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# Special Commission of Inquiry into LGBTIQ hate crimes

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## Volume 3

Commissioner, The Honourable Justice John Sackar  
December 2023

## TABLE OF CONTENTS VOLUME 3

<b>Chapter 7: Cold Cases</b>	<b>1343</b>
Evidence regarding cold case reviews	1345
Availability of exhibits and exhibit management	1346
Record-keeping practices	1347
Scientific and technological advancements	1350
Best practice for reviewing cold cases	1353
Frequency of review	1353
Manner of review	1354
Judicial approaches to evaluating evidence in cold case prosecutions	1356
Overview	1356
The impact of delay and the reliability of oral evidence	1357
“Forensic disadvantage”	1359
Evidentiary difficulties: Lost evidence and missing witnesses	1362
Case study: <i>R v Warwick (No 93)</i> [2020] NSWSC 926	1365
Conclusion	1368
<b>Chapter 8: Investigative Practices Hearing</b>	<b>1369</b>
Introduction	1370
Evidence obtained by the Inquiry in relation to the NSWPF’s Investigative Practices	1371
Areas of consensus	1373
The work of homicide investigators and of the UHT	1373
The recording of past failures, and causes for optimism in the future	1375
The initial case review and the challenges faced by the UHT	1376
The unrepresentative nature of unsolved homicides	1376
The importance of respectful and inclusive communications	1377
Approach to fact-finding	1378
Where an individual has not been called to give evidence	1378
Where I cannot be satisfied concerning precisely what occurred	1378
Findings or observations made at a level of generality	1380
Procedural fairness	1380
Homicide investigations in the NSWPF	1382
The history of homicide detection in NSW	1382
Prior to the Homicide Squad	1382
The formation of the Homicide Squad	1384
Homicide Squad relationship with other NSWPF units/agencies	1387

The Engagement and Hate Crime Unit (and its predecessors)	1387
The Missing Persons Registry	1393
Training of homicide detectives	1396
Joining the homicide squad	1396
Homicide investigator courses	1398
Desirable qualities in a homicide investigator	1401
The value of cultural awareness	1403
Continuing education of homicide investigators	1404
Education about the LGBTIQ community	1406
Education concerning hate crimes	1407
The relevance of conscious or unconscious bias	1410
Conscious and unconscious bias in investigations	1411
Submissions concerning the education available to homicide investigators	1414
Submissions regarding conscious and unconscious bias	1415
Forensic testing	1420
The Crime Scene Services Branch (CSSB)	1421
The Forensic and Analytical Science Service (FASS)	1424
Evolution of forensic testing in NSW	1425
Forensic testing from the 1970s to the 1990s	1425
The 2000s to present	1428
DNA testing and technology	1431
DNA testing	1431
DNA technology	1436
Evidence from NSWPF witnesses concerning the evolution of DNA testing and technology	1444
Conclusion concerning the evolution of DNA testing and technology	1448
The Unsolved Homicide Team	1449
Establishment of the UHT	1449
Structure and operation of the UHT	1451
The UHT Tracking File	1453
The Review and Investigation Teams	1456
The triage and review process	1457
The screening process prior to 2018	1458
Current review process	1460
General issues arising in relation to screening or triage forms	1465
Case reviews in 2004–2008	1466
Case reviews between 2009 and 2017	1472
Case reviews between 2018 to present	1475
UHT review of cases dispensed with by a coroner	1479
Duration of screening and review process	1481
The backlog of reviews in the UHT	1482

Submissions concerning the UHT	1484
Management of exhibits and documentary records	1491
Application of the <i>State Records Act</i>	1491
The <i>State Records Act</i>	1491
The introduction of the State Archives Act	1492
Does the State Records Act apply to physical exhibits?	1495
The interaction between the <i>State Records Act</i> and other legislative schemes	1497
The consequence of the conclusion that exhibits may be State Records	1498
Submissions of the NSWPF concerning the application of the <i>State Records Act</i>	1500
Submissions in reply of Counsel Assisting	1501
Conclusions regarding the <i>State Records Act</i>	1502
Historical practices in relation to exhibit management	1503
The 1970s to the 1990s	1503
The 2000s and the introduction of the Command Management Framework	1509
Current policies and procedures	1511
Identifying and obtaining exhibits at a crime scene	1512
Storing exhibits	1512
Exhibit books	1514
The handling of exhibits	1515
The destruction of exhibits	1515
The introduction of EFIMS	1516
Treatment of exhibits at FASS	1518
NSWPF processes to identify and locate records and exhibits	1521
NSWPF Corporate Records, Record and Information Management Unit	1522
Standard operating procedures and protocols of Corporate Records	1525
Difficulties in locating exhibits/records	1529
Submissions concerning exhibit management	1530
The utility of criticism	1531
The evidentiary difficulties	1532
The nature of the problem	1533
Submissions concerning record management	1536
Knowledge within the NSWPF concerning the difficulties locating and retrieving exhibits and documentary material	1537
The Lehmann Report	1538
Media coverage of difficulties with exhibits	1547
The final report of Strike Force Parrabell	1548
Submissions concerning the knowledge of the NSWPF as to the significant problems with lost documentary and exhibit material	1549

Recommendations	1550
Proposed recommendation concerning matters where inquest dispensed with	1550
Recommendation 8	1551
Recommendation 9	1552
Recommendations 10-15	1553
Recommendation 16	1556
<b>Chapter 9: Overview of NSWPF investigations into LGBTIQ hate crimes and Public Hearing 2</b>	<b>1557</b>
Timeline of Public Hearing 2	1558
December 2022 hearings	1562
February-May 2023 hearings	1562
The reopening of Public Hearing 2	1564
Terms of Reference	1564
Evidence and Procedural Fairness	1565
The Inquiry’s process for receiving evidence	1565
The submissions of the NSWPF and Mr Willing	1568
Strike Force Parrabell	1568
Bias Crimes Unit	1570
Strike Force Neiwand	1571
Strike Force Macnamir	1572
Procedural fairness	1573
Observations	1575
The Inquiry’s pragmatic approach	1576
Named police witnesses and issues regarding legal representation	1577
Other witnesses named by the NSWPF and Mr Willing	1579
The academic team	1580
Bias Crimes Unit	1581
Junior Strike Force Parrabell officers	1582
Strike Force Neiwand officers	1583
Strike Force Macnamir and those assisting the State Coroner	1585
“Others” in State Crime Command	1586
Strike Force Welsford	1587
“Others” who shared the views of Ms Young and Detective Sergeant Brown	1588
Summary of Inquiry’s contact with persons identified in submissions	1588
The position reached for the September/October 2023 hearings	1589
September/October 2023 hearings	1589
<b>Chapter 10: NSWPF Responses to Hate/Bias Crimes</b>	<b>1592</b>
Early attempts to establish a hate crimes capability	1593
1995–2000: Hate Crimes Data Collection Project	1593
2001: Proposal for the establishment of a Hate Crimes Unit	1595

2006: Another proposal for a hate crimes capability	1596
2007: Position of Hate Crimes Coordinator established	1597
2009: De-establishment of the role	1598
2012–2017: Re-establishment of the role	1598
Training	1600
Data Collection	1600
2013–2015: Development of SOPs	1600
2013–2014: Operation Parrabell	1600
2014–2015: Resourcing; and establishment of the BCU	1601
2015–2017: The Bias Crimes Unit and Strike Force Parrabell	1601
2017: The Bias Crimes Unit is radically reduced and relocated	1602
From 2018 to the present	1604
Current Structure	1607
Development of a Bias Crimes Tool	1609
Conclusions and recommendations of the Inquiry	1616
History of the Bias Crimes Unit	1616
The June NSWPF Submissions	1617
The Inquiry’s response after June 2023	1618
Conclusions	1623
Recommendations	1624
<b>Chapter 11: Strike Force Macnamir</b>	<b>1626</b>
1988–2012: The first and second inquests into the death of Scott Johnson	1627
The Homicide Squad and Unsolved Homicide Team	1631
The 2012 UHT review	1632
The nature of the review	1632
The approach of the 2012 UHT review	1633
The consequence of the 2012 UHT review	1634
February 2013: <i>Australian Story</i> , and the establishment of Strike Force Macnamir	1635
The lead-up to <i>Australian Story</i>	1635
11 February 2013: Strike Force Macnamir, and <i>Australian Story</i>	1637
12 February 2013: the meeting with the Minister	1638
2013–2014: Strike Force Macnamir’s investigations	1639
The “suicide theory” in the Young Coronial Statement	1639
Application for a third inquest	1641
The “Lateline” issues	1643
Relevance of the <i>Lateline</i> issues to the work of the Inquiry	1643
The <i>Lateline</i> interview	1644
A short chronology	1644
Responses to <i>Lateline</i> received by Ms Young	1658
An alleged conspiracy	1659

2017: The conclusion of Strike Force Macnamir	1660
The State Coroner’s finding	1660
The reaction of Detective Sergeant Brown and Officer A to the Coroner’s finding	1660
Strike Force Welsford	1661
Submissions about the <i>Lateline</i> issues	1661
Procedural matters	1661
Knowledge and/or approval of the <i>Lateline</i> interview	1662
Support for Ms Young’s comments on <i>Lateline</i>	1665
Conclusions of the Inquiry	1665
Creation of Strike Force Macnamir	1665
Attitude of Strike Force Macnamir towards Scott Johnson’s death	1666
The Third Inquest	1666
Attitude of Strike force Macnamir	1667
The Young Coronial Statement	1667
The attitude of Ms Young and Mr Willing to Scott Johnson’s death	1669
Credibility and reliability of witnesses	1671
Conclusion	1672
<b>Chapter 12: Strike Force Neiwand</b>	<b>1673</b>
Background leading to Strike Force Neiwand	1674
1985–1989: The deaths of Ross Warren, John Russell and Gilles Mattaini	1674
1990–1991: Investigation by Detective Sergeant McCann	1674
2000–2005: Taradale	1675
2000–2002: Operation Taradale	1675
2003–2005: Taradale Inquest	1677
2005–2015: No reinvestigation	1681
Aftermath of the Milledge Inquest	1681
2012: UHT Review	1682
2013: Media	1683
2013: Issue Paper	1685
2015: <i>Lateline</i> Interview	1686
2015: Monetary reward	1689
Awareness of Strike Force Neiwand	1690
2015: The establishment of Strike Force Neiwand	1692
Mr Willing	1694
Mr Lehmann	1695
Mr Leggat	1696
Detective Sergeant Brown	1697
Detective Sergeant Morgan	1698
Conclusion	1699
The conduct of Strike Force Neiwand	1701

Personnel involved in Strike Force Neiwand	1702
What was not done?	1703
What was done?	1705
Neiwand Summaries	1705
Investigation Plan	1708
Progress Reports	1710
Conclusion in relation to the conduct of Strike Force Neiwand	1711
The Conclusions of Strike Force Neiwand generally	1713
The Neiwand Summaries: Generally	1713
Detective Sergeant Morgan's involvement in the Neiwand Summaries	1713
Criticisms of Operation Taradale which are common to the Neiwand Summaries	1716
Overturning of coronial findings	1719
Response of Mr Page	1720
Evidence of Detective Sergeant Morgan	1722
Conclusion about the Neiwand Summaries generally	1722
The Neiwand Summaries in respect of each case	1722
Ross Warren	1722
Assertions of Strike Force Neiwand	1722
Response of Mr Page	1724
Evidence of Detective Sergeant Morgan	1727
Evidence of Mr Willing	1729
Conclusion in relation to the Warren Summary	1729
John Russell	1732
Assertions of Strike Force Neiwand	1732
Response of Mr Page	1735
Evidence of Detective Sergeant Morgan	1738
Evidence of Mr Willing	1738
Conclusions in relation to the Russell Summary	1739
Gilles Mattaini	1741
Assertions of Strike Force Neiwand	1741
Response by Mr Page	1747
Evidence of Detective Sergeant Morgan	1751
Evidence of Mr Willing	1752
Conclusion in relation to the Mattaini Summary	1753
The Post Operational Assessment (POA)	1754
The dissemination of the Neiwand Summaries and the POA	1756
The Purpose of Strike Force Neiwand	1758
Strike Force Neiwand's stated purpose	1758
The actual purpose of Strike Force Neiwand	1760
Role of Detective Sergeant Brown	1761
Role of Mr Lehmann	1761



Role of Detective Sergeant Morgan and Mr Leggat	1764
Role of Mr Chebl	1769
Conclusion in relation to the purpose of Strike Force Neiwand	1770
Informing the Coroners Court	1772
Conclusions of the Inquiry	1774
<b>Chapter 13: Strike Force Parrabell</b>	<b>1778</b>
A. Introduction	1779
B. Origins and Beginnings	1779
Background	1779
Operation Parrabell	1783
Establishment of Strike Force Parrabell	1785
Rationale and objectives	1786
Personnel	1790
Sergeant Steer	1793
Constituent documents	1796
Terms of Reference	1796
Investigation Plan	1797
Induction Package	1798
Coordinating Instructions	1798
Content of constituent documents	1799
Creation and dissemination of constituent documents	1800
The Bias Crime Indicator Review Form	1801
Comparing the constituent documents, and the various versions of the BCIF	1802
Possible original version of BCIF ('Form 1')	1805
Second version of BCIF ('Form 2')	1807
Third version of BCIF ('Form 3')	1808
Fourth version of BCIF ('Form 4')	1809
"Re-reviews"	1810
Differences in the standard of proof	1810
How the constituent documents were used	1811
Strike Force Parrabell and ACON	1814
Submissions of Counsel Assisting and the NSWPF and conclusions of the Inquiry	1815
Operation Parrabell	1815
Establishment of Strike Force Parrabell	1816
Rationale and objectives	1816
Personnel	1821
Sergeant Steer	1822
Constituent documents	1824
ACON	1830
C. Police Methodology	1832
Overview	1832

Implementation	1833
A three-stage process	1833
Who consulted the original files?	1840
Subjectivity and intuition	1842
Standard of proof	1844
The Inquiry's expert evidence	1847
Reliability and validity	1849
Common issues addressed by all experts	1850
Other aspects of the experts' reports	1865
What could have been done instead?	1873
Submissions of Counsel Assisting and the NSWPF	1874
Police Methodology	1874
Expert evidence	1878
Selection of the bias crime indicators	1880
Concerns about the BCIF itself	1881
Consultation with the LGBTIQ community	1882
Reliance on archival material	1882
Partial motivation (such as robbery-related violence)	1883
Other aspects of the experts' reports	1884
What could have been done instead?	1886
Other matters	1887
Conclusions of the Inquiry	1889
The experts	1889
The September/October 2023 evidence	1890
General conclusions as to methodology	1890
Identification of bias crimes by Counsel Assisting compared to the process engaged in by Strike Force Parrabell	1893
D. Choosing the Academics	1895
Purpose of the academic review	1895
The search for possible academic reviewers	1897
Early enquiries	1898
Three quotes required	1899
The Request for Quotation (RFQ)	1901
Drafting of the Request for Quotation	1901
Insertion of additional bullet point under "Services required"	1902
"Challenges"	1903
The selection criteria, and the three proposals	1905
The selection process	1908
"Capability" and "demonstrated experience"	1909
"Objectivity"	1909
Submissions; and conclusions of the Inquiry	1911

Purpose of the academic review	1911
The search for possible academic reviewers	1914
Request for Quotation (RFQ)	1915
The selection process	1920
E. The Academics' Methodology	1929
Purpose and scope of academic review	1929
Timeline of the academic review	1932
The differing levels of involvement of the academic team	1934
Rejection of the BCIF	1936
Development of alternative methodology	1941
"Anti-gay bias" and "anti-paedophile animus"	1945
Origins and rationale of this distinction	1945
The experts' views	1948
The 'Moral Panic' article	1950
The Inquiry's expert evidence	1955
Common issues addressed by all experts	1955
Other aspects of the experts' reports	1965
Submissions of Counsel Assisting and the NSWPF	1971
Rejection of the BCIF	1971
"Anti-gay bias" and "anti-paedophile animus"	1974
The 'Moral Panic' article	1977
Expert evidence	1979
Conclusions of the Inquiry	1995
Rejection of the BCIF	1995
Intuition vs. objectivity	1997
Engagement with hate crimes literature	1998
Definition of bias crime and the issue of partial motivation	1999
"Anti-gay bias" and "anti-paedophile animus"	1999
The 'Moral Panic' article	2000
Victim perceptions	2002
Was there a need for a novel typology?	2003
E. Collaboration, consensus and independence	2005
A "collaborative" process	2005
Email correspondence	2006
Email of 31 October 2016 from Superintendent Middleton	2006
Email of 12 December 2016 from Dr Dalton	2007
Emails of 12 and 13 December 2016 from Assistant Commissioner Crandell	2008
Email of 13 December 2016 from Superintendent Middleton	2010
Email of 13 February 2017 from Superintendent Middleton	2011
The Academic Report	2012
Feedback on draft report	2012

Email of 14 February 2018 from Superintendent Middleton	2014
References to “collaboration” in the Parrabell Report	2014
Evidence of Assistant Commissioner Crandell	2015
Evidence of Superintendent Middleton	2016
Submissions of Counsel Assisting and the NSWPF	2017
Conclusions of the Inquiry	2023
<b>G. The Parrabell Report</b>	<b>2030</b>
The Police Report	2030
Introduction	2030
Impetus for, and objectives of, the Parrabell Report	2032
Terms of Reference	2034
“A Simple Question”	2035
“Each team endorsed the systemic approach of the other”	2035
Findings of Strike Force Parrabell team	2036
The Academic Report	2037
Methodology of Strike Force Parrabell	2038
Methodology of the academic team	2039
Findings of academic team	2040
Submissions of Counsel Assisting and the NSWPF	2041
The Police Report	2041
The Academic Report	2047
Conclusions of the Inquiry	2048
The Police Report	2048
The Academic Report	2053
<b>Chapter 14: Convergences</b>	<b>2054</b>
The Strike Forces, viewed collectively	2056
The 2013 Issue Paper	2057
Overlaps between the three Strike Forces	2060
Timing	2060
Personnel – Strike Force Macnamir and Strike Force Neiwand	2062
Personnel – Strike Force Parrabell and the other strike forces	2065
“Collaborative media”	2068
“Putting to the test” the Taradale findings	2070
Subject matter and outcomes	2070
Coordination generally	2072
Conclusions of the Inquiry	2073
The 2013 Issue Paper	2073
Convergence or conspiracy	2074
<b>Chapter 15: Response of the NSWPF to the Inquiry</b>	<b>2078</b>
Acknowledgement of the work of the NSWPF	2079

The extensions	2080
The question of resourcing	2081
The process of locating material for production	2082
The impact of the problems with production	2084
The expectation that the NSWPF would draw factual matters to the attention of the Inquiry	2085
Compliance with Practice Guidelines and timeframes set by the Inquiry	2086
The NSWPF as a model litigant	2088
The commencement of the Inquiry's work	2088
Summons NSWPF1 and NSWPF3	2088
Method and timing of production – Summonses NSWPF1 and NSWPF3	2089
Initial correspondence with the NSWPF	2090
Summons 12	2092
September to December 2022	2093
An issue emerges in relation to NSWPF resourcing	2095
The beginning of 2023	2099
June and July 2023	2099
Public Hearing 15	2101
August to November 2023	2103
Correspondence with the NSWPF concerning statements made by members of the UHT concerning the work of the Inquiry	2104
A belated issue arises concerning NSWPF1	2108
Gratuitous complaint about trans witnesses	2114
Institutional defensiveness	2116
Engagement of the NSWPF with the LGBTIQ community	2118
The value of an independent review	2120
<b>Chapter 16: Concluding Remarks</b>	<b>2123</b>
ACON's <i>In Pursuit of Truth and Justice</i> Report and recommendations arising from the Parliamentary Inquiry	2124
<i>Speaking Out Against Anti-Trans Violence: A Call for Justice</i>	2125
An apology	2125
The history of violence against the LGBTIQ community	2126
Aboriginal communities	2127
Culturally and linguistically diverse (CALD) communities	2127
Looking to the future	2128



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# Chapter 7: Cold Cases

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## COLD CASES

- 7.1. The deaths which are the subject of this Inquiry are, by definition, cold cases. When I refer to a cold case, I mean a homicide or suspected homicide which has not been solved over a protracted period. As demonstrated in **Chapters 5 and 6**, the cases before the Inquiry have regrettably remained unsolved for between 15 and 47 years.
- 7.2. As I have observed before, the Inquiry has experienced significant difficulties in conducting its work due to the obstacle created by the loss or destruction of exhibits and documents, and/or the fact that particular investigative steps were not take contemporaneously with a death. This prompted me to give consideration the general principles concerning cold case investigation, and what matters contribute to the resolution (or lack thereof) of cold cases. This Chapter has come about against that backdrop.
- 7.3. Some further aspects of cold case investigation are explored in greater detail in the context of the Investigative Practices Hearing which is addressed at **Chapter 8** of this Report.
- 7.4. This Chapter examines the nature of, and limitations associated with, cold cases, including the barriers to a successful reinvestigation. This Chapter covers:
  - a. The expert evidence that Dr Cheryl Allsop provided to the Inquiry; and
  - b. Relevant case law involving the prosecution of cold cases or where a forensic disadvantage is experienced.
- 7.5. As a matter of common sense, the solvability and successful prosecution of a cold case is heavily dependent on the thoroughness of the initial investigation, the effect of that investigation on future reinvestigations, and the approach taken by reinvestigators. For example, the initial gathering and documentation of evidence and the allocation of resources—including the number of detectives assigned to a case and whether the detectives involved are committed or experienced—will bear on whether a case is solved at first instance. Where the case remains unsolved, these factors will inhibit any future review or reinvestigation, and may also seriously affect the prospects of a successful prosecution. This point is also made in the academic literature on this topic.<sup>1</sup>

<sup>1</sup> See Charles Welford and James Cronin, 'Clearing up homicide clearance rates' (2000) (April) *National Institute of Justice Journal* cited in R. H. Whalton, *Cold Case Homicides: Practical Investigative Techniques* (CRC Press, 2<sup>nd</sup> ed, 2017) 21; Jenny Mouzos and Damon Muller, 'Solvability Factors of Homicide in Australia: An Exploratory Analysis' (2001) (No. 216) *Australian Institute of Criminology Trends and Issues in crime and criminal justice*, 5.

