tactics
- NSWPF, Police Prosecutions
- NSWPF, Operational Programs Command (Aboriginal Coordination Team & Cultural Diversity Team)
- NSWPF, Police Executive Team
- Australian Human Rights Commission
- NSW Community Relations Commissions
- The Gender Centre, Transgender Anti-Violence Project
- All Together Now
- People with Disability Australia
- Transgender Anti-Violence Project
- Jewish Board of Deputies
- ACON, Anti-Violence Project
- University of Sydney, Law School
- University of New South Wales, School of Social Sciences
- University of Western Sydney, School of Social Science and Psychology