## Evidence regarding cold case reviews

- 7.6. This section summarises the evidence provided to the Inquiry by Dr Allsop, a Senior Lecturer in Criminology at the University of South Wales and researcher in major crime investigations. Dr Allsop prepared an expert report for the Inquiry dated 9 August 2023 (**Allsop Report**).<sup>2</sup> Dr Allsop was also called by the Inquiry to give oral evidence in relation to cold case investigations. A number of academic articles authored by Dr Allsop were also in evidence before the Inquiry.
- 7.7. The Inquiry was assisted by the evidence of Ms Sharon Neville, the Operations Director of Criminalistics at FASS, who prepared an expert report for the Inquiry dated 1 June 2023.<sup>3</sup> Ms Neville’s evidence is primarily addressed at **Chapter 8**. However, where Ms Neville’s evidence addresses general practice for cold cases, particularly with respect to the management of exhibits, it will also be addressed in this section.
- 7.8. Dr Allsop was not cross-examined by Counsel for the NSWPF. Given her expertise, Counsel Assisting submitted her evidence should be accepted in its entirety.
- 7.9. Dr Allsop gave evidence about best practice for cold case investigations and provided an account of some of the factors that can impede an investigation (or reinvestigation, or review) of “cold case” homicides, and which bear upon whether a cold case can or will be solved. These include:<sup>4</sup>
- a. The availability of physical exhibits and the way in which those exhibits have been stored;
  - b. The record-keeping practices of the relevant police force;
  - c. Scientific and technical developments, including the ability to create DNA profiles; and
  - d. The frequency and manner in which cold cases are reviewed by investigators.
- 7.10. The above factors are not necessarily definitive or determinative of whether a cold case will be solved. For example, it is possible that, through the passage of time and shifts in personal allegiances, additional evidence may become available, such as additional eyewitness evidence and/or evidence of admissions.<sup>5</sup> However, the factors outlined above and addressed in more detail below are particularly salient in the context of this Inquiry given the extent to which they pervade the cases being examined by it.

<sup>2</sup> Exhibit 51, Tab 18A, Expert Report of Dr Cheryl Allsop, 9 August 2023 (SCOI.84938).

<sup>3</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 2 June 2023 (SCOI.83528).

<sup>4</sup> Exhibit 51, Tab 18A, Expert Report of Dr Cheryl Allsop, 9 August 2023, [22]–[36] (SCOI.84938).

<sup>5</sup> See Exhibit 51, Tab 18A, Expert Report of Dr Cheryl Allsop, 9 August 2023, [27] (SCOI.84938); Transcript of the Inquiry, 15 August 2023, T5544.39–5545.20 (TRA.00082.00001).



## Availability of exhibits and exhibit management

- 7.11. The loss of physical exhibits (or the inability to find or locate them) is a “major obstacle” to the success of cold case investigations.<sup>6</sup> In the past, it was “not uncommon” for police to return items to suspects, victims, and relatives if they did not believe items needed to be retained for any prosecution.<sup>7</sup> Additionally, in circumstances where items or exhibits were retained, they may have been misfiled, lost, or destroyed and are, therefore, unable to be tested.<sup>8</sup> Furthermore, and as discussed in more detail below, even where exhibits were retained, police may not be able to locate them in the present day because of the record-keeping practices used at the time by the relevant police force or officer.<sup>9</sup>
- 7.12. Another problem that frequently arises in the investigation of cold cases is the integrity, and ability to show the “chain of continuity”, of physical exhibits.<sup>10</sup> Evidence handling practices have changed significantly over time.<sup>11</sup> In the past, items were also often retained in an “exhibits bag” without being covered or sealed protectively.<sup>12</sup>
- 7.13. As noted in the Allsop Report, “all exhibits should be correctly collected, retained, and stored to avoid cross contamination of exhibits”.<sup>13</sup> The failure to wear protective clothing or to properly store the exhibit increases the chance that exhibits are contaminated.<sup>14</sup>

<sup>6</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018), 115 (SCOI.84208).

<sup>7</sup> Exhibit 51, Tab 16, Cheryl Allsop, ‘Cold Case Homicide Reviews’ in Fiona Brookman, Edward R. Maguire, and Mike Maguire (eds), *The Handbook of Homicide* (John Wiley & Sons, 2017), 572; Exhibit 51, Tab 18A Expert Report of Dr Allsop, 9 August 2023, [26] (SCOI.84938); affirmed in oral evidence at Transcript of the Inquiry, 15 August 2023, T5540.41–45, 5542.20–22, 5543.3–17 (TRA.00082.00001).

<sup>8</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018), 141 (SCOI.84208); affirmed in oral evidence at Transcript of the Inquiry, 15 August 2023, T5543.7–42, 5547.12–29 (TRA.00082.00001).

<sup>9</sup> Transcript of the Inquiry, 15 August 2023, T5542.19–24, 5543.3–17, 5545.39–46 (TRA.00082.00001).

<sup>10</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 141 (SCOI.84208); Exhibit 51, Tab 18A Expert Report of Dr Allsop, 9 August 2023, [29] (SCOI.84938).

<sup>11</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 141 (SCOI.84208); Transcript of the Inquiry, 15 August 2023, T5541.38–5542.26 (TRA.00082.00001).

<sup>12</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 142 (SCOI.84208).

<sup>13</sup> Exhibit 51, Tab 18A Expert Report of Dr Allsop, 9 August 2023, [29] (SCOI.84938).

<sup>14</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 141 (SCOI.84208).

- 7.14. Ms Neville gave evidence that how exhibits were collated and stored can affect the amenability of any exhibits to forensic testing, particularly over time. Ms Neville said there are a range of variables around how a sample is collected and stored which contribute to the degradation of DNA on exhibits.<sup>15</sup> Some of these include the number of people who have handled the sample; whether the sample has been exposed to heat, UV light or moisture; and the use of chemicals, for example cleaning products, on the exhibit.<sup>16</sup> According to Ms Neville:<sup>17</sup>
- the samples that have been retained within the stored forensic biology facility are the most amenable to applying the new technologies, because they have been stored in optimised conditions and protected from any inadvertent contamination.*
- 7.15. The availability and contamination of physical evidence will, obviously enough, have an impact upon the value of DNA obtained from a physical exhibit. The context in which a DNA sample is found is, therefore, an important consideration in interpreting any test results. The utility of DNA evidence should also be assessed by a concurrent consideration of all the other forms of evidence available in the case.<sup>18</sup>
- 7.16. Given the evolving nature of scientific and technological advances in this area, it is perhaps unsurprising that many investigators considered and collected exhibits, in what became cold cases, based on what analysis could be done at the time.<sup>19</sup>
- 7.17. Exhibits, particularly those consisting of DNA evidence, are vulnerable to deterioration over time. Moreover, the methods previously used to test forensic samples may have utilised much of that sample, so that there is little left to analyse today.<sup>20</sup>

### Record-keeping practices

- 7.18. The ability to solve a cold case may be affected by whether all the documentation from the original investigation, and any subsequent reviews of that case, have been correctly retained and filed, and whether investigators can easily locate any exhibits.

<sup>15</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [107b] (SCOI.83528).

<sup>16</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [107b] (SCOI.83528); Transcript of the Inquiry, 15 August 2023, T5527.34–45 (TRA.00082.00001).

<sup>17</sup> Transcript of the Inquiry, 15 August 2023, T5519.25–37 (TRA.00082.00001).

<sup>18</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 142 (SCOI.84208).

<sup>19</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 55 (SCOI.84208).

<sup>20</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 55 (SCOI.84208); Exhibit 51, Tab 18A Expert Report of Dr Allsop, 9 August 2023, [25] (SCOI.84938).

- 7.19. A cold case review will often begin by locating and collating all relevant documentation and exhibits. If these records are missing, or have been misfiled, destroyed or lost, it can hinder the progression of a cold case review.<sup>21</sup> Dr Allsop summed up the inherent difficulties for cold case investigations with poor record-keeping practices as follows:<sup>22</sup>

*...if you haven't got the paperwork, if you haven't got the documentation, if you haven't got it in an organised manner such that you can see what is available, what exhibits you have got, what suspects you might need to eliminate, what witnesses you might need to speak to, it then makes it difficult to go back and review those cases, it makes it difficult to cross-reference any links with those cases.*

- 7.20. In the course of her research, Dr Allsop has encountered many instances where investigative paperwork has been misfiled, lost, moved away from the force area where the homicide occurred, or even discovered in the homes of former detectives.<sup>23</sup> In the absence of a complete set of documentation, the concept of “back engineering” will be one of the first steps in revisiting a crime.<sup>24</sup> This refers to:<sup>25</sup>

*...the process of rebuilding case files from scratch, gathering the paperwork and exhibits still available, and obtaining information and knowledge from the original investigating officers, drawing on their ‘corporate memory’.*

- 7.21. Dr Allsop emphasised the need for adequate record-keeping, not just for the purposes of investigation, but in order to present the material at trial or in a prosecution to discharge the burden of proof.<sup>26</sup>
- 7.22. Dr Allsop also gave evidence that ensuring that all the relevant records are readily accessible leads to more efficient and effective reviews of cold cases. Likewise, Dr Allsop gave evidence that:<sup>27</sup>

*Ensuring there are also closing reports for each cold case reviewed will help any future investigators understand the status of the investigation at that time and any outstanding opportunities that could be pursued.*

<sup>21</sup> Exhibit 51, Tab 18A Expert Report of Dr Allsop, 9 August 2023, [30], [32], [36], [40] (SCOI.84938).

<sup>22</sup> Transcript of the Inquiry, 15 August 2023, T5545.39–46, reiterated at T5547.43–5548.3 (TRA.00082.00001).

<sup>23</sup> Transcript of the Inquiry, 15 August 2023, T5543.7–42, 5547.12–21 (TRA.00082.00001).

<sup>24</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 115 (SCOI.84208).

<sup>25</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 109 (SCOI.84208).

<sup>26</sup> Transcript of the Inquiry, 15 August 2023, T5550.40–5551.4 (TRA.00082.00001).

<sup>27</sup> Exhibit 51, Tab 18A, Expert Report of Dr Cheryl Allsop, 9 August 2023, [32] (SCOI.84938).

- 7.23. Dr Allsop worked with a police force which, in about 2010, recognised the concerns with storage of unsolved homicide material and made a concerted effort to collate, organise and review this paperwork. While Dr Allsop considered this to be good practice, she observed that it appears reliant on the initiative of that particular segment of the relevant police force, rather than the application of a systematic approach to record-keeping.<sup>28</sup> Amending historical deficiencies is undoubtedly going to be a resource intensive task.
- 7.24. Dr Allsop provided evidence to the Inquiry about the operation of the Home Office Large Major Enquiry System (**HOLMES**) which is currently used in the UK as an information management system for homicide investigations and serious complex cases.<sup>29</sup> The HOLMES system was introduced in about 1986, following the Byford Review of 1981, which identified missed opportunities to identify the offender in a series of linked murders in Bradford, UK, as a result of the record-keeping practices used in the investigation.<sup>30</sup>
- 7.25. According to Dr Allsop, HOLMES is “used in the UK to manage the high volume of information generated in large scale investigations”.<sup>31</sup> The HOLMES system enables the “comprehensive storage and retrieval of information collected during a major crime investigation”<sup>32</sup> and, in its current form, allows several users to input, update and access information at the same time. The benefits of such a system are said to be cross-force collaboration and data sharing, the ability to link incidents and conduct joint investigations, and to give the investigation’s leader visibility in relation to how the investigation is progressing.<sup>33</sup> In oral evidence, Dr Allsop explained that HOLMES allows for analysis to be undertaken on the platform, and it can “link and make connections” between the information stored on the system.<sup>34</sup>
- 7.26. Dr Allsop also provided information about the general operation and advantages of the HOLMES system, but could not be sure of its day-to-day use by the police force.<sup>35</sup> It is clear that the system has the capability to store all records regarding exhibits—including expert reports, testing results and the movement of exhibits—but that, to some extent, it still relies on members of the police inputting that data into the system.<sup>36</sup> If the system is used correctly, Dr Allsop confirmed that all data about exhibits and testing (what tests had been done and what tests had not been done) should be contained on the system.<sup>37</sup>

<sup>28</sup> Transcript of the Inquiry, 15 August 2023, T5543.44–5544.33 (TRA.00082.00001).

<sup>29</sup> Transcript of the Inquiry, 15 August 2023, T5534.20–42 (TRA.00082.00001).

<sup>30</sup> Transcript of the Inquiry, 15 August 2023, T5534.34–5535.12 (TRA.00082.00001).

<sup>31</sup> Exhibit 51, Tab 18A, Expert Report of Dr Cheryl Allsop, 9 August 2023, [19] (SCOI.84938).

<sup>32</sup> Exhibit 51, Tab 18A, Expert Report of Dr Cheryl Allsop, 9 August 2023, [19] (SCOI.84938).

<sup>33</sup> Exhibit 51, Tab 18A, Expert Report of Dr Cheryl Allsop, 9 August 2023, [19] (SCOI.84938).

<sup>34</sup> Transcript of the Inquiry, 15 August 2023, T5536.5–11 (TRA.00082.00001).

<sup>35</sup> Transcript of the Inquiry, 15 August 2023, T5536.21–43 (TRA.00082.00001).

<sup>36</sup> Transcript of the Inquiry, 15 August 2023, T5536.13–43 (TRA.00082.00001).

<sup>37</sup> Transcript of the Inquiry, 15 August 2023, T5536.37–43 (TRA.00082.00001).

- 7.27. In written submissions, the NSWPF noted that the systems it uses for investigation and evidence management, such as e@gle.i and EFIMS have similar capabilities to the HOLMES system. The NSWPF suggested that the rollout of the cloud-based Integrated Policing Operations System (**iPOS**) in 2024 will further improve and integrate these electronic systems.<sup>38</sup> This submission is addressed further in **Chapter 8**.

### Scientific and technological advancements

- 7.28. Dr Allsop gave evidence that scientific and technological advances have been key to the successful resolution of cold cases. In particular, Dr Allsop gave evidence about advances enabling “smaller and smaller” samples of DNA to be amplified to obtain a DNA profile.<sup>39</sup> Ms Neville’s evidence about these advances in technology, as used in NSW, is canvassed in more detail in **Chapter 8**. Dr Allsop explained that she considers this technology (which was developed and continues to be used in the UK) to be “pivotal” to cold case investigations, and “fundamental” to renewing opportunities to identify and prosecute offenders.<sup>40</sup>
- 7.29. In many cold cases, these technologies were not available at the time of the original investigation. According to Dr Allsop (with Dr Pike):<sup>41</sup>

*...we have seen an exponential growth in the use of science and technology in investigations... progressive developments in scientific techniques and technologies, enabling DNA profiles to be established from ever-smaller amounts of biological material, has increased opportunities for offenders to be identified, linked to and eliminated from, crimes.*

- 7.30. Likewise, Dr Allsop gave evidence that there is now a greater chance of obtaining a DNA profile from a degraded sample.<sup>42</sup> Ms Neville also highlighted the opportunities that exist around DNA testing when she told the Inquiry that all modern techniques that are available can be applied to historical samples:<sup>43</sup>

*So, there is a lot of opportunity for reviewing old cases and applying technology to achieve outcomes that wouldn't have been achieved at the time, and there has been a lot of work done in that space over the years.*

<sup>38</sup> Submissions of NSWPF, 10 October 2023, [66]–[68] (SCOI.86127).

<sup>39</sup> Transcript of the Inquiry, 15 August 2023, T5537.32–38 (TRA.00082.00001).

<sup>40</sup> Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [22], [24] (SCOI. 84938); affirmed in oral evidence at Transcript of the Inquiry, 15 August 2023, T5537.24–30 (TRA.00082.00001).

<sup>41</sup> Exhibit 51, Tab 18, Cheryl Allsop and Sophie Pike, ‘Investigating homicide: back to the future’ (2019) 5(3) *Journal of Criminological Research, Policy and Practice* 229, 230 (SCOI.84209).

<sup>42</sup> Transcript of the Inquiry, 15 August 2023, T5538.25–30 (TRA.00082.00001).

<sup>43</sup> Transcript of the Inquiry, 15 August 2023, T5519.34–37 (TRA.00082.00001).

- 7.31. Dr Allsop gave evidence to the effect that forensic science can play a significant role in the prosecution of historical crimes.<sup>44</sup> Dr Allsop further observed that investigators are mindful of the need for evidence to successfully prosecute a cold case, and forensic science is perceived to provide that necessary evidence.<sup>45</sup> To reinvestigate a cold case homicide is “difficult, resource intensive, and time-consuming, given the sheer volumes of data that would need to be reviewed”.<sup>46</sup> Dr Allsop notes that, in some instances, forensic science can help to identify a suspect which would then enable targeted investigations to be made.<sup>47</sup>
- 7.32. According to Dr Allsop, the development of DNA databases has also been significant. Dr Allsop gave evidence that a national DNA database was introduced in the UK in 1995. Together with scientific and technological advancements, DNA databases have given investigators the opportunity to rework forensic samples from historical crime scenes and compare them with databased profiles.<sup>48</sup> In oral evidence, Dr Allsop summarised the significance of this development as follows:<sup>49</sup>
- It allows you to link crimes. It allows you then to – if you’ve got potential suspects that were named in the original investigation, they can then be eliminated if it’s not their DNA profile that was left at the crime scene. So, it gives you opportunities.*
- 7.33. The ability to make familial matches has also been significant in identifying offenders.<sup>50</sup> Dr Allsop noted that matching an unknown offender with an unknown relative “still requires a lot of detective work” but suggested that there has been some success in these cases in the UK.<sup>51</sup> Furthermore, in the USA, genealogy websites are “beginning to have an impact on cold cases”, albeit less so in the UK, where Dr Allsop said the use of genealogy websites for cold case investigations raises human rights and privacy concerns.<sup>52</sup> The use of public genealogy websites in Australia is dealt with in detail in **Chapter 8**.
- 7.34. However, Dr Allsop gave evidence she considered that the reliance on science in cold case investigations is “not without issue”.<sup>53</sup> In her oral evidence, Dr Allsop also cautioned that DNA testing “is not the magic bullet you might think”.<sup>54</sup>

<sup>44</sup> Transcript of the Inquiry, 15 August 2023, T5537.24–30 (TRA.00082.00001); Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 142 (SCOI.84208).

<sup>45</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 145 (SCOI.84208).

<sup>46</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 144 (SCOI.84208).

<sup>47</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 142, 144 (SCOI.84208).

<sup>48</sup> Transcript of the Inquiry, 15 August 2023, T5537.40–5538.5 (TRA.00082.00001).

<sup>49</sup> Transcript of the Inquiry, 15 August 2023, T5538.7–11 (TRA.00082.00001).

<sup>50</sup> Transcript of the Inquiry, 15 August 2023, T5538.13–23 (TRA.00082.00001).

<sup>51</sup> Transcript of the Inquiry, 15 August 2023, T5538.20–23 (TRA.00082.00001).

<sup>52</sup> Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [24] (SCOI. 84938); Transcript of the Inquiry, 15 August 2023, T5541.12–33 (TRA.00082.00001).

<sup>53</sup> Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [25] (SCOI. 84938).

<sup>54</sup> Transcript of the Inquiry, 15 August 2023, T5542.25–26 (TRA.00082.00001).

- 7.35. First, and as noted above, Dr Allsop gave evidence that if the crime took place before the advent of DNA for forensic purposes became widely known, there is a risk of contamination to any samples collected.<sup>55</sup> However, Dr Allsop suggests that the advancement of testing means that even degraded, smaller or mixed samples *can* yield DNA profiles.<sup>56</sup>
- 7.36. Secondly, and as also noted above, science is only useful if it can be applied to a particular exhibit. The current reliance on scientific evidence means that the success of cold case reviews often depends on the availability of forensic opportunities to be pursued.<sup>57</sup> This, in turn, often hinges upon the availability of exhibits and other physical evidence, which are not always retained.<sup>58</sup>
- 7.37. Thirdly, the focus on science can result in other opportunities for progressing a case being missed, particularly when forensic opportunities are not immediately obvious.<sup>59</sup> In such cases, opportunities that can be ascertained by what Dr Allsop (with Dr Pike) calls the “craft of investigative work” can be overlooked or dismissed.<sup>60</sup>
- 7.38. These opportunities include witnesses who may have changed allegiances over time, or lines of enquiry which were not followed at the time of the original investigation.<sup>61</sup> Furthermore, investigators must have an understanding of the science and how to use it, because the “use of science in an investigation is only as good as the understanding officers have as to its use”.<sup>62</sup> This requires investigators to keep up with the capabilities of science and technology, as well as how science and technology can be used in legal proceedings.
- 7.39. Fourthly, utilising scientific tools and techniques can be costly, and the inability to show a chain of custody from collection to court can be a disincentive to apply resources to the testing of exhibits in cold cases, if there will likely be legal issues in utilising the results of such testing.

<sup>55</sup> Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [25] (SCOI.84938)]; affirmed in oral evidence at Transcript of the Inquiry, 15 August 2023, T5541.38–5542.17 (TRA.00082.00001).

<sup>56</sup> Transcript of the Inquiry, 15 August 2023, T5538.25–30 (TRA.00082.00001).

<sup>57</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018), 54, 142 (SCOI.84208).

<sup>58</sup> Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [26] (SCOI.84938); Transcript of the Inquiry, 15 August 2023, T5542.19–25 (TRA.00082.00001).

<sup>59</sup> Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [27] (SCOI. 84938).

<sup>60</sup> Exhibit 51, Tab 18, Cheryl Allsop and Sophie Pike, ‘Investigating homicide: back to the future’ (2019) 5(3) *Journal of Criminological Research, Policy and Practice* 229, 237 (SCOI.84209).

<sup>61</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018), 145 (SCOI.84208); Transcript of the Inquiry, 15 August 2023, T5544.39–5545.22 (TRA.00082.00001).

<sup>62</sup> Exhibit 51, Tab 17, Cheryl Allsop, *Cold Case Reviews: DNA, Detective Work and Unsolved Major Crimes* (Oxford University Press, 2018) 142, 54 (SCOI.84208).

## Best practice for reviewing cold cases

- 7.40. The frequency and manner in which cold cases are reviewed by investigators can also affect whether a cold case can or will be solved. According to Dr Allsop, “there are no uniform or prescribed ways of approaching cold case reviews”.<sup>63</sup>

### Frequency of review

- 7.41. Dr Allsop gave evidence that since 1998, the then Association of Chief Police Officers (now the National Police Chiefs Council) in the UK have suggested that cold cases should be reviewed every two years; guidance which was reaffirmed in the 2000s.<sup>64</sup> Dr Allsop also gave evidence that regular reviews are important because of advances in scientific techniques and technologies “that may mean DNA profiles can be obtained from exhibits retained from the original investigation” and because “people do change allegiance and may be willing to come forward with information that they had not previously felt able to do”.<sup>65</sup>
- 7.42. Dr Allsop expressed her opinion that the two-year guideline is good practice, but acknowledged that the ability to conduct reviews with that sort of frequency depends on adequate resourcing.<sup>66</sup> Dr Allsop also acknowledged that “[y]ou simply can’t”<sup>67</sup> do a full review of everything every two years, and that a balance must be struck between the depth of review and the volume.<sup>68</sup> The review actually undertaken might be limited in nature such as a “thematic review, an intelligence review, forensic review [or] exhibits review”.<sup>69</sup>
- 7.43. However, Dr Allsop considers that conducting reviews with this sort of frequency allows an investigator to consider:<sup>70</sup>

*...are there any new scientific techniques since last this was reviewed that might help in your case now? Is there any intelligence that you might have that might help you in your case now? And, of course, it helps you keep on top of your unsolved cases.*

<sup>63</sup> Exhibit 51, Tab 16, Cheryl Allsop, ‘Cold Case Homicide Reviews’ in Fiona Brookman, Edward R. Maguire, and Mike Maguire (eds), *The Handbook of Homicide* (John Wiley & Sons, 2017) 568 (SCOI.84206).

<sup>64</sup> Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [35] (SCOI. 84938); Transcript of the Inquiry, 15 August 2023, T5554.8–17 (TRA.00082.00001).

<sup>65</sup> Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [35] (SCOI. 84938).

<sup>66</sup> Transcript of the Inquiry, 15 August 2023, T5554.19–22 (TRA.00082.00001).

<sup>67</sup> Transcript of the Inquiry, 15 August 2023, T5554.44– (TRA.00082.00001).

<sup>68</sup> Transcript of the Inquiry, 15 August 2023, T5556.13–24 (TRA.00082.00001).

<sup>69</sup> Transcript of the Inquiry, 15 August 2023, T5555.14–15 (TRA.00082.00001).

<sup>70</sup> Transcript of the Inquiry, 15 August 2023, T5554.23–27 (TRA.00082.00001).



- 7.44. When asked about the difference between a two and a five year review cycle, Dr Allsop emphasised the importance of keeping up to date with scientific advancements, and preserving the ability to test exhibits.<sup>71</sup> If all scientific techniques are captured in the case, then Dr Allsop considered that five years was “fine”.<sup>72</sup> I return to this issue in **Chapter 8**, but I would observe here that, in light of the evidence I have received I consider a two year review cycle to be called for—by which I mean that a system should be in place to ensure that each cold case is reviewed at least every two years, but earlier if new information comes to light in relation to a given case. If exhibits and records are adequately kept and referenced, I see no reason why a two-year review cycle would not be feasible. The rate of technological change and the potential for new information to arise upon review calls for regular reviews of this kind.
- 7.45. This highlights the importance, indeed urgency, of the audit of unsolved homicides which I have recommended as **Recommendation 10** in this Report.
- 7.46. However, Dr Allsop considered that a focus on five years should not detract from other prompts that should instigate a review, for example, where an offender is otherwise identified who could assist the investigation, or the opportunity to initiate an anniversary appeal.<sup>73</sup> Although there are known problems with eyewitness testimony in investigations, Dr Allsop gave evidence that witnesses “can and do remember information even despite the passage of time since the crime took place”.<sup>74</sup> Anniversary appeals using the available media—usually on the date of the homicide or birthday of the victim—can also be very useful to:<sup>75</sup>

*...try and jog people’s memories, to try and get either witnesses to come forward who might not necessarily have realised the significance of information that they held, who might have given information at the time and maybe have changed allegiance... [or] prompt a suspect to come forward.*

### Manner of review

- 7.47. In circumstances where a cold case review is taking place for the first time, Dr Allsop explains that the initial stage should focus on establishing the location of all relevant documents and exhibits so they can be collated for review.<sup>76</sup> Dr Allsop, in oral evidence, described this stage as “understanding your case”,<sup>77</sup> particularly where the gaps might be.<sup>78</sup> According to Dr Allsop:<sup>79</sup>

<sup>71</sup> Transcript of the Inquiry, 15 August 2023, T5555.26–5556.26 (TRA.00082.00001).

<sup>72</sup> Transcript of the Inquiry, 15 August 2023, T5556.4–6 (TRA.00082.00001).

<sup>73</sup> Transcript of the Inquiry, 15 August 2023, T5556.19–26, 5557.9–32 (TRA.00082.00001).

<sup>74</sup> Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [35] (SCOI.84208).

<sup>75</sup> Transcript of the Inquiry, 15 August 2023, T5557.14–25 (TRA.00082.00001).

<sup>76</sup> Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [36] (SCOI.84208).

<sup>77</sup> Transcript of the Inquiry, 15 August 2023, T5558.25–26 (TRA.00082.00001).

<sup>78</sup> Transcript of the Inquiry, 15 August 2023, T5558.14–16 (TRA.00082.00001).

<sup>79</sup> Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [36] (SCOI.84208).

*These documents and exhibits should then be thoroughly assessed to identify potential lines of enquiry and scope for progression of the cold case. Depending on the volume of cold cases a review team must manage, outstanding cold cases need be prioritised, weighing up factors such as the likely chances of success, the viability of forensic opportunities, whether there are suspects identified and considering the risk that the offender may offend again. A review should then focus on looking for forensic opportunities, witnesses, and potential suspects to be implicated or eliminated. A closing report should be prepared so that when the case is next reviewed investigators have the Senior Investigating Officer's views along with any outstanding lines of enquiry to pursue.*

7.48. In oral evidence, Dr Allsop identified the “closing report” as an important document which she describes as a “point-in-time view of everything that has been done in that investigation and potential future opportunities”, which should have been prepared by the original investigator or the first cold case reviewer.<sup>80</sup> A review should be conducted in accordance with best practice so as to ensure any further review is efficient and effective.

7.49. Dr Allsop also identified that another difficulty in cold case reviews is that most investigation and review teams are periodically created and disbanded, and the process is required to start again each time.<sup>81</sup> According to Dr Allsop this requires investigators to undertake the following steps:<sup>82</sup>

*...make sure all documentation and exhibits are corrected [sic] stored and maintained. Search forensic archives for any materials that may be retained there. Most important do not dispose of items and paperwork from any investigation. Keep abreast of scientific and technological advances and utilise media appeals to identify potential witnesses and people who may have changed allegiances since the original investigation...*

7.50. In oral evidence, Dr Allsop added that the relationship between investigators, prosecutors and forensic science providers was important in order for the investigator to understand both the forensic significance of the material in the case and how it might play out at trial,<sup>83</sup> and so as not to miss an opportunity to advance a cold case investigation.<sup>84</sup> In a similar vein, Dr Allsop suggests that drawing on scientific expertise outside of the usual or readily available forensic circle might assist in solving cold cases.<sup>85</sup>

<sup>80</sup> Transcript of the Inquiry, 15 August 2023, T5559.11–31 (TRA.00082.00001).

<sup>81</sup> Transcript of the Inquiry, 15 August 2023, T5551.23–29 (TRA.00082.00001).

<sup>82</sup> Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [40] (SCOI.84208).

<sup>83</sup> Transcript of the Inquiry, 15 August 2023, T5564.30–5565.14 (TRA.00082.00001).

<sup>84</sup> Transcript of the Inquiry, 15 August 2023, T5561.2–17 (TRA.00082.00001); Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [38] (SCOI.84208).

<sup>85</sup> Transcript of the Inquiry, 15 August 2023, T5565.37–5566.20 (TRA.00082.00001).

- 7.51. There are dedicated review teams which exist in some regions of the UK, mostly for the purpose of reviews of ongoing investigations, designed to:<sup>86</sup>
- ...check that investigations are running as they should do, that procedures are being followed, that standards are being conformed to, and to be a help to the senior investigating officer.*
- 7.52. Dr Allsop suggests that these sorts of review teams could operate to review cold cases alongside live investigations. This may serve to address the issue of sporadic reviews, and allow cold cases to be reviewed on an ongoing basis.<sup>87</sup>
- 7.53. Dr Allsop emphasised the pivotal role that a dedicated cold case review team would play, in order to implement all of the best practice methods, particularly one that is led by a “tenacious” officer.<sup>88</sup> One of the key advantages of a dedicated team is the overarching view of all the unsolved cases, as opposed to the ebb and flow model of sporadic teams (as discussed above), which may not have this breadth of understanding.<sup>89</sup>
- 7.54. Dr Allsop identified two national cold case operations specifically funded by the UK government, in the early 2000s (Operation Advance), and again in around 2007 (Operation Stealth).<sup>90</sup> Dr Allsop considered that the success of these national operations justified the expenditure required, as well as spurring action in some local forces in respect to cold cases.<sup>91</sup> In **Chapter 8**, I describe the evidence I received from Ms Neville about two similar projects in NSW, the Cold Case Justice Program and the Human Skeletal Remains Initiative.

## Judicial approaches to evaluating evidence in cold case prosecutions

### Overview

- 7.55. The case law considered in this next part of this Chapter draws attention to some of the challenges that arise in investigating and in turn prosecuting in cold cases.
- 7.56. The principles applied in these cases provide useful guidance in relation to the manner in which judicial decision-makers have attempted to manage the impact of the passage of time, in order to ensure that accused persons receive a fair trial while also ensuring, so far as practicable, that offenders are made accountable for their actions.

<sup>86</sup> Transcript of the Inquiry, 15 August 2023, T5551.36–40 (TRA.00082.00001).

<sup>87</sup> Transcript of the Inquiry, 15 August 2023, T5551.40–42 (TRA.00082.00001).

<sup>88</sup> Transcript of the Inquiry, 15 August 2023, T5561.40–5562.8 (TRA.00082.00001); Exhibit 51, Tab 18A, Expert Report of Dr Allsop, 9 August 2023, [40] (SCOI.84208).

<sup>89</sup> Transcript of the Inquiry, 15 August 2023, T5561.41–5562.40 (TRA.00082.00001).

<sup>90</sup> Transcript of the Inquiry, 15 August 2023, T5552.23–5553.20 (TRA.00082.00001). Although Dr Allsop could not specify when those operations might have ended.

<sup>91</sup> Transcript of the Inquiry, 15 August 2023, T5553.9–17 (TRA.00082.00001).

## The impact of delay and the reliability of oral evidence

- 7.57. Delay “impoverishes” the evidence available to determining a case.<sup>92</sup> The effect of a delay will vary depending upon whether the case turns more upon oral or documentary evidence. In cases of the latter kind, delay is less likely to have as significant an impact while in the former the issue of “impoverishment” is more acute.<sup>93</sup>
- 7.58. The fallibility of human memory and the effect of delay upon the capacity of witnesses to give reliable evidence is well recognised in the case law.<sup>94</sup> With the passage of time, the memory of witnesses will almost inevitably fade and may become tainted by events that have come to pass in the intervening period.
- 7.59. In *Watson v Foxman* (1995) 49 NSWLR 315, Justice McLelland, Chief Judge in Equity, observed that:<sup>95</sup>

*[H]uman memory of what was said in a conversation is fallible for a variety of reasons, and ordinarily the degree of fallibility increases with the passage of time, particularly where disputes or litigation intervene, and the processes of memory are overlaid, often subconsciously, by perceptions or self-interest as well as conscious consideration of what should have been said or could have been said. All too often what is actually remembered is little more than an impression from which plausible details are then, again often subconsciously, constructed. All this is a matter of ordinary human experience.*

- 7.60. The decision of Justice McLelland echoes a similar observation made by Justice McHugh in *Longman v The Queen* (1989) 168 CLR 79; [1989] HCA 60 (**Longman**):<sup>96</sup>

*The fallibility of human recollection and the effect of imagination, emotion, prejudice and suggestion on the capacity to “remember” is well documented. The longer the period between an “event” and its recall, the greater the margin for error. Interference with a person’s ability to “remember” may also arise from talking or reading about or experiencing other events of a similar nature or from the person’s own thinking or recalling. ... Experience derived from forensic contests, experimental psychology and autobiography demonstrates only too clearly how utterly false the recollections of honest witnesses can be.*

<sup>92</sup> *Abdulla v Birmingham City Council* [2012] UKSC 47; [2013] 1 All ER 649, [41] (Lord Sumption), quoted in *Moubarak by his tutor Coorey v Holt* (2019) 100 NSWLR 218; [2019] NSWCA 102 at [72] (Bell P).

<sup>93</sup> *Moubarak by his tutor Coorey v Holt* (2019) 100 NSWLR 218; [2019] NSWCA 102 at [77] (Bell P).

<sup>94</sup> See the authorities collated by Besanko J in *Roberts-Smith v Fairfax Media Publications Pty Limited (No 41)* [2023] FCA 555 at [162]–[166].

<sup>95</sup> *Watson v Foxman* (1995) 49 NSWLR 314, 319.

<sup>96</sup> *Longman v The Queen* (1989) 168 CLR 79, 107–108 (McHugh J); [1989] HCA 60.

- 7.61. The evidence of witnesses in cold cases should therefore be given an “anxious and critical” appraisal, regardless of how compelling their evidence might otherwise appear to be.<sup>97</sup> In conducting such an appraisal, it is important to corroborate the evidence of such witnesses with objective forms of evidence, including contemporary documentary material, wherever possible.
- 7.62. In cases where there has been a delay between the relevant events and the proceedings, a judicial decision-maker will usually rely upon contemporaneous, or near contemporaneous, documents. Such evidence will often provide valuable and, usually, more revealing information than what may be an attempt to recall those facts, particularly at a point in time where the person attempting to recall those facts may have an interest in the outcome of the litigation.<sup>98</sup> Greater weight is usually accorded to such documents, as often they provide a safer repository of reliable fact, particularly when it is clear that they have been prepared by a person with no reason to misstate those facts in the documents and where there is no suggestion that the documents are other than genuine.<sup>99</sup>
- 7.63. Similarly, in *Lake Cumbeline Pty Ltd v Effem Foods Pty Ltd (trading as Uncle Ben’s of Australia)* (Federal Court of Australia, 29 June 1995, unrep), Justice Tamberlin said:<sup>100</sup>
- Given the lapse of time] between the events and conversations raised in evidence and the hearing of the evidence before me, the only safe course is to place primary emphasis on the objective factual surrounding material and the inherent commercial probabilities, together with the documentation tendered in evidence. In circumstances where the events took place so long ago, it must be an exceptional witness whose undocumented testimony can be unreservedly relied on. The witnesses in this case unfortunately did not come within that exceptional class. The discussions referred to in evidence were capable of bearing quite opposed meanings depending on subtle differences of nuance and emphasis, and a proper appreciation of the significance of those matters must necessarily be considerably diminished over such a long period of time.*
- 7.64. In addition, a separate but related role that objective facts can play in proceedings is to test the credibility and veracity of a witness.<sup>101</sup>
- 7.65. This obviously reinforces the importance of objective contemporaneous evidence—i.e., documents and other exhibits—in cold cases.

<sup>97</sup> *Herron v McGregor* (1986) 6 NSWLR 246, 254 (McHugh JA) quoting Street CJ, *Report of the Royal Commission of Inquiry into Certain Committal Proceedings Against K E Humphreys* (July 1983), 9–10.

<sup>98</sup> *Bathurst Regional Council v Local Government Financial Services Pty Ltd (No 5)* [2012] FCA 1200 at [1247] (Jagot J).

<sup>99</sup> *Hughes v St Barbara Mines Ltd (No 4)* [2010] WASC 160 at [157] (Kenneth Martin J).

<sup>100</sup> *Lake Cumbeline Pty Ltd v Effem Foods Pty Ltd (trading as Uncle Ben’s of Australia)* (Federal Court of Australia, Justice Tamberlin, 29 June 1995, unrep) at 122–123; cited with approval by the High Court in *Effem Foods Pty Ltd v Lake Cumbeline Pty Ltd* (1999) 161 ALR; [1999] HCA 15; 599 at [15].

<sup>101</sup> *Armagas Ltd v Mundogas S.A. (The Ocean Frost)* [1985] 1 Lloyd’s Rep 1, 57 (Robert Goff LJ). See also *In the matter of Kit Digital Australia Pty Ltd (in liq)* [2014] NSWSC 1547, [7] (Black J).

- 7.66. These decisions are entirely consistent with the academic research on this topic. Lacy and Stark have said as follows:<sup>102</sup>

*Memory distortions in humans may occur simply with the passage of time. This is partly because over time, memories typically become less episodic (highly detailed and specific) and more semantic (more broad and generalized) as the information is repeatedly retrieved and re-encoded in varying contexts.*

and:<sup>103</sup>

*Given what we know about the neurobiology of memory and the cognitive psychological research on memory, ‘perfect’ memories that are accompanied by a high level of confidence and detail should be taken with a grain of salt, and ‘imperfect’ memories that are vague and missing details should not be immediately discredited. However ‘good’ a witness’s memory of an event may be, their memory may not actually be accurate, and currently there is no clear way to measure the accuracy. This does not mean that memory-based evidence should be disregarded but rather that police, judges and jurors should be educated on these nuances so that they may give memory-based evidence its proper weight.*

- 7.67. It will, therefore, generally be essential in cold cases for witness statements to be supplemented with and assessed in light of available objective forms of evidence—including contemporaneous documentary material and exhibits—where possible.

### “Forensic disadvantage”

- 7.68. The concept of “forensic disadvantage” has developed in recognition of the difficulties arising out of delay between relevant events and a criminal trial. The now abolished common law *Longman* direction (see below) has been adapted within the statutory context in s. 165B of the *Evidence Act 1995* in an attempt to expressly acknowledge the difficulties faced by the defence. These difficulties include the unavailability of witnesses and the loss of evidence which may result in a defendant being unable to test the prosecution’s case.
- 7.69. Section 165B of the *Evidence Act 1995* is relevant to cold case proceedings where a prosecution proceeds before a jury. It provides:<sup>104</sup>

#### *165B Delay in prosecution*

1. *This section applies in a criminal proceeding in which there is a jury.*
2. *If the court, on application by a party, is satisfied that the defendant has suffered a significant forensic disadvantage because of the consequences of delay, the court must inform the jury of the nature*

<sup>102</sup> Joyce Lacy and Craig Stark, ‘The Neuroscience of Memory: Implications for the Courtroom’ (2013) 14(9) *Nat Rev Neurosci* 649, 653.

<sup>103</sup> Joyce Lacy and Craig Stark, ‘The Neuroscience of Memory: Implications for the Courtroom’ (2013) 14(9) *Nat Rev Neurosci* 649.

<sup>104</sup> *Evidence Act 1995* (NSW), s. 165B.

*of that disadvantage and the need to take that disadvantage into account when considering the evidence.*

3. *The judge need not comply with subsection (2) if there are good reasons for not doing so.*
  4. *It is not necessary that a particular form of words be used in informing the jury of the nature of the significant forensic disadvantage suffered and the need to take that disadvantage into account, but the judge must not in any way suggest to the jury that it would be dangerous or unsafe to convict the defendant solely because of the delay or the forensic disadvantage suffered because of the consequences of the delay.*
  5. *The judge must not warn or inform the jury about any forensic disadvantage the defendant may have suffered because of delay except in accordance with this section, but this section does not affect any other power of the judge to give any warning to, or to inform, the jury.*
  6. *For the purposes of this section—*
    - a. *delay includes delay between the alleged offence and its being reported, and*
    - b. *significant forensic disadvantage is not to be regarded as being established by the mere existence of a delay.*
  7. *For the purposes of this section, the factors that may be regarded as establishing a significant forensic disadvantage include, but are not limited to, the following—*
    - a. *the fact that any potential witnesses have died or are not able to be located,*
    - b. *the fact that any potential evidence has been lost or is otherwise unavailable.*
- 7.70. Section 165B acknowledges that, due to the passage of time, the strength of the evidence in a criminal trial may be eroded and the defence may have lost valuable opportunities to test the prosecution case.
- 7.71. As noted above, the language of “forensic disadvantage” picks up on the now abolished common law *Longman* direction.<sup>105</sup> In *Longman*, a complaint of sexual assault was prosecuted more than 20 years after the alleged offence. In the majority judgment, Brennan, Dawson and Toohey JJ commented on the necessity for a trial judge to provide a warning to the jury in these circumstances:<sup>106</sup>

<sup>105</sup> See *Longman v R* (1989) 168 CLR 79; [1989] HCA 60.

<sup>106</sup> *Longman v R* (1989) 168 CLR 79, 91; [1989] HCA 60.

*[T]here is one factor which may not have been apparent to the jury and which therefore required not merely a comment but a warning be given to them... That factor was the applicant's loss of those means of testing the complainant's allegations which would have been open to him had there been no delay in prosecution. Had the allegations been made soon after the alleged event, it would have been possible to explore in detail the alleged circumstances attendant upon its occurrence and perhaps to adduce evidence throwing doubt upon the complainant's story or confirming the applicant's denial. After more than twenty years that opportunity was gone and the applicant's recollection of them could not be adequately tested. The fairness of the trial had necessarily been impaired by the long delay... and it was imperative that a warning be given to the jury. The jury should have been told that, as the evidence of the complainant could not be tested after the passage of more than twenty years, it would be dangerous to convict on that evidence alone unless the jury, scrutinising the evidence with great care, considering the circumstances relevant to its evaluation and paying heed to the warning, were satisfied of its truth and accuracy.*

- 7.72. There is an extensive body of case law dealing with what may amount to forensic disadvantage both before *Longman*, and before and after the enactment of s. 165B. It is expressly noted in s. 165B, however, that forensic advantage includes, but is not limited to, (a) the fact that any potential witnesses have died or are not able to be located and (b) the fact that any potential evidence has been lost or is otherwise unavailable.<sup>107</sup> Unlike the *Longman* direction, there is no generalised assumption under statute concerning the reliability of the complainant's evidence resulting from the delay.<sup>108</sup>
- 7.73. Section 165B is directed to addressing the forensic disadvantage to the defendant caused by delay but the disadvantages of delay cut both ways: the prosecution is, arguably, equally disadvantaged by the death of witnesses, the loss of evidence, the fading of memory and the loss of an opportunity to take further investigative steps. This approach to the effect of delay might be seen to reflect the “golden thread” of the criminal law and the requirement of the prosecution to prove guilt beyond reasonable doubt. Since delay might affect the assessment of evidence in such a way as to give rise to a reasonable doubt, it is appropriate that s. 165B offers protection to the defence and is silent as to the effect of delay on prosecutions.

<sup>107</sup> *Evidence Act 1995* (NSW), ss. 165B(7)(a)–(b).

<sup>108</sup> *Jarrett v R* (2014) 86 NSWLR 623; [2014] NSWCCA 140 at [54], [60] (Basten JA with whom R A Hulme J and Campbell J agreed).



- 7.74. In *R v Warwick (No 93)* [2020] NSWSC 926 (*Warwick*), Justice Garling noted that the effluxion of 35–40 years from the alleged offending had occasioned significant forensic disadvantage to the defendant. This manifested in several ways, including through diminishing the reliability of accounts of various witnesses; the death of several witnesses who authored statements or records of interview that were tendered in the trial; and the loss of the ability of the defendant to test that evidence through cross-examination.<sup>109</sup>
- 7.75. In *Pell v The Queen* (2020) 268 CLR 123; [2020] HCA 12, the High Court referred with apparent approval to the trial Judge’s directions to the jury regarding the impact of the delay of some 20 years between the alleged offending and the conclusion of the criminal trial. The High Court summarised these directions as follows:<sup>110</sup>

*His Honour’s instruction as to the nature of the disadvantage covered the following considerations: (i) the delay meant that the applicant had lost the opportunity of making inquiries and exploring the alleged circumstances close to the time of the alleged events, which may have uncovered additional evidence throwing doubt on A’s allegations or supporting the applicant’s denials; (ii) most of the opportunity witnesses could only give evidence of practice or routine whereas, had the trial been held on a date closer to 1996, more might have had specific recall of the subject events; (iii) the effluxion of 20 years or so meant that some witnesses no longer presented the lucid and coherent evidence of younger men; (iv) the Dean of the Cathedral in 1996, whose evidence would have been material on the issue of the applicant’s movements following Mass, was in a nursing home and incapable of giving reliable evidence; (v) the passage of time diminished the capacity for the defence to fully test A’s evidence; and (vi) B would have been a material witness.*

- 7.76. The law has developed to expressly recognise that a significant lapse in time between an offence and prosecution can negatively impact a defendant’s ability to test the prosecution’s case. This forensic disadvantage can manifest in different ways, including the unavailability of key witnesses or the fallibility of the memory of others, as well as the loss of the defendant’s opportunity to make inquiries exploring the alleged circumstances at the time of the events. Section 165B of the *Evidence Act 1995* operates to ensure that in criminal trials, a jury is warned of the nature of the disadvantage suffered by the defendant and the need to take this into account.

### Evidentiary difficulties: Lost evidence and missing witnesses

- 7.77. The loss of evidence and the death or unavailability of witnesses can become a particularly significant forensic disadvantage. This is an issue which has confronted the Inquiry in many cases which it has considered.

<sup>109</sup> *R v Warwick (No 93)* [2020] NSWSC 926, [62]–[67] (Garling J).

<sup>110</sup> *Pell v The Queen* (2020) 376 ALR 478, 484–485 (Kiefel CJ, Gageler, Keane, Nettle, Gordon and Edelman JJ); [2020] HCA 12.

7.78. Since the High Court recognised that delay may inform the decision to grant a permanent stay in *Jago v District Court of New South Wales* (1989) 168 CLR 23 (*Jago*), there has been extensive judicial consideration of how delay impacts a criminal trial in the context of applications for permanent stays. Justice Deane identified five main heads of relevant circumstances and considerations to which a court should avert in deciding whether proceedings should be stayed on the ground that the effect of the delay on the part of the prosecution is such that the trial would be unfair in all circumstances. These are:<sup>111</sup>

*(i) the length of the delay; (ii) reasons given by the prosecution to explain or justify the delay; (iii) the accused’s responsibility for and past attitude to the delay; and, (iv) proven or likely prejudice to the accused. The fifth is the public interest in the disposition of charges of serious offences and in the conviction of those guilty of crime...*

7.79. These factors should not be treated as a code or replace regard to the context of the nature and seriousness of the alleged offence and all other relevant circumstances.<sup>112</sup> There must be “a fundamental defect which goes to the root of a trial” such that there is nothing a judge can do to relieve against its unfair consequences to justify a permanent stay of criminal proceedings.<sup>113</sup>

7.80. The High Court has recently affirmed that it is only an exceptional case that justifies the exercise of a court’s power to grant a permanent stay.<sup>114</sup>

7.81. In *Moubarak by his tutor Coorey v Holt* (2019) 100 NSWLR 218; [2019] NSWCA 102, and in the context of the impact of delay on the possibility of a fair trial, President Bell (as his Honour then was) commented that:<sup>115</sup>

*a fair trial is not synonymous with a perfect trial. Thus, one of the points made in Rivkin at [298] was that, although an accused may have conducted his or her defence in a better way had suitable medical treatment or medication been provided, or had the accused had greater intelligence or acuity of mind, this did not carry the consequence that a trial would not be fair. So, too, the absence of a witness or witnesses who may be regarded by a party as important, whether through death, illness, loss of memory or inaccessibility (for example, because the witness is overseas and thus beyond the reach of subpoena) will not mean that a fair trial cannot be obtained...*

<sup>111</sup> *Jago v District Court of New South Wales* (1989) 168 CLR 23, 60–61 (Deane J); [1989] HCA 46.

<sup>112</sup> *Jago v District Court of New South Wales* (1989) 168 CLR 23, 61 (Deane J); [1989] HCA 46.

<sup>113</sup> *Jago v District Court of New South Wales* (1989) 168 CLR 23, 34 (Mason CJ); [1989] HCA 46.

<sup>114</sup> *GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore* [2023] HCA 32 at [3], [21] (Kiefel CJ, Gageler and Jagot JJ).

<sup>115</sup> *Moubarak by his tutor Coorey v Holt* (2019) 100 NSWLR 218, 237 (Bell P); [2019] NSWCA 102, citing *R v Rivkin* (2004) 59 NSWLR 284; *R v McCarthy* (Unreported, New South Wales Court of Criminal Appeal, 12 August 1994) (Gleeson CJ).

- 7.82. In *R v Edwards* (2009) 83 ALJR 717; [2009] HCA 20 the High Court observed that:<sup>116</sup>

*Trials involve the reconstruction of events and it happens on occasions that relevant material is not available; documents, recordings and other things may be lost or destroyed. Witnesses may die. The fact that the tribunal of fact is called upon to determine issues of fact upon less than all of the material which could relevantly bear upon the matter does not make the trial unfair.*

- 7.83. In *R v McCarthy* (Unreported, New South Wales Court of Criminal Appeal, 12 August 1994), Chief Justice Gleeson observed that:<sup>117</sup>

*Time and time again it happens in criminal proceedings that for any one of a variety of reasons witnesses who may be regarded as important by one side or the other die, or become ill, or lose their memory, or lose documents. If the result of that were that nobody could obtain a fair trial, and the proceedings had to be permanently stayed, it would go a long way towards solving the problems of delay in the criminal lists in this State. However, the position is that it is well recognised that an occurrence of that kind does not of itself mean that a person cannot obtain a fair trial or that proceedings need to be stayed.*

- 7.84. As stressed in *GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore* [2023] HCA 32, courts have utilised techniques to address the difficulties that arise through the passage of time, including the principles in *Longman and Watson v Foxman*, cited above, and the recognition that the trier of fact is not bound to accept uncontradicted evidence.<sup>118</sup> The special responsibilities of a trial judge in guarding against unfairness or forensic disadvantage arising out of the degradation of the evidence of witnesses is an important context in which the courts have affirmed that a permanent stay should only be granted in an exceptional case. As Justice Brennan put it in *Jago*, the “judge’s responsibilities are heavy but they are not discharged by abdication of the court’s duty to try the case.”<sup>119</sup>

- 7.85. While these principles mean that a prosecution in a cold case may be permitted to proceed, notwithstanding the degradation of evidence, the loss of exhibits and the death of witnesses will inevitably have a material impact on the prospects of a successful conviction. As a result, there will be cases where a prosecution is not brought in the first place because the loss of exhibits or the death of witnesses mean there are no longer sufficient prospects of proving guilt to the criminal standard. These principles serve to highlight the importance of document and exhibit management techniques being thorough and reliable.

<sup>116</sup> *R v Edwards* (2009) 83 ALJR 717; [2009] HCA 20 at [31] (Hayne, Heydon, Crennan, Kiefel and Bell JJ).

<sup>117</sup> *R v McCarthy* (Unreported, New South Wales Court of Criminal Appeal, Gleeson CJ, 12 August 1994), 11; cited in *Webb v R* (2012) 225 A Crim R 550, 564; [2012] NSWCCA 216; *R v Hatfield* [1999] NSWCA 340, [17]; *R v Pike* [2000] NSWCCA, [28]; *R v Rose (No 1)* [2001] NSWSC 818 at [45].

<sup>118</sup> *GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore* [2023] HCA 32 at [59]-[60] (Kiefel CJ, Gageler and Jagot JJ).

<sup>119</sup> *Jago v District Court of New South Wales* (1989) 168 CLR 23, 49 (Brennan J); [1989] HCA 46.

### Case study: *R v Warwick (No 93)* [2020] NSWSC 926

- 7.86. A useful case study concerning the evaluation of evidence in cold cases is the judgment of Justice Garling in *Warwick*.
- 7.87. In *Warwick*, the accused was charged with several counts of murder, along with a number of other offences, arising out of a sustained campaign of violence between 1980–1985. This string of incidents came to be known as the “Family Court Bombings”. The accused was indicted for these offences in 2017, some 37 years after the relevant events, following a reinvestigation of the case by Task Force Reddan.
- 7.88. The trial was a judge alone trial conducted by Justice Garling (i.e., it was not a trial by jury who would ordinarily be charged with making any relevant findings of fact). His Honour’s judgment was not appealed. His Honour’s methodical approach to the evidence provides a model of how decision-makers may choose to evaluate different forms of evidence in cold cases. It is instructive to briefly set out the way his Honour considered the impact of delay and the role of scientific evidence in this case.
- 7.89. Throughout the judgment, Justice Garling preferred contemporaneous documentary evidence and fresh scientific evidence over accounts of witnesses given years after the events. In doing so, his Honour accepted both parties’ submissions that it was appropriate for the Court to give itself a direction in relation to the significant forensic disadvantage suffered by the accused by his inability to cross-examine those witnesses in the trial or otherwise challenge their accounts.<sup>120</sup>
- 7.90. In giving this direction, Justice Garling observed that:<sup>121</sup>

*As is obvious, this trial was heard between 35 and 40 years after each of these Events occurred. It is notorious that evidence today of an event, fact or circumstance which occurred in the 1980s will not be of the same quality as evidence of that event, fact or circumstance given a short time after the occurrence of that event, fact or circumstance.*

*A contemporaneous statement of observations, taken shortly after the fact in a formal way, is likely to be more accurate than an unrefreshed recollection of that event taken at a time which is between 35 and 40 years after the event. This does not mean, by itself and without more, that a particular present day recollection is unable to be regarded as truthful or accurate. However, in considering the weight to be given to any evidence, I need to be, and I am, conscious of the extent the delay between the subject of the evidence and the time when it is given can impact the quality of the recollection. I am also conscious that whether the evidence has been given in circumstances where the witness has been able to refresh their recollection from a contemporaneous or reasonably contemporaneous document which is a record of the earlier event can impact the quality of the recollection.*

<sup>120</sup> *R v Warwick (No 93)* [2020] NSWSC 926 at [65].

<sup>121</sup> *R v Warwick (No 93)* [2020] NSWSC 926 at [62]–[63].

- 7.91. This approach is borne out in the manner in which his Honour assessed the evidence with respect to each “Event” with which the case was concerned.
- 7.92. The first event which Justice Garling considered was the “Kingdom Hall Bombing”, which was described in the judgment as “Event 7”. The Kingdom Hall Bombing occurred on 21 July 1985, when a device detonated at the Kingdom Hall of Jehovah’s Witnesses in Casula. This resulted in the death of Graham Wykes and serious injuries to several other members of the congregation. The Crown accepted that proof that the accused was the person responsible for two prior break ins at the Kingdom Hall was an intermediate fact necessary to prove that he was responsible for the bombing.<sup>122</sup>
- 7.93. Considerable weight was placed by Justice Garling upon DNA profiles which were developed from blood stains observed in the Hall on 14 July 1985, following the initial break in. This DNA profile was matched to the accused in tests that were conducted in 2013 and 2017. This was described as the “principal circumstance by which the Crown seeks to persuade me that the Accused was the intruder on 13/14 July 1985”.<sup>123</sup>
- 7.94. In finding the accused guilty of offences relating to the Kingdom Hall Bombing, Justice Garling summarised his assessment of the evidence as follows:<sup>124</sup>

*Whilst all of the circumstances lead me to this conclusion, about which I have no doubt at all, the circumstances include these particularly significant findings:*

- a. the Accused had a motive to seek revenge against the members of the Lurnea congregation of the Jehovah’s Witnesses, who used the Kingdom Hall at Casula for their meetings;*
- b. the Accused had the opportunity to carry out the bombing of the Kingdom Hall because he was not rostered on at work, nor was he performing work duties at the time. He lived within a short walking distance of the Kingdom Hall;*
- c. the DNA of the Accused, which was found on the carpet and the cardboard, came from the blood that was shed onto the two items during the first break-in to the Kingdom Hall on 13/14 July 1985.*
- d. the Accused was the intruder who broke into the Kingdom Hall on 13/14 July 1985 when he explored the inside of the Kingdom Hall, including behind the platform by way of a reconnaissance to identify where a bomb might be best placed to be effective from a concealed location;*

<sup>122</sup> R v Warrick (No 93) [2020] NSWSC 926 at [94], [125]–[126], [136].

<sup>123</sup> R v Warrick (No 93) [2020] NSWSC 926 at [328].

<sup>124</sup> R v Warrick (No 93) [2020] NSWSC 926 at [728].

- e. *the bomb detonated by a time delay mechanism, which was set to, and did, explode at a time when the Lurnea Congregation was having its regular Sunday morning meeting in the Kingdom Hall. It was thereby likely to cause death or serious injury to one or more of the members congregation, and significant damage to the Kingdom Hall; and*
- f. *there was no one else who had a sufficient motive to blow up the Kingdom Hall or to cause harm to the members of the Lurnea congregation.*
- 7.95. His Honour’s summary illustrates the need, in cold cases especially, to carefully weigh different forms of evidence, and in the totality of the relevant circumstances, accord appropriate weight to scientific evidence and contemporary documentary material.
- 7.96. Given the length of the judgment, I do not propose to summarise his Honour’s reasoning in relation to every other “Event” with which the case of *Warwick* was concerned. However, it is also useful to consider how Justice Garling dealt with non-objective evidence, including the oral evidence given during the course of the trial.
- 7.97. An example of Justice Garling’s careful treatment of oral evidence given at the trial can be seen in his Honour’s approach to the evidence of two NSWPF officers, Detective Sheather and Constable Constable, regarding the chain of custody of bloodstained items of cardboard and carpet taken from Kingdom Hall.<sup>125</sup> In assessing their evidence to determine whether the exhibits entered police custody and how they were managed, his Honour compared the evidence of both witnesses to the contemporaneous documentary material available which included a Police Exhibit Examination Form, a paper exhibit bag and photographs of Kingdom Hall taken by police attending the scene.<sup>126</sup>
- 7.98. Detective Sheather gave evidence that he removed two pieces of bloodstained cardboard and a piece of carpet, believed to be bloodstained, from the scene. Detective Sheather said that he then gave instructions for the items to be conveyed to the Laboratory of the DOFM for analysis, a request that was later carried out by Constable Constable after he received the form and the items from Detective Sheather at the police Ballistics Unit in Surry Hills.

<sup>125</sup> *R v Warwick (No 93)* [2020] NSWSC 926 at [344]–[366].

<sup>126</sup> *R v Warwick (No 93)* [2020] NSWSC 926 at [354]–[356], [359]–[361].

- 7.99. His Honour discounted evidence that Constable Constable gave at an earlier Coronial Inquest that he received the items at Kingdom Hall, as opposed to at the Ballistics Unit, on the basis that this evidence contradicted the contemporaneous exhibit examination form.<sup>127</sup> In accepting the evidence of Detective Sheather as to the chain of custody of these exhibits, his Honour noted that “it is significant that in material respects his evidence is corroborated by contemporaneous photographs, documents and the items themselves.”<sup>128</sup> His Honour’s careful comparison of the evidence given by witnesses at the trial with contemporaneous records is also borne out in several other passages.<sup>129</sup>
- 7.100. Clearly, the DNA evidence was crucial to the Crown case against Mr Warwick, not only in relation to the Kingdom Hall Bombing but also in relation to the other charges, which rested in part on the Crown proving the allegations about the Kingdom Hall Bombing.<sup>130</sup> As is clear from Justice Garling’s reasons, the crucial DNA evidence was only located in 2013, and it was necessary for his Honour to draw chain-of-custody conclusions beyond reasonable doubt to confirm that the items located in 2013 were the items from the crime scene referred to in the evidence from 1984 to 1985.<sup>131</sup>
- 7.101. While the evidence against Mr Warwick was able to be located, and the chain of custody proven, Mr Lehmann agreed in evidence before me that the location of this evidence in 2013 was a “fluke”,<sup>132</sup> even though according to Mr Lehmann’s report of 5 August 2016 Mr Warwick had always been a prime suspect.<sup>133</sup> It is obviously undesirable that the successful prosecution of the perpetrators of serious crimes should ever rest upon a “fluke” as to the location, identification or quality of evidence.

## Conclusion

- 7.102. One common thread emerging from Dr Allsop’s evidence, and the authorities reviewed above, is the critical importance, in relation to cold cases, of the reliable collection and storage of documentary records and exhibits. I return to this issue in **Chapter 8**, in the context of the evidence I received as to the historical and current practices of the NSWPF.

<sup>127</sup> *R v Warwick (No 93)* [2020] NSWSC 926 at [345]–[351], [356]–[357], [362].

<sup>128</sup> *R v Warwick (No 93)* [2020] NSWSC 926 at [361].

<sup>129</sup> See, eg, *R v Warwick (No 93)* [2020] NSWSC 926 at [264]–[267], [517]–[520].

<sup>130</sup> See especially *R v Warwick (No 93)* [2020] NSWSC 926 at [94]–[98]; and see [119]–[120] and [805]–[807] in relation to the other charges.

<sup>131</sup> *R v Warwick (No 93)* [2020] NSWSC 926 at [344]–[431], [543].

<sup>132</sup> Transcript of the Inquiry, 26 September 2023, T6014.22–24 (TRA.00091.00001).

<sup>133</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector Lehmann, 5 August 2016 (NPL.0100.0018.0001).



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# Chapter 8: Investigative Practices Hearing

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## INVESTIGATIVE PRACTICES HEARING

### Introduction

- 8.1. This Chapter concerns the Investigative Practices Hearing which was held from 4 to 7 July 2023 and on 15 August 2023.
- 8.2. As was explained in the Executive Summary, over the course of the Inquiry's work, a number of questions arose concerning the investigative practices of the NSWPF over the period covered by the Terms of Reference, and in relation to the storage and retrieval of exhibits and documentary material (such as investigative files). The purpose of the Investigative Practices Hearing was to explore these questions.
- 8.3. I commence this Chapter by dealing with some key areas of consensus that emerged between Counsel Assisting and the NSWPF following the exchange of submissions. It is convenient to deal with this at the outset as I consider these areas of agreement provide useful context for the evidence set out later in this Chapter. In addition, I deal with certain areas of disagreement between the NSWPF and Counsel Assisting which shape the findings I make in relation to the matters canvassed in the Investigative Practice Hearing.
- 8.4. The first section of this Chapter deals with homicide investigation, addressing both the period covered by the Terms of Reference and, where appropriate, the current NSWPF structure and procedures. This includes the investigation of homicides prior to the creation of a dedicated Homicide Squad; the creation and role of the Homicide Squad; the interaction between the Homicide Squad and other NSWPF units; the relevance of conscious and unconscious bias in the process of homicide investigation; and the education and training of homicide detectives, including in relation to bias and the LGBTIQ community.
- 8.5. The second section of this Chapter considers the forensic techniques available to the NSWPF to assist in homicide investigations, including the evolution of forensic testing, and the use of DNA databases in NSW.
- 8.6. The third section of this Chapter deals with the UHT, including the establishment and operation of the UHT, and the screening, triage and review process used by the UHT.
- 8.7. The fourth section of this Chapter relates to the management of exhibits and documentary records, and covers the exhibit "lifecycle", and the archiving and retrieval of exhibits and investigative material. This section picks up, in the specific context of the NSWPF, some of the evidence and material of wider application concerning cold cases in **Chapter 7**.
- 8.8. Document and exhibit management, and investigative practices in the context of individual deaths, and the UHT consideration of individual deaths, are primarily dealt with in **Chapters 5 and 6** of this Report. However, some matters concerning individual cases, and submissions concerning the operation of the UHT, are considered in this Chapter.

- 8.9. The recommendations arising out of the Investigative Practices Hearing are set out at the beginning of this Report. I have also outlined those recommendations at the end of this Chapter for ease of reference.

### **Evidence obtained by the Inquiry in relation to the NSWPF's Investigative Practices**

- 8.10. The evidence considered in this Chapter was tendered at the Investigative Practices Hearing. A number of statements were furnished by the NSWPF in response to requests by the Inquiry, which formed the majority of the evidence considered by Counsel Assisting and the NSWPF in their submissions. Assistant Commissioner Rashelle Conroy, Superintendent Roger Best, Detective Superintendent Daniel Doherty, Detective Inspector Nigel Warren and Detective Chief Inspector David Laidlaw were also asked questions about these cases in the course of their oral evidence.
- 8.11. In addition, the Inquiry had already received some evidence from the NSWPF in relation to the topics explored at the Investigative Practices Hearing. This is set out in relevant places below.
- 8.12. On 13 March 2023, the Inquiry wrote to the NSWPF and annexed two schedules identifying, by reference to individual matters considered by the Inquiry, lost or destroyed exhibits and other matters of concern to the Inquiry. The Inquiry requested that the NSWPF address specified questions in relation to each case.
- 8.13. The Inquiry requested a statement or statements concerning the handling and storage of physical exhibits in homicide cases.<sup>134</sup> In response to this request, the NSWPF furnished a statement of Superintendent Best dated 24 April 2023 (**Best Statement**)<sup>135</sup> and a statement of Assistant Commissioner Conroy dated 2 May 2023 (**First Conroy Statement**).<sup>136</sup>
- 8.14. The Inquiry also requested a statement or statements concerning topics in connection with the Homicide Squad.<sup>137</sup> In response to this request the NSWPF furnished a statement of Detective Superintendent Doherty dated 18 April 2023 (**Doherty Statement**).<sup>138</sup>

<sup>134</sup> Exhibit 52, Tab 1, Letter from the Inquiry to the NSWPF re Request for statement concerning exhibit management, 13 March 2023 (NPL.9000.0002.0493).

<sup>135</sup> Exhibit 51, Tab 2, Statement of Superintendent Roger Best, 24 April 2023 (NPL.9000.0003.1533).

<sup>136</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [52]–[54] (NPL.9000.0008.0905).

<sup>137</sup> Exhibit 51, Tab 1 Annexure 1, Letter from the Inquiry to the NSWPF re request for statement concerning the qualifications and training of NSWPF officers assigned to the Homicide Squad, 13 March 2023, 38 (NPL.9000.0006.0001).

<sup>138</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023 (NPL.9000.0006.0001).

- 8.15. On 12 May 2023, the Inquiry wrote to the NSWPF requesting a further statement concerning exhibit management by reference to a number of the cases considered by the Inquiry and identified in a Schedule annexed to that letter (**Exhibits Statement**).<sup>139</sup> The Inquiry had previously received statements from the NSWPF concerning some of those cases.<sup>140</sup>
- 8.16. On 26 May 2023, the Inquiry wrote to the NSWPF identifying two additional cases where exhibits had been lost or destroyed.<sup>141</sup> This letter contained an updated version of the Schedule identifying the cases where the Inquiry was aware of exhibits having been lost or destroyed (**Exhibits Schedule**). This letter also requested a statement (**Investigative Steps Statement**) addressing certain conduct of the NSWPF itemised in a second Schedule (**Investigative Steps Schedule**).
- 8.17. On 30 May 2023, the Inquiry wrote to the NSWPF requesting a statement or statements concerning the UHT (**UHT Statement**).<sup>142</sup>
- 8.18. In response to requests for the Exhibits Statement and the Investigative Steps Statement, the Inquiry received a statement of Detective Inspector Warren dated 9 June 2023 (**Warren Statement**),<sup>143</sup> and a statement of Assistant Commissioner Conroy dated 11 June 2023 (**Second Conroy Statement**).<sup>144</sup> In response to the request for the UHT Statement, the Inquiry received a statement of Detective Chief Inspector Laidlaw dated 13 June 2023 (**Laidlaw Statement**).<sup>145</sup>
- 8.19. The first tranche of the Investigative Practices Hearing took place over four days from 4 to 7 July 2023. The Inquiry received oral evidence from each of the NSWPF witnesses. The second tranche of the Investigative Practices Hearing took place on 15 August 2023. On that occasion, the Inquiry received oral evidence from Sharon Neville of FASS and Dr Cheryl Allsop.
- 8.20. The above evidence was the subject of submissions made by Counsel Assisting and the NSWPF. On 25 September 2023, Counsel Assisting filed submissions,<sup>146</sup> to which the NSWPF responded by way of submissions filed on 10 October 2023.<sup>147</sup> Counsel Assisting filed submissions in reply on 19 October 2023.<sup>148</sup>

<sup>139</sup> Exhibit 52, Tab 2, Letter from the Inquiry to the NSWPF re request for further statement, 12 May 2023 (SCOI.84216).

<sup>140</sup> Exhibit 16, Tab 31, Statement of Detective Sergeant Neil Sheldon – Cuthbert, 18 January 2023 (SCOI.82580); Exhibit 23, Tab 36A, Statement of Statement of Detective Sergeant Neil Sheldon – Wark, 19 January 2023 (SCOI.82332); Exhibit 28, Tab 169, Statement of Detective Sergeant Neil Sheldon – Bedser, 23 January 2023 (SCOI.82591); Exhibit 18, Tab 62, Statement of Detective Sergeant Neil Sheldon – Stockton, 17 April 2023 (NPL.9000.0005.0001); Exhibit 41, Tab 33, Statement of Detective Inspector Nigel Warren – Jones, 21 February 2023 (SCOI.83075); Exhibit 46, Tab 66, Statement of Detective Inspector Nigel Warren – Russell, 30 March 2023 (NPL.9000.0001.0001); Exhibit 46, Tab 67, Statement of Detective Inspector Nigel Warren – Russell, 5 May 2023 (NPL.9000.0001.0017).

<sup>141</sup> Exhibit 52, Tab 3, Letter from the Inquiry to the NSWPF re further cases in which exhibits had been lost or destroyed, 26 May 2023 (SCOI.84217).

<sup>142</sup> Exhibit 51, Tab 6, Annexure 1 to the Statement of Detective Chief Inspector David Laidlaw, 13 June 2023 (NPL.9000.0019.0001).

<sup>143</sup> Exhibit 51, Tab 5, Statement of Detective Inspector Nigel Warren, 9 June 2023 (NPL.9000.0018.0507).

<sup>144</sup> Exhibit 51, Tab 4, Second Statement of Assistant Commissioner Rashelle Conroy, 11 June 2023 (NPL.9000.0008.1049).

<sup>145</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector David Laidlaw, 13 June 2023 (NPL.9000.0019.0001).

<sup>146</sup> Submissions of Counsel Assisting, 15 September 2023 (SCOI.85649).

<sup>147</sup> Submissions of NSWPF, 10 October 2023 (SCOI.86127).

<sup>148</sup> Submissions of Counsel Assisting in reply, 19 October 2023 (SCOI.86354).

## Areas of consensus

- 8.21. As identified above, by the time Counsel Assisting filed reply submissions, there were a number of areas of consensus between the NSWPF and Counsel Assisting. It is appropriate to commence this Chapter with a consideration of those areas. In particular, there was substantial consensus concerning the appropriate recommendations emerging from the Investigative Practices Hearing. However, as I explain below, I considered it appropriate, having considered those submissions, to reformulate the recommendations proposed by Counsel Assisting and the NSWPF.

### The work of homicide investigators and of the UHT

- 8.22. I wish to commence this Chapter by acknowledging the work of homicide investigators, both generally and within the UHT. The NSWPF made the following submissions to the Inquiry:<sup>149</sup>

*Homicide investigations are often complex and resource intensive. They routinely place extraordinarily onerous demands on officers involved in them.*

*The Homicide Squad is staffed by professional and dedicated officers, who regard the investigation of a person's death as a great responsibility. Entry to the Homicide Squad is competitive and attracts applications from a range of experienced investigators throughout the State. As a result, the Homicide Squad is staffed by some of the most effective criminal investigators in NSW.*

- 8.23. In their submissions in reply, Counsel Assisting submitted:<sup>150</sup>

*The submissions recorded at [8]-[9] of the NSWPF Submissions should be accepted. It is important at the outset of these submission[s] to acknowledge the dedication, diligence and commitment of homicide detectives to undertaking onerous work in the public interest. The nature of an Inquiry of this kind is that it will tend to draw attention to areas of potential deficiency, and this may be more noticeable if propositions were at first resisted which were then clearly demonstrated on the evidence ... That is not to detract from the professionalism of the substantial majority of homicide investigators, present and historical.*

- 8.24. I accept the submissions of both the NSWPF and Counsel Assisting on this issue. As Counsel Assisting observed, an Inquiry of this kind tends to focus attention on areas where criticism might be appropriate. It is important in that context to emphasise the professionalism and dedication of the vast majority of homicide investigators, past and present.

<sup>149</sup> Submissions of NSWPF, 10 October 2023, [8]-[9] (SCOI.86127).

<sup>150</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [27] (SCOI.86354).

8.25. The topic of conscious and unconscious bias is one that I return to below. In the same way that an Inquiry of this kind directs attention to areas where the NSWPF might be criticised, it is important to acknowledge that the NSWPF does not exist independently from broader society.

8.26. It is true to say, as was said by the NSWPF:<sup>151</sup>

*...the NSWPF is not merely a product of society, but plays an important culture-shaping role in it. That being so, the possible existence of bias within the NSWPF is to be abhorred and denounced, even where that bias may have reflected wider social norms of the time.*

8.27. Conscious bias on the part of a police officer at any time is wholly inconsistent with the responsibilities and privileges conferred on police officers. It is, as the NSWPF say, to be abhorred and denounced. As the NSWPF acknowledges, the NSWPF plays an important role in shaping culture within society, and any actions by the NSWPF that have contributed to social norms that have marginalized particular communities should be condemned.

8.28. It is, however, important to recognise that the NSWPF operates within a particular social context. Unconscious bias is, by its nature, something that operates in people without them being conscious of its effect. That is not to say that unconscious bias should not be identified and challenged. However, where there is broad societal homophobia and transphobia, that homophobia or transphobia may affect people even if they are seeking to act entirely properly. It is important to acknowledge the impact of systemic and structural homophobia and transphobia, in addition to critiquing individual and institutional actions.

8.29. In the context of responding to one of the adverse submissions made by Counsel Assisting (to which I return below),<sup>152</sup> the NSWPF said:<sup>153</sup>

*Unsolved homicide investigations are typically onerous, and as observed ... above, members of the UHT are regularly diverted to other investigative roles. The officers of the UHT and the Homicide Squad generally undertake challenging, emotionally taxing work, in service of the victims' families and the broader community. They are subject to extraordinary personal and professional demands and routinely work very long hours. Their efforts should not be unduly denigrated.*

8.30. In reply, Counsel Assisting said:<sup>154</sup>

*The submission at [915] obviously invites criticism of aspects of the operation of the UHT, and the matters addressed in that part of the [Counsel Assisting's written submissions] are matters which Counsel*

<sup>151</sup> Submissions of NSWPF, 10 October 2023, [35] (SCOI.86127).

<sup>152</sup> Submissions of Counsel Assisting, 15 September 2023 [915] (SCOI.85649).

<sup>153</sup> Submissions of NSWPF, 10 October 2023, [453] (SCOI.86127).

<sup>154</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [28] (SCOI.86354).

*Assisting respectfully submit call for significant adverse comment by the Commissioner. Nevertheless, the submissions of the NSWPF concerning the challenges faced by the UHT (see Pt C.3 below) should be accepted, including the submission at NSWPF Submissions [453] concerning the nature of the work undertaken by those working within the UHT. Even where [Counsel Assisting's written submissions] invite criticism of individuals, that should be in the context of recognising the challenges and difficulties faced by cold case investigations, as is clear when the [Counsel Assisting's written submissions] are read as a whole. The members of the UHT can and should take pride in the work they do for the community. However, in our submission, the hard work of individuals does not mean that it may not be appropriate to criticise important aspects of the current or past operations of the UHT.*

- 8.31. I accept this submission, and proceed on this basis in this Chapter. There are some matters concerning the operation of the UHT which call for adverse comment. However, I recognise the challenges and difficulties faced by cold case investigators, both generally and in the context of the UHT, which has operated with substantial resource constraints. It is right to say that members of the UHT can and should take pride in the work they do for the community.

### **The recording of past failures, and causes for optimism in the future**

- 8.32. It is now common ground between the NSWPF and Counsel Assisting that there is a value in past failures being acknowledged and attributed.<sup>155</sup> Similarly, the NSWPF acknowledge that, in a number of cases, the loss or destruction of exhibits and records has affected the Inquiry's ability to carry out its work, and that this is a serious concern.<sup>156</sup>
- 8.33. I accept these submissions. I consider that it is important to acknowledge and attribute past failures in police practice and procedure. However, I also accept the evidence, set out below, that the substantial changes in record-keeping and exhibit management policies mean that these problems are unlikely to recur. I note and accept the submissions made by the NSWPF:<sup>157</sup>

*It is unfortunately correct that, in relation to historical deaths – which occurred prior to the introduction of electronic records management – there was a greatly increased scope for human error or failures of diligence (CA, [428]). The Commissioner of Police accepts that the apparent frequency of such human error and/or failures to diligently archive material correctly is regrettable (CA, [429]).*

<sup>155</sup> Submissions of NSWPF, 10 October 2023, [341] (SCOI.86127); Submissions of Counsel Assisting in reply, 13 October 2023, [30] (SCOI.86175).

<sup>156</sup> Submissions of NSWPF, 10 October 2023, [30] (SCOI.86127).

<sup>157</sup> Submissions of NSWPF, 10 October 2023, [113]-[114] (SCOI.86127).

*It is trite to say that any system (in any organisation) will be reliant on individual personnel to at least some extent. Very substantial efforts, however, have been made by the NSWPF to refine its exhibit and record management procedures. As a consequence, and in line with Counsel Assisting's submission (CA, [430]), the problems relating to the retention and location of documents and exhibits encountered during the course of the Inquiry are very substantially less likely to reoccur in the future.*

- 8.34. As a consequence of the evidence received concerning present exhibit management practices, I have not considered it necessary to make any recommendation concerning exhibit management in relation to current or recent investigations.

### **The initial case review and the challenges faced by the UHT**

- 8.35. A matter addressed in some detail below is the initial case review of unsolved homicides conducted by the UHT between 2004 and 2008. There is consensus between the NSWPF and Counsel Assisting that the initial review was not comprehensive, and that this represents a significant missed opportunity. I also accept the submissions made by the NSWPF concerning the difficulties faced by the UHT upon its inception.<sup>158</sup>
- 8.36. I accept that officers involved in this initial review process, and in the inception of the UHT, were in effect operating with a “blank slate”, and that there were a range of challenges inherent in the work they were undertaking. While I consider that it is appropriate to record that the failure to conduct an initial and comprehensive review was a significant missed opportunity, I do not underestimate the challenges faced by the individuals involved.
- 8.37. To the extent that I make adverse comment about the operation of the UHT, it is important that those comments should be understood as criticisms of the systems in place, not of the individual officers who were, in all likelihood, doing their best in challenging circumstances.

### **The unrepresentative nature of unsolved homicides**

- 8.38. I accept the submission, made by both the NSWPF and Counsel Assisting, that unsolved homicides cannot be treated as a representative sample of all police work, because their unsolved status serves as a “confounding variable”.<sup>159</sup> I consider it appropriate to acknowledge at the outset of this Chapter the following submissions made by the NSWPF, which I accept:<sup>160</sup>
- a. The work of the UHT is constrained by historical exhibit management and record-keeping practices, which is an inherent challenge faced across

<sup>158</sup> Submissions of NSWPF, 10 October 2023, [78]–[83], [94]–[97],[168] (SCOI.86127).

<sup>159</sup> Submissions of NSWPF, 10 October 2023, [58]–[59] (SCOI.86127); Submissions of Counsel Assisting, 15 September 2023, [906] (SCOI.85649).

<sup>160</sup> Submissions of NSWPF, 10 October 2023, [459]–[463] (SCOI.86127).



jurisdictions in relation to cold cases. It is important to recognise that police practices were significantly different before developments in DNA technology were known or foreseen. I also accept that it is important to recognise that failures to comply with historical protocols in investigative practice and exhibit and record management are not the fault of the UHT;

- b. The NSWPF has acknowledged that there are examples before the Inquiry of poor record-keeping practices within the UHT itself;
- c. The task of dealing with a very large number of unsolved cases is one that necessarily requires a methodical and systematic approach, and that while the UHT has aimed to operate in this way, that has not always occurred;
- d. As a consequence of want of resources, reviews of cases that result in recommendations for further investigation may not be able to be followed. I note the acceptance by the NSWPF that where this occurs, it would be appropriate for that decision and the reasons for it to be recorded; and
- e. The features of document management and record-keeping identified by Dr Allsop have now been in place within the NSWPF for a considerable time. I note the acceptance by the NSWPF that complete and accurate record management of previous case reviews is of significant importance to the efficient operation of the UHT.

### **The importance of respectful and inclusive communications**

- 8.39. The NSWPF acknowledges that references to Samantha Rose’s former name, and the mislabelling of her gender, in addition to referring to her as a “cross dresser”, were “disrespectful and unacceptable”.<sup>161</sup>
- 8.40. The NSWPF accepts that “such references should not be perpetuated in new records unless there is a clear forensic purpose underpinning the use of the relevant language”. I accept that the NSWPF submission that it is cognisant that the use of inappropriate language can be extremely harmful, and that it “is of the utmost importance that the NSWPF officers communicate in respectful and inclusive ways”.<sup>162</sup>
- 8.41. I agree that it is of the utmost importance that NSWPF officers communicate in respectful and inclusive ways. In the section below dealing with recommendations, I deal with a proposed recommendation concerning education in relation to the LGBTIQ community.
- 8.42. It is my observation, based on the evidence that the Inquiry has received—particularly in the Context Hearing—that the question of respectful and inclusive language is one that requires a process of continuing education and continuing engagement with the LGBTIQ community.

<sup>161</sup> Submissions of NSWPF, 10 October 2023, [444] (SCOI.86127).

<sup>162</sup> Submissions of NSWPF, 10 October 2023, [464] (SCOI.86127).



## Approach to fact-finding

- 8.43. The approach I have taken to fact finding is set out in **Chapter 1**. However, the availability and appropriateness of particular types of findings that I might make in the context of this Chapter have been the subject of differing submissions by Counsel Assisting and the NSWPF. These types of findings fall within three broad categories:
- a. First, findings which might be made in the absence of evidence from individual officers;
  - b. Secondly, findings where it is not possible to know precisely what occurred in relation to exhibits and documentary records; and
  - c. Thirdly, findings made about general practices or patterns observable from the evidence before the Inquiry.

## Where an individual has not been called to give evidence

- 8.44. In a variety of different contexts, the NSWPF has made submissions concerning findings about individual conduct in circumstances where the Inquiry has not received evidence from a person or persons involved. I accept the submissions of Counsel Assisting, which identify the distinction between the requirements of natural justice, and the question of sufficiency of evidence.<sup>163</sup>
- 8.45. The examples given by Counsel Assisting at [6]–[10] of their reply submissions are illustrative.<sup>164</sup> In terms of procedural fairness, I accept that, in making findings that touch on the conduct of persons who have not given evidence or been given an explicit opportunity to make submissions, it is important that I do so in a way that avoids practical injustice.
- 8.46. This is a matter that I address primarily in the context of individual cases and submissions. However, I observe here that, unless I do so explicitly, my criticisms of the conduct of the NSWPF should not be understood as being directed at any individual personally. In most instances, I am concerned with the failure by the NSWPF to take identified steps, not the conduct of an individual officer. This is particularly so where, as in many instances, the officer responsible for a particular action or omission is not known to the Inquiry.

## Where I cannot be satisfied concerning precisely what occurred

- 8.47. Both Counsel Assisting and the NSWPF identify instances where the evidence before the Inquiry does not permit a conclusion to be reached about what actually happened.

<sup>163</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [6] (SCOI.86354).

<sup>164</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [6]–[10] (SCOI.86354).

- 8.48. The findings available to me in such circumstances, and the ones I consider I should make, are explained in the context of individual cases. However, it is appropriate for me to make some general remarks as this matter is dealt with in the submissions.
- 8.49. I accept, as pointed out by the NSWPF, and embraced by Counsel Assisting, that the possible breach of policies and procedures concerning recordkeeping is a distinct matter from whether it would reasonably be expected that exhibits would have been retained.<sup>165</sup> As Counsel Assisting submitted, both of these matters are distinct from, but may overlap with, the question of whether there may have been breaches of the *State Records Act 1998* (***State Records Act***) or the *Archives Act 1983* (***Archives Act***).<sup>166</sup>
- 8.50. I also accept the submission made by the NSWPF, with which Counsel Assisting concur: there is a distinction between circumstances where the evidence establishes a failure to take particular steps, circumstances where there has been a failure to keep records of such steps, and circumstances where it cannot be known whether there was a failure to take steps or a failure of record-keeping or both.<sup>167</sup> These scenarios should be treated separately so far as practicable. They are all matters, however, that I consider I should address.
- 8.51. Counsel Assisting submit that:<sup>168</sup>

*In some instances, the Inquiry has received evidence that either of the alternatives (failure to retain the exhibit, or failure to make and/or retain a record) indicates a breach of proper police practice. In such cases, a finding that a breach of proper police practice had occurred is clearly open on the evidence. For example, in Mr Cuthbert's case, although AC Conroy's evidence was that while it was not possible to conclude whether the exhibits were destroyed with proper authorisation, a record of the destruction should have been made (NSWPF Submissions [348]).*

*In some instances, it appears impossible to know what occurred. In some such cases, the NSWPF have accepted that, whatever occurred, there has been a breach of proper police practice. In those circumstances, we do not understand it to be controversial that a finding to this effect should be made. In other instances, the NSWPF submits it is not possible to know what occurred, and that no positive finding of a breach is open. In our submission, even where there is uncertainty as to whether a breach of policies or procedures has occurred, a finding or observation that there may have been a breach of relevant policies, procedures or legislation is of value in the context of the work of the Inquiry.*

<sup>165</sup> Submissions of NSWPF, 10 October 2023, [300] (SCOI.86127).

<sup>166</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [15] (SCOI.86354).

<sup>167</sup> Submissions of NSWPF, 10 October 2023, [358] (SCOI.86127).

<sup>168</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [18], [23]-[24] (SCOI.86354).

*Similarly, there may be circumstances where a positive finding concerning the obligation to retain (as opposed to create) records should not be made. An example may be the possibility of authorised destruction of records following the inquest in Mr Wark's case. However, the fact that the Inquiry is not in a position to make a positive finding is unsatisfactory. The NSWPF have been provided with ample opportunity to put on evidence concerning what policies and procedures were actually in place. It is unsatisfactory that nobody from the NSWPF has been able to explain whether records at particular times should have been retained. That is itself a matter about which the Commissioner can and should comment in his Final Report.*

- 8.52. I accept these submissions of Counsel Assisting, and this is the approach I have taken both in this Chapter, and in relation to individual cases.

### Findings or observations made at a level of generality

- 8.53. I accept the submission made by the NSWPF that, in general, where there is evidence of lost or destroyed exhibits, that should be dealt with in the context of individual cases, as the question of whether a policy or procedure has breached requires attention to individual cases.<sup>169</sup>
- 8.54. However, I also accept the submission made by Counsel Assisting that is appropriate for me to make general observations about patterns or similarities that I observe between cases. I consider this an important aspect of reporting in relation to many of the matters raised in the Investigative Practices Hearing.<sup>170</sup> Having considered a large number of individual cases, in addition to hearing evidence concerning practices and procedures, I consider that reporting concerning similarities between cases and patterns that emerge is an important aspect of this Report.

### Procedural fairness

- 8.55. The topic of procedural fairness is one which I have considered already, and will return to, throughout this Report. As is recorded by Counsel Assisting, controversy as far as the OICs of each investigation are concerned has now fallen away.<sup>171</sup>
- 8.56. It is not necessary for me to repeat here the core principles of procedural fairness, but I observe that they are dealt with in **Chapter 1** and set out in the reply submissions of Counsel Assisting.<sup>172</sup>

<sup>169</sup> Submissions of NSWPF, 10 October 2023, [56] (SCOI.86127).

<sup>170</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [25] (SCOI.86354).

<sup>171</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [45]–[47] (SCOI.86354).

<sup>172</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [49]–[51] (SCOI.86354).

- 8.57. I agree with the submission of Counsel Assisting that advertent to an error in an investigation, even in critical terms, will not necessarily enliven an obligation to afford procedural fairness in relation to an individual involved in the investigation.<sup>173</sup> Where I identify an error, oversight or deficiency in investigative practice, this should not be understood as a personal criticism of any particular officer involved in the investigation. I agree that I am able to make findings of this kind in a way that avoids practical injustice, and this is the approach I take in this Chapter and throughout the Report.
- 8.58. In addition, as Counsel Assisting identified, the statutory framework within which I am operating is of critical importance when considering what procedural fairness requires.<sup>174</sup> The content of the obligation should not frustrate the purpose for which statutory power is conferred.
- 8.59. Counsel Assisting made the following submissions concerning this issue:<sup>175</sup>

*The Commissioner has been tasked with considering unsolved homicides over a 40-year period. It is likely that hundreds of individual police officers have, over that period, come into contact with those matters. In many cases, explaining the progress of the Inquiry's work will involve engaging critically with the investigations that have occurred. This may involve identifying errors or oversights in those original investigations. The scope of the obligation of procedural fairness suggested by the NSWPF would frustrate the purpose for which power has been conferred on the Commissioner by vastly multiplying the cost and time required for the Inquiry to conduct its work.*

*In the present case, the work of the Inquiry has been extensively publicised over a significant period of time. The Inquiry's website contains a large amount of information about each case considered by the Inquiry, including written submissions and the livestream of each public documentary tender. It contains details for how an individual can make contact with the Inquiry. In a number of cases, this has led to individuals approaching the Inquiry with information which they consider to be relevant to the Inquiry's work.*

*In the present circumstances, and accepting that a general invitation to be heard would not ordinarily be sufficient to satisfy the obligations of procedural fairness, we submit that it would be consistent with the requirements of procedural fairness for the Commissioner to accept the criticisms made in CA Submissions about investigative oversights or deficiencies, and about what appears from the face of the documentary record.*

<sup>173</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [52] (SCOI.86354).

<sup>174</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [53] (SCOI.86354).

<sup>175</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [55]–[57] (SCOI.86354).

*Of course, this does not preclude a more onerous obligation arising in respect of an officer who might be the subject of a serious finding: for example, a finding that their conduct, as an individual, was negligent, or was actuated by bias. The NSWPF have not identified a finding of that nature, except in relation to the topic of unconscious or conscious bias.*

- 8.60. I accept these submissions, and deal with any specific issues arising in the context of individual matters. I turn now to the question of conscious and unconscious bias.

## Homicide investigations in the NSWPF

- 8.61. There was, broadly, consensus between Counsel Assisting and the NSWPF concerning much of the factual background concerning homicide detection, the Homicide Squad, and the history of exhibit management and forensic testing. For that reason, the summary of those matters is drawn from the submissions of Counsel Assisting, with some additional detail drawn from the submissions of the NSWPF.

### The history of homicide detection in NSW

#### Prior to the Homicide Squad

##### HOMICIDE INVESTIGATION IN THE 1970S

- 8.62. Prior to approximately July 1972, the investigation of homicides was undertaken by specially selected groups of detectives, known as “General Duty Detectives”, who worked in pairs under the supervision of the Superintendent in Charge of the Criminal Investigation Branch (**CIB**).<sup>176</sup> In around July 1972, these detectives were granted “squad status” and the “Special Crimes Squad” (**SCS**) (the precursor to the Homicide Squad) was established under the supervision of a Senior Detective Sergeant.<sup>177</sup> As at 1975, there were 33 detectives attached to the SCS.<sup>178</sup>
- 8.63. In around July 1976, the SCS was renamed the “Homicide Squad”. From that time, the Homicide Squad was under the leadership of a Detective Inspector, assisted by a Senior Detective Sergeant and 23 Detective Constables. The Homicide Squad operated throughout NSW and investigated homicides; deaths of an unusual or suspicious nature; skeletal remains; and the disappearances of persons under suspicious or unusual circumstances.<sup>179</sup>

<sup>176</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [20] (NPL.9000.0006.0001).

<sup>177</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [21] (NPL.9000.0006.0001); Transcript of the Inquiry, 6 July 2023, T5041.26-36 (TRA.00074.00001).

<sup>178</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [22] (NPL.9000.0006.0001).

<sup>179</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [23] (NPL.9000.0006.0001); Transcript of the Inquiry, 6 July 2023, T5041.26-40 (TRA.00074.00001).

## THE 1980S AND THE DISBANDMENT OF THE CIB

- 8.64. In around 1987, the CIB was disbanded. The specialised resources for investigating homicides in NSW were regionalised.<sup>180</sup> Until 1997, NSW had four “Homicide Units” which formed part of the four “Major Crime Squads”, each of which was located within one of four regions: North (Chatswood and Newcastle), South (Strawberry Hills), South West (Flemington) and North West (Parramatta).<sup>181</sup>
- 8.65. The regional Homicide Units worked independently of one another to investigate homicides within their regions.<sup>182</sup> Local detectives of each Patrol were responsible for notifying the relevant regional Homicide Unit of any potential homicide and seeking their assistance with the investigation.<sup>183</sup> At this time, the Patrol Commander had responsibility for all activities within their Patrol.<sup>184</sup>

## THE 1990S AND CENTRALISATION

- 8.66. Following consideration of the report of the Working Party Reviewing the Effect of Regionalisation on the Investigation of Homicides (delivered in February 1990),<sup>185</sup> it was determined that it was more effective for specialised units (such as homicide units) to be centralised. Since 1997, there has been a centralised homicide unit within the NSWPF.<sup>186</sup>
- 8.67. Three historical versions of Standard Operating Procedures (**SOPs**) for the regional Major Crime Squads are in evidence before the Inquiry.<sup>187</sup> In addition, Detective Superintendent Doherty refers in his statement to the “Major Crime Squad, Investigation Referral System” document, dated September 1994.<sup>188</sup>
- 8.68. Prior to centralisation, it was a matter for each Patrol Commander to involve the relevant regional Major Crimes Squad by completing an investigation referral form.<sup>189</sup> Detective Superintendent Doherty also annexed to his statement a profile document concerning the Major Crime Squad, South Region.<sup>190</sup>
- 8.69. Centralisation was thought to be beneficial on the basis that it meant “one point of contact, increased information sharing, communication; to have a specialist body that was answerable to certain crime types.”<sup>191</sup>

<sup>180</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [25] (NPL.9000.0006.0001).

<sup>181</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [26], [41] (NPL.9000.0006.0001); Transcript of the Inquiry, 6 July 2023, T5045.6-44 (TRA.00074.00001).

<sup>182</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [27] (NPL.9000.0006.0001).

<sup>183</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [28] (NPL.9000.0006.0001).

<sup>184</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [29] (NPL.9000.0006.0001).

<sup>185</sup> Exhibit 51, Tab 1B, Report of the Working Party, February 1990 (NPL.0100.0003.0830).

<sup>186</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [31] (NPL.9000.0006.0001).

<sup>187</sup> Exhibit 51, Tab 1C, North Region, Standard Operating Procedures (“SOPS”), June 1992 (NPL.0100.0003.0967); Exhibit 51, Tab 1E, Homicide Unit, Major Crime Squad North SOPS, Undated (NPL.0100.0003.0890); Exhibit 51, Tab 1G, Homicide Unit, Major Crime Squad South SOPS, January 1995 (NPL.0100.0003.0961).

<sup>188</sup> Exhibit 51, Tab 1D, Major Crime Squad Investigation Referral System, 1994 (NPL.0100.0003.1130).

<sup>189</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [43] (NPL.9000.0006.0001).

<sup>190</sup> Exhibit 51, Tab 1F, Homicide Unit, Major Crime Squad, South Region, Profile, October 1994 (NPL.0100.0003.1110).

<sup>191</sup> Transcript of the Inquiry, 6 July 2023, T5050.1-6 (TRA.00074.00001).

- 8.70. In around 1997, all major crime units within the NSWPF were re-centralised and “Crime Agencies” were formed. After this centralisation, the investigation of homicides was managed by the “Homicide and Serial Crime Agency”.<sup>192</sup>
- 8.71. In 2002, the State Crime Command (SCC) was established as a centralised body, and the Homicide Squad, as it now exists, was established.<sup>193</sup> The SCC has 11 squads which sit within it, and is one of the six commands which report to the Deputy Commissioner Investigations and Counter Terrorism.<sup>194</sup>
- 8.72. In his statement, Detective Superintendent Doherty identified a number of benefits which he considered flowed from the centralisation of the Homicide Squad.<sup>195</sup> A copy of the SCC document “Investigation Support, Standard Operating Procedures” dated May 2003 is in evidence before the Inquiry.<sup>196</sup>

### The formation of the Homicide Squad

- 8.73. Detective Superintendent Doherty explained in his statement:<sup>197</sup>

*Since 2002, the Homicide Squad has led and driven the NSWPF response to homicide and coronial investigations, at all levels. This is achieved through the development of tactical intelligence products, the provision of policy advice and advice as to best practice concerning the proper investigation of homicides to Police Area Commands (PACs) and police departments involved in such investigations. In addition, this is achieved through the provision of specialist investigative services on homicide investigations by providing experienced homicide detectives to lead, manage and consult on such investigations. The Homicide Squad, and its detectives, specialise in the investigation of murder, suspicious deaths, specific critical incidents and specific coronial investigations, as determined by the New South Wales State Coroner.*

- 8.74. In his oral evidence, Detective Superintendent Doherty elaborated on the changes and improvements to the way in which suspicious deaths have been investigated since the formation of the Homicide Squad. He said that there were a number of advances: the transition from analogue to digital devices; enhancements to cameras and video recording; the availability of electronic information; the use of body-worn cameras; and developments in psychology, criminology and victimology.<sup>198</sup>

<sup>192</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [32] (NPL.9000.0006.0001).

<sup>193</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [33] (NPL.9000.0006.0001).

<sup>194</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [36] (NPL.9000.0006.0001).

<sup>195</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [45] (NPL.9000.0006.0001).

<sup>196</sup> Exhibit 51, Tab 1H, Investigation Support SOPS, May 2003 (NPL.0100.0003.1038).

<sup>197</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [34] (NPL.9000.0006.0001).

<sup>198</sup> Transcript of the Inquiry, 6 July 2023, T5042.1-37 (TRA.00074.00001).



- 8.75. In addition, Detective Superintendent Doherty identified the development of DNA as changing the way the NSWPF would investigate homicides (as well as other crimes). He said that the *Crimes (Forensic Procedures) Act 2000* (**CFP Act**) had enhanced the ability of the NSWPF to gather DNA from suspects and volunteers, but also changed the way the NSWPF managed and stored exhibits.<sup>199</sup> The issue of advancements in DNA technology is dealt with below.

### STRUCTURE OF THE HOMICIDE SQUAD

- 8.76. At the time of this Inquiry, the Homicide Squad has a structure of 11 teams.<sup>200</sup> Detective Superintendent Doherty's experience is that entry to the Homicide Squad is competitive and "attracts applications from a range of experienced and dedicated detectives." Detective Superintendent Doherty said in his statement that homicide investigations require a "thorough, patient, and at times innovative approach."<sup>201</sup> Six of the 11 teams respond to recent homicides or missing persons reports. The other five operate as the UHT.<sup>202</sup>
- 8.77. According to the 2003 SOPs, it was mandatory for homicides (being classified as a Level 1 offence) to be referred to the SCC as soon as they were detected.<sup>203</sup> In his oral evidence, in response to questions from Senior Counsel Assisting, Detective Superintendent Doherty said that this was, to his knowledge, the first time that notification became mandatory, but that this formalised the process that was already generally followed and that "it was always a practice that homicide would always be notified." He confirmed that this notification had been "required" as a matter of proper police practice even before its formalisation.<sup>204</sup>
- 8.78. The role and responsibility of the SCC, including the Homicide Squad, was to provide specialist investigative support to the Local Area Command (**LAC**) in which the incident occurred. Discretion to direct the method of operation for serious major crimes, including homicides, rested with the Commander of the SCC.<sup>205</sup>

### STANDARD OPERATING PROCEDURES OF THE HOMICIDE SQUAD

- 8.79. The SOPs in place from May 2010 onwards are also in evidence before the Inquiry, as is the current version of the SOPs.<sup>206</sup> Since at least May 2010, a detective from the Homicide Squad will lead an investigation into a homicide or suspicious death for the first 72 hours of an investigation, unless and until the Homicide Squad determines otherwise.<sup>207</sup>

<sup>199</sup> Transcript of the Inquiry, 6 July 2023, T5043.7–5044.2 (TRA.00074.00001).

<sup>200</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [37] (NPL.9000.0006.0001).

<sup>201</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [35] (NPL.9000.0006.0001).

<sup>202</sup> Transcript of the Inquiry, 6 July 2023, T5050.21–42 (TRA.00074.00001).

<sup>203</sup> Exhibit 51, Tab 1H, Investigation Support SOPs, May 2003, [5.7] (NPL.0100.0003.1038).

<sup>204</sup> Transcript of the Inquiry, 6 July 2023, T5051.38–5052.44 (TRA.00074.00001).

<sup>205</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [48] (NPL.9000.0006.0001).

<sup>206</sup> Exhibit 51, Tab 1I, Leadership of Homicide and Suspicious Death Investigations, 1 May 2010 (NPL.0100.0003.0183); Exhibit 51, Tab 1J, Leadership of Homicide or Suspicious Death Investigations, 16 June 2022 (NPL.0100.0003.1163).

<sup>207</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [51] (NPL.9000.0006.0001).



- 8.80. Detective Superintendent Doherty explained in his statement that “[t]his approach has been adopted to ensure that there is an experienced detective on homicide investigations that is responsible for making decisions concerning the future direction of the investigation and to ensure that best practice is being followed by the Investigation Team at the most critical point in the investigation.”<sup>208</sup>
- 8.81. At the end of that 72 hour period (or at an earlier point, if the Homicide Squad determines that it should no longer lead the investigation), the Homicide Squad will, in consultation with the relevant PAC/Police Districts and Regions, determine which unit within the NSWPF should continue the investigation and, if that unit is not the Homicide Squad, whether a Homicide Squad Detective should be part of the investigative team.<sup>209</sup>
- 8.82. In the event that a homicide or suspicious death investigation is returned to the PAC in which it occurred, the Homicide Squad has authority (in consultation with the SCC) to take over leadership of the investigation or to assign a detective to the team conducting an investigation.<sup>210</sup> Officers of the NSWPF can also access the resources of the Homicide Squad while conducting investigations.<sup>211</sup>
- 8.83. In addition, if an investigation into a homicide or suspicious death is being conducted by an officer other than a Homicide Squad officer, that officer can liaise either formally or informally with the Homicide Squad. A formal request for assistance involves a request for a review of the investigation. Such a review is conducted by a panel of investigators from the Homicide Squad.<sup>212</sup>
- 8.84. As noted above, there is a mandatory requirement that any suspicious death be notified to the Homicide Squad. The Homicide Squad has investigative authority and control over an investigation for at least the initial 72 hours, but the investigative team would ordinarily comprise, in part, local officers and detectives from the PAC where the homicide occurred.<sup>213</sup> In his oral evidence, Detective Superintendent Doherty explained that there is a high level of collaboration and cooperation between officers at a PAC and the Homicide Squad in relation to suspicious deaths.<sup>214</sup>

<sup>208</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [51] (NPL.9000.0006.0001).

<sup>209</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Daniel Doherty, 18 April 2023, [55] (NPL.9000.0006.0001).

<sup>210</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [57] (NPL.9000.0006.0001).

<sup>211</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [60]–[62] (NPL.9000.0006.0001); Exhibit 51, Tab 1K, Homicide Squad Business Charter, Undated (NPL.0100.0003.1200).

<sup>212</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [59] (NPL.9000.0006.0001).

<sup>213</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [66] (NPL.9000.0006.0001).

<sup>214</sup> Transcript of the Inquiry, 6 July 2023, T5053.44–5054.43 (IRA.00074.00001).

## Homicide Squad relationship with other NSWPF units/agencies

### The Engagement and Hate Crime Unit (and its predecessors)

- 8.85. This is a topic which the NSWPF emphasised some particular factual matters. The submissions of both Counsel Assisting and the NSWPF are considered following a description of the background to this issue.
- 8.86. The Engagement and Hate Crime Unit (**EHC**U) is a unit within the Anti-Terrorism and Security Group (**ATIG**) and has 15 positions within its organisational structure.<sup>215</sup> The EHC U was established in December 2019 following the amalgamation of the Engagement and Intervention Unit (**EI**U) and the Bias Crimes Unit (**BC**U). I have considered the BC U in greater detail in **Chapter 10** of this Report. The BC U was positioned within the EI U from November 2018, following a brief period when it was attached to the Fixed Persons Investigation Unit (**FPI**U).<sup>216</sup> I return to the EHC U below in the context of setting out the education available to officers in relation to bias crimes.
- 8.87. Sergeant Ismail Kirgiz, who gave evidence to the Inquiry, assumed the role of Hate Crime Coordinator in the EHC U in August 2020. The equivalent of the Hate Crimes Coordinator in the BC U was the Bias Crimes Coordinator.<sup>217</sup>
- 8.88. In his statement, Sergeant Kirgiz explained that the primary role of the Hate Crime Coordinator is to “coordinate the operational and program-based response of the NSWPF to crime motivated by hate, by building the organisation’s awareness, knowledge and operational capacity to respond effectively to all aspects of hate crime.”<sup>218</sup> There are approximately 35–50 incidents flagged as potential hate crimes for consideration by the EHC U,<sup>219</sup> and the EHC U conducts an assessment of all such incidents.<sup>220</sup> Where an investigation into the matter remains extant, the case will be considered by the Hate Incident Review Committee (**HIRC**) within the EHC U.<sup>221</sup>
- 8.89. Sergeant Kirgiz explained in his statement that:<sup>222</sup>

*The HIRC determines whether the EHC U contacts other investigators or PACs to assist or encourage the progress of an investigation where it is considered necessary. This typically occurs by the Hate Crime Coordinator calling or emailing the investigating officer to discuss the incident and offer assistance. The Hate Crime Coordinator will remain in regular phone or email contact with the officer until the matter is finalised. Deficiencies or delays in the investigation that are of greater concern are escalated to the*

<sup>215</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [10] (SCOI.82035).

<sup>216</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [5] (SCOI.82035).

<sup>217</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [8] (SCOI.82035).

<sup>218</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [6]–[7] (SCOI.82035).

<sup>219</sup> Transcript of the Inquiry, 13 December 2022, T1276.24 (TRA.00016.00001).

<sup>220</sup> Exhibit 6, Tab 195, NSWPF Hate Crime Guidelines, 13 April 2022, [4.3.3], [4.4] (SCOI.77445).

<sup>221</sup> Transcript of the Inquiry, 13 December 2022, T1276.30-33 (TRA.00016.00001).

<sup>222</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [17] (SCOI.76961).

*investigating officer's PAC's Crime Coordinator (Detective Senior Sergeant rank) or Crime Manager (Detective Inspector rank). By way of example, if a delay in an investigation is found to be as a result of an officer being on a long leave of absence, the EHCU will request the relevant Crime Coordinator or Crime Manager to allocate the investigation to another officer to progress the matter in a timely manner.*

8.90. The NSWPF submitted that, accordingly, “provided the relevant incident is flagged as a potential hate crime, it will come to the attention of the EHCU and the HIRC will monitor the investigation and offer assistance as appropriate.”<sup>223</sup> I accept this submission as far as it goes, but note that it does not answer Counsel Assisting’s concern about this flagging occurring (a topic to which I return below).

8.91. I accept the submission of the NSWPF that the process of flagging something as a potential hate crime is not an onerous one.<sup>224</sup>

8.92. Detective Superintendent Doherty explained in his statement that the EHCU provides an intelligence function within the NSWPF (as opposed to an investigative function). EHCU officers are intelligence officers rather than detectives.<sup>225</sup> The Homicide Squad consults with the EHCU where the victimology of a case suggests that crime may have been motivated by hate, prejudice and bias.<sup>226</sup>

8.93. In his oral evidence, Detective Superintendent Doherty described the role of the EHCU as being:<sup>227</sup>

*...assisting the field and specialist units with training and development around bias crime, in relation to prejudice or bias of persons that – due to a person’s identity or their perceived difference, and they provide information that may assist in relation to a victim, a location of interest, for example, a group of people, that may assist an investigation. But they provide ongoing training through the State as well and in relation to bias crime...in relation to victims, how to treat the situation and the victim.*

8.94. Detective Superintendent Doherty explained in response to questions from Senior Counsel Assisting that it will be up to a detective investigating a homicide to make a judgement to consult with the EHCU, and that the factors informing that decision would include the nature of the crime and the investigation, including whether a victim was a member of the LGBTIQ community.<sup>228</sup>

<sup>223</sup> Submissions of NSWPF, 10 October 2023, [17] (SCOI.86127).

<sup>224</sup> Submissions of NSWPF, 10 October 2023, [18]–[19] (SCOI.86127).

<sup>225</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [92] (NPL.9000.0006.0001).

<sup>226</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [92] (NPL.9000.0006.0001).

<sup>227</sup> Transcript of the Inquiry, 6 July 2023, T5068.14-25 (TRA.00074.00001).

<sup>228</sup> Transcript of the Inquiry, 6 July 2023, T5068.27–5069.8 (TRA.00074.00001).

- 8.95. Detective Superintendent Doherty said that part of the training given to investigators is when to contact the EHCU. He was not able to assist the Commissioner in relation to how often the EHCU was consulted, but said it was “whenever we had... the circumstances arise” and that he could recall there were four matters since around 2020 when there had been a perception that bias crime might have been involved, and where he recalled the EHCU may have been consulted.<sup>229</sup>
- 8.96. Detective Superintendent Doherty said in his statement that “[t]he EHCU is able to assist the Homicide Squad in the investigation by providing intelligence, for example, in relation to similar hate crimes which may have occurred in that area, information concerning the victim and why they may have been targeted or groups or persons of interest who may be linked to the incident or investigation.”<sup>230</sup>
- 8.97. Detective Superintendent Doherty was asked by Senior Counsel Assisting how a detective joining the Homicide Squad would learn about the EHCU (noting that the induction package from 2020 does not refer to the EHCU). He said that they ought to be aware of it prior to joining the Homicide Squad, and that each team working on a matter would include experienced investigators who “have utilised all investigative practices and intelligence strategies.” He said that a training day for supervisors scheduled for August of 2023 would include a presentation from the EHCU.<sup>231</sup>
- 8.98. In January 2020, the NSWPF moved from using the term “bias crime” to the term “hate crime” to provide greater clarity to frontline officers considering possible hate/bias motivations.<sup>232</sup>
- 8.99. Sergeant Kirgiz identified a range of tools used by the NSWPF to detect hate motivations. These include the mandatory use of “associated factors” in COPS reporting, which include the option of “hate crime related”. This category has associated sub-categories, including LGBTIQ+. In addition, as set out above, officers have access to the Hate Crime Guidelines, a module available on the Police Education Training Environment (**PETE**); Hate Crime Awareness presentations to frontline police officers; and Hate Crime Awareness presentations to community groups.<sup>233</sup>

<sup>229</sup> Transcript of the Inquiry, 6 July 2023, T5069.40–5070.7 (TRA.00074.00001).

<sup>230</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [93] (NPL.9000.0006.0001).

<sup>231</sup> Transcript of the Inquiry, 6 July 2023, T5086.37–5087.6 (TRA.00074.00001).

<sup>232</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [12] (SCO1.82035).

<sup>233</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [14] (SCO1.82035).

- 8.100. The main protocol for interaction between the EHCU and other arms of the NSWPF, including the Homicide Squad and the UHT, is the HIRC. The HIRC was established in March 2021 and convenes fortnightly. It monitors all hate crime and hate incidents that have been assessed by the Hate Crime Team to require attention or follow-up.<sup>234</sup> The HIRC determines whether the EHCU will contact other investigators or PACs to “assist or encourage the progress of an investigation where it is considered necessary.”<sup>235</sup>
- 8.101. Arms of the NSWPF are able to contact the EHCU if they wish to obtain advice on hate crime related matters.<sup>236</sup> The EHCU conducts hate crime awareness training at all training courses for LGBTIQ Liaison Officers (**Liaison Officers**) and liaises with Liaison Officers at relevant PACs if a hate crime incident is detected against a member or members of the LGBTIQ community.<sup>237</sup>
- 8.102. Detective Chief Inspector Laidlaw was asked about the relationship between the UHT and the EHCU. Senior Counsel Assisting asked whether members of Detective Chief Inspector Laidlaw’s team dealt with the EHCU, and he said “[n]ot personally that I know of, no.”<sup>238</sup>
- 8.103. Senior Counsel Assisting asked whether it could be assumed, on the basis of that evidence, that any interaction between the EHCU and the UHT was “rare and not of a kind that would come to your attention as their supervisor.” Detective Chief Inspector Laidlaw then said he wouldn’t say it was “rare” because “the [EHCU] is an intelligence-based unit, is [sic] my belief, is that our intel personnel that’s attached to the [UHT] may engage with them to see whether there’s information there that can assist our reviews.”<sup>239</sup>
- 8.104. Senior Counsel Assisting then asked Detective Chief Inspector Laidlaw whether Senior Counsel Assisting had misunderstood Detective Chief Inspector Laidlaw’s earlier evidence that in Detective Chief Inspector Laidlaw’s role as Investigation Coordinator, Detective Chief Inspector Laidlaw was responsible for knowing the extent to which members of the Review Team engaged with the EHCU. Detective Chief Inspector Laidlaw said that that evidence was correct, and that he could not say that people would come to him and say that they’d spoken to the EHCU.<sup>240</sup>

<sup>234</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [16] (SCO1.82035).

<sup>235</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [17] (SCO1.82035).

<sup>236</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [19] (SCO1.82035).

<sup>237</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [20] (SCO1.82035).

<sup>238</sup> Transcript of the Inquiry, 7 July 2023, T5199.2–4 (TRA.00075.00001).

<sup>239</sup> Transcript of the Inquiry, 7 July 2023, T5199.17–31 (TRA.00075.00001).

<sup>240</sup> Transcript of the Inquiry, 7 July 2023, T5199.24–39 (TRA.00075.00001).

- 8.105. Detective Chief Inspector Laidlaw had not himself ever spoken to his team about the availability of the EHCU as a resource, and had never been told about any occasion on which they had consulted with the EHCU.<sup>241</sup> He said he had never seen a document recording any communication between the EHCU and the Review Team, although he said he would not necessarily expect this to be recorded on a triage document.<sup>242</sup>

#### SUBMISSIONS CONCERNING THE ROLE OF THE EHCU

- 8.106. Counsel Assisting submitted that the decision to contact the EHCU is one made by the investigating officer. It is, therefore, reliant on the investigating officer detecting signs that may indicate that a crime is a hate or bias crime. The NSWPF sought to emphasise that whilst the decision to contact the EHCU ultimately falls to an investigating officer, engagement between the EHCU and investigators is not a “one-way process”. Once an incident has been flagged as a potential hate crime, the EHCU and the Hate Crime Review Committee within the EHCU will assess the incident and continue to monitor the investigation and provide assistance as appropriate.<sup>243</sup>
- 8.107. Counsel Assisting submitted, consistently with the submissions made in relation to education concerning the LGBTIQ community (to which I return below), that there remains a concern as to the adequacy of the training provided to officers concerning the LGBTIQ community. They submitted that it follows from that concern that officers may not be in a position to identify indicia of bias crime and to engage the EHCU.
- 8.108. Counsel Assisting observed that there does not appear to be any mechanism by which the EHCU, or any other person or team within the NSWPF, supervises or reviews the characterisation (or lack thereof) of matters as potential hate or bias crimes. Counsel Assisting also referred to Detective Chief Inspector Laidlaw’s evidence, as set out above, that he has not spoken to his team concerning the availability of the EHCU, and has never been told about any occasion where the UHT had consulted the EHCU, or seen any document recording engagement with the EHCU.
- 8.109. Further, Counsel Assisting submitted that the lack of “meaningful engagement” between the EHCU and the UHT was an unsatisfactory state of affairs, given that the role of the EHCU may be of particular significance in unsolved cases where ignorance or prejudice on the part of investigating officers may have led to hate crime factors being overlooked or ignored, and where contribution of the EHCU may assist in discerning fruitful lines of enquiry.

<sup>241</sup> Transcript of the Inquiry, 7 July 2023, T5199.41–47 (TRA.00075.00001).

<sup>242</sup> Transcript of the Inquiry, 7 July 2023, T5200.2–10 (TRA.00075.00001).

<sup>243</sup> Submissions of NSWPF, 10 October 2023, [14]–[17] (SCOI.86127).

- 8.110. The NSWPF submitted that Counsel Assisting’s concerns regarding the ability of officers to identify indicia of bias crimes and engage the EHCU failed to have regard to the evidence of Assistant Commissioner Anthony Cooke and the evidence of Sergeant Kirgiz, concerning the efforts the EHCU has made to educate NSWPF officers about hate crimes. The NSWPF pointed to a “significant number of face-to-face education sessions” the EHCU has conducted, focussing on Police Area Commands (**PAC**) with the highest incidence of hate crime and those with significant populations of potentially vulnerable communities. This is an education package which the EHCU is continuing to implement throughout NSW.<sup>244</sup>
- 8.111. The NSWPF also submitted that the Hate Crime Guidelines (discussed further below), which have been disseminated to all NSWPF officers via email and are available through the NSWPF’s online education system, provide “very clear guidance” to officers in identifying hate crimes and engaging the EHCU.<sup>245</sup>
- 8.112. Regarding the engagement between the EHCU and the UHT, the NSWPF submitted that there may have been contact between the UHT and the EHCU which Detective Chief Inspector Laidlaw was not aware of. In this respect, the NSWPF sought to rely on Detective Chief Inspector Laidlaw’s evidence that intelligence personnel attached to the UHT may engage with the EHCU.
- 8.113. Further, given Detective Chief Inspector Laidlaw’s evidence as to his investigative commitments, the NSWPF submitted that it is “unsurprising” that Detective Chief Inspector Laidlaw did not monitor contact between UHT investigators and members of the EHCU.<sup>246</sup>
- 8.114. The NSWPF further submitted that, given Counsel Assisting had not identified any cases “where ignorance or prejudice on the part of investigating officers may have led to hate crime factors being overlooked or ignored”, a finding in the terms of Counsel Assisting’s submissions summarised above at should not be made.<sup>247</sup>
- 8.115. In saying this, the NSWPF agreed that the EHCU may be able to discern fruitful lines of inquiry in unsolved homicides where the original investigation had failed to identify potential indicia of hate crimes. The NSWPF acknowledged that, in such cases, the EHCU’s input should be sought by the UHT.<sup>248</sup>

<sup>244</sup> Submissions of NSWPF, 10 October 2023, [18]–[23] (SCOI.86127).

<sup>245</sup> Submissions of NSWPF, 10 October 2023, [18]–[23] (SCOI.86127).

<sup>246</sup> Submissions of NSWPF, 10 October 2023, [24]–[25] (SCOI.86127).

<sup>247</sup> Submissions of NSWPF, 10 October 2023, [26] (SCOI.86127).

<sup>248</sup> Submissions of NSWPF, 10 October 2023, [27] (SCOI.86127).

8.116. In their submissions in reply, Counsel Assisting said:<sup>249</sup>

*The NSWPF acknowledges, as submitted at [Counsel Assisting’s written submissions] [67], that the decision to contact the EHCU is one made by the investigating officer, and is thus reliant on that officer detecting signs of bias crime. The NSWPF draws attention to additional training provided to officers, not set out in the [Counsel Assisting’s written submissions] ([18], [42]-[45]). As set out above, notwithstanding this evidence, we submit that Recommendation 2 should be made.*

*Having regard to the submissions made at NSWPF [24]-[27], and accepting the possibility that individual officers are making contact with the EHCU, we submit that rather than a finding in terms of [Counsel Assisting’s written submissions] [70], it would be appropriate for a recommendation be made that procedures be put in place to ensure that UHT officers are aware that the EHCU should be contacted in appropriate circumstances.*

8.117. I agree that, having regard to the submissions of the NSWPF, it is not necessary for me to make any finding about the engagement of the UHT with the EHCU. However, I have made a recommendation in relation to the practices and procedures of the UHT below. It is my intention that the issues referred to in that recommendation include the interactions between the UHT and the EHCU.

### The Missing Persons Registry

8.118. The role, function and structure of the Missing Persons Registry (**MPR**) has changed significantly over time.<sup>250</sup> Detective Superintendent Doherty explained in his statement that he understands that there have been significant improvements to the function and investigative capacity of the MPR following a number of internal reviews and coronial recommendations.<sup>251</sup>

8.119. The “Missing Friends Bureau” was established in 1930, and became the “Missing Persons Bureau” in around 1947, at which time it operated as a central recording agency for all missing persons including escaped psychiatric patients.<sup>252</sup> By 1974 a “Missing Persons Section” of the NSWPF was established and in around 1987 the “Missing Persons Section” was renamed the “Missing Persons Unit”.<sup>253</sup>

<sup>249</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [36]–[37] (SCOI.86354).

<sup>250</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [98] (NPL.9000.0006.0001).

<sup>251</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [98] (NPL.9000.0006.0001).

<sup>252</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [100]–[101] (NPL.9000.0006.0001).

<sup>253</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [101] (NPL.9000.0006.0001).



- 8.120. Detective Superintendent Doherty was not able to “uncover” any additional information about where the MPU sat within the operational structure of the NSWPF during the 1970s and 1980s, or its relationship with the Homicide Squad, but he observed that “internal police records suggest that a close liaison was maintained between the Missing Person Unit and the original Homicide Squad (under the CIB) in 1981.”<sup>254</sup>
- 8.121. Detective Superintendent Doherty reviewed a number of documents concerning the SOPs from 2006 to 2013 in relation to missing persons in preparing his statement.<sup>255</sup> Those documents are in evidence before the Inquiry.<sup>256</sup> Missing persons cases were primarily investigated by the relevant Patrol or LAC (now PAC), and it was the responsibility of the Patrol or PAC to report the incident to the MPU.<sup>257</sup>
- 8.122. The document entitled “Operational Information Agency, Missing Persons Unit” dated 16 July 2003 does not include any reference to the Homicide Squad.<sup>258</sup> By 2007, the equivalent policy document provided that if foul play was suspected in relation to a missing person, the duty officer and detectives should be briefed immediately so that a mandatory referral could be made to the Homicide Squad.<sup>259</sup> This instruction is repeated in the 2013 version of the document,<sup>260</sup> which also records that the MPU meets regularly with the Homicide Squad regarding suspicious cases.<sup>261</sup> At this time, it was the duty of the Crime Manager to manage suspicious missing persons cases and maintain liaison with the Homicide Squad.<sup>262</sup> The version of this document updated in 2016 records:<sup>263</sup>

### *3.1 State Crime Command Homicide Squad*

*If foul play is suspected the Homicide Squad, State Crime Command is to be immediately notified. Consistent with the NSWPF Policy that during the first 72 hours of an investigation into a homicide or suspicious death the Homicide Squad should be the leading investigator unless and until the Homicide Squad decides otherwise, the on-call Homicide Squad Inspector will conduct an assessment and determine an appropriate response from the Homicide Squad.*

<sup>254</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [102] (NPL.9000.0006.0001). The document entitled “Crime Information and Intelligence System, Introduction of New Procedures respecting Missing Persons Unidentified Bodies and Unidentified Persons” referred to at [103] of Detective Superintendent Doherty’s statement (Exhibit 51, Tab 1P, Crime Information and Intelligence System Procedures, 1985 (NPL.0100.0003.0001) does not shed light on this matter. See also Transcript of the Inquiry, 6 July 2023, T5071.32-37 (TRA.00074.00001).

<sup>255</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [105] (NPL.9000.0006.0001).

<sup>256</sup> Exhibit 51, Tab 1Q, Operational Information Agency, Missing Persons Unit, 16 July 2003 (NPL.0100.0003.0377); Exhibit 51, Tab 1R, Missing Persons, Policies and Procedures, 2007 (NPL.0125.0005.0001); Exhibit 51, Tab 1S, Missing Persons SOPS, 2013 (NPL.0100.0003.0218); Exhibit 51, Tab 1T, Missing Persons SOPS, June 2016 (NPL.0125.0005.0108).

<sup>257</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [106] (NPL.9000.0006.0001).

<sup>258</sup> Exhibit 51, Tab 1Q, Operational Information Agency, Missing Persons Unit, 16 July 2003 (NPL.0100.0003.0377).

<sup>259</sup> Exhibit 51, Tab 1R, Missing Persons, Policies and Procedures, 2007, 7, 13, 24 (NPL.0125.0005.0001).

<sup>260</sup> Exhibit 51, Tab 1S, Missing Persons SOPS, 2013, 7, 8, 35 (NPL.0100.0003.0218).

<sup>261</sup> Exhibit 51, Tab 1S, Missing Persons SOPS, 2013, 4 (NPL.0100.0003.0218).

<sup>262</sup> Exhibit 51, Tab 1S, Missing Persons SOPS, 2013, 13 (NPL.0100.0003.0218).

<sup>263</sup> Exhibit 51, Tab 1T, Missing Persons SOPS, June 2016, 3 (NPL.0125.0005.0108).

- 8.123. In 2019, following a review of the MPU and a number of coronial recommendations, the NSWPF MPR was established “as an oversight unit for all NSW missing persons and unidentified bodies and human remains.”<sup>264</sup> The SOPs concerning missing persons, unidentified bodies and human remains dated 2019, 2020, 2021 and 2022 are in evidence before the Inquiry.<sup>265</sup>
- 8.124. In his oral evidence, Detective Superintendent Doherty explained that until 2019 the PACs and the police districts would “own the investigation up to a certain point for a missing person” and that the MPU would provide guidance on how that would be managed through PACs or LACs. However, after 2019 the MPR evolved to have “complete oversight over missing persons”.<sup>266</sup>
- 8.125. At present, it is mandatory for there to be immediate notification to the on-call Homicide Inspector via the State Crime Coordinator where suspicious circumstances exist.<sup>267</sup> Missing persons, unidentified bodies and human remains investigations remain the responsibility of PACs/Police Districts unless investigative responsibility is accepted by the Homicide Squad.<sup>268</sup> The MPR provides assistance to an investigative team to coordinate the response on an investigation but does not assume responsibility for the investigation.<sup>269</sup>
- 8.126. Detective Superintendent Doherty said that the MPR works closely with the Homicide Squad and that there is a lot of crossover and exchange of information between the two groups.<sup>270</sup> Detective Superintendent Doherty expressed the view that the MPR has “significantly improved” the response to, and investigation of, all missing persons.<sup>271</sup>
- 8.127. Matters involving long-term missing persons are reported to the Coroner within 12 months of the initial report being made.<sup>272</sup> At any subsequent inquest the Coroner may recommend a long-term missing persons case be referred to the UHT. If such a recommendation is made, management of the investigation will transfer to the Homicide Squad.<sup>273</sup> In his statement, Detective Superintendent Doherty said that the Homicide Squad has “a close relationship with the MPR,” and that “[i]n recent years, the notification of suspicious missing persons matters to the Homicide Squad has greatly improved, enabling an earlier involvement and response if required”.<sup>274</sup>

<sup>264</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [107] (NPL.9000.0006.0001).

<sup>265</sup> Exhibit 51, Tabs 1U-X, Missing Persons Unidentified Bodies and Human Remains SOPS dated 2019 (NPL.0100.0003.0494); 2020 (NPL.0125.0005.0033); 2021 (NPL.0100.0003.0262); and 2022 (NPL.0100.0003.0025).

<sup>266</sup> Transcript of the Inquiry, 6 July 2023, T5070.45–5071.9 (TRA.00074.00001).

<sup>267</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [109] (NPL.9000.0006.0001); Exhibit 51, Tab 1X, Missing Persons Unidentified Bodies & Human Remains SOPS, 2022, 16 (NPL.0100.0003.0025).

<sup>268</sup> Exhibit 51, Tab 1X, Missing Persons Unidentified Bodies & Human Remains SOPS, 2022, 17 (NPL.0100.0003.0025).

<sup>269</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [109] (NPL.9000.0006.0001).

<sup>270</sup> Transcript of the Inquiry, 6 July 2023, T5071.13–16 (TRA.00074.00001).

<sup>271</sup> Transcript of the Inquiry, 6 July 2023, T5075.7–11 (TRA.00074.00001).

<sup>272</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [111] (NPL.9000.0006.0001).

<sup>273</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [112] (NPL.9000.0006.0001).

<sup>274</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [113] (NPL.9000.0006.0001).

- 8.128. Counsel Assisting submitted that, on Detective Superintendent Doherty's evidence, to the extent the cases before the Inquiry give rise to concerns about efficient communication and collaboration between the MPR (or its predecessors) and homicide investigators, it appears those concerns have been addressed through the present iteration of the MPR. This submission is echoed by the NSWPF in its written submissions,<sup>275</sup> and I accept it.

### Training of homicide detectives

- 8.129. Detective Superintendent Doherty dealt with the training and education of homicide squad detectives in his statement. He annexed four documents to his statement which were utilised from the 1970s to the 1990s for the purposes of the NSW Police Homicide Detective Training Course:<sup>276</sup>
- a. The first is entitled "Homicide". It appears to have been prepared in the 1970s. It concerns the distinction between lawful and unlawful homicides;
  - b. The second is entitled "Homicide – Part I". It sets out the duties of both uniformed police and homicide detectives when called to the scene of a potential homicide;
  - c. The third is entitled "Homicide – Part II" and sets out the duties of an OIC at the scene, the body, and the investigation; and
  - d. The fourth is entitled "Homicide – Part III" and identifies further duties of an OIC, including in relation to exhibits. It identifies that not all investigations will require a specific OIC of exhibits, and that in smaller investigations this role can often be carried out by the OIC of running sheets.
- 8.130. These documents do not contain any reference to bias, hate crime, or engagement with the LGBTIQ community. This issue will be dealt with in detail below.

### Joining the homicide squad

- 8.131. In order to apply for the Homicide Squad, a person must have completed their detective training and achieved the designation of detective, and must possess "demonstrated experience in major crimes investigations."<sup>277</sup> Detective Superintendent Doherty said in his statement that "[a]s one of the most highly sought after squads in the NSWPF, the Homicide Squad receives a large number of expressions of interest from detectives within the NSWPF wishing to join the squad."<sup>278</sup> He said that many detectives possessed a broad range of qualifications and experience, including qualifications external to the NSWPF such as tertiary degrees and diplomas.<sup>279</sup>

<sup>275</sup> Submissions of NSWPF, 10 October 2023, [28]-[29] (SCOI.86127).

<sup>276</sup> Exhibit 51, Tab 1Y, NSWPF Detectives Training Course, Undated, (NPL.0100.0003.0706).

<sup>277</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [115] (NPL.9000.0006.0001).

<sup>278</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [116] (NPL.9000.0006.0001).

<sup>279</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [116] (NPL.9000.0006.0001).

- 8.132. In order to join the Homicide Squad, detectives submit an expression of interest which is then reviewed by the Homicide Squad Human Resources Panel (**Homicide Squad HR Panel**).<sup>280</sup> This is followed by an interview process. The Homicide Squad HR Panel then makes a recommendation to the Senior Management Team. If an officer is deemed suitable, they are accepted into the Homicide Squad subject to a psychological and professional standards risk assessment by the SCC and the successful completion of psychometric testing.<sup>281</sup>
- 8.133. Detective Superintendent Doherty said in his statement that he understood that between 1970 and 1996, it was always a requirement for officers investigating homicides to have achieved the designation of detective.<sup>282</sup> Detective Superintendent Doherty was asked by Senior Counsel Assisting about whether, in the 1990s, candidates were assessed by reference to the skills identified below, but he was unable to assist.<sup>283</sup>
- 8.134. There is no requirement that members of the Homicide Squad have completed any form of tertiary education. However, many members of the Homicide Squad do have tertiary qualifications.<sup>284</sup>
- 8.135. Assistant Commissioner Conroy was asked by Senior Counsel Assisting how the Bachelor of Policing had affected her approach to policing. She said that “[i]t assisted me with all avenues of policing in terms of investigative skill, community engagement, statement preparation, brief preparation...”.<sup>285</sup>
- 8.136. Similarly, Superintendent Best was asked by Senior Counsel Assisting why he undertook the Bachelor of Policing. He said:<sup>286</sup>

*I saw that course and chose to do a course for personal development, and also with an understanding that it was going to be the future of policing and that those types of courses would be part of just general enrolment of becoming a police officer. So I saw that and to stay contemporary and then also for future promotion, that doing those sort of courses were requirements, essentially.*

- 8.137. Senior Counsel Assisting asked Detective Superintendent Doherty what the value of detectives having tertiary degrees was. He said that it means that “they have more broad mindedness in terms of their abilities and what skill sets they have.... [a]nd I think it’s good to have people with a tertiary background, as many as you can.”<sup>287</sup> Detective Superintendent Doherty also gave evidence in relation to the financial support provided by the NSWPF to those undertaking tertiary

<sup>280</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [118] (NPL.9000.0006.0001).

<sup>281</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [120] (NPL.9000.0006.0001).

<sup>282</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [122] (NPL.9000.0006.0001).

<sup>283</sup> Transcript of the Inquiry, 6 July 2023, T5049.25-29 (TRA.00074.00001).

<sup>284</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [116] (NPL.9000.0006.0001).

<sup>285</sup> Transcript of the Inquiry, 4 July 2023, T4797.13-16 (TRA.00072.00001).

<sup>286</sup> Transcript of the Inquiry, 4 July 2023, T4869.13-20 (TRA.00072.00001).

<sup>287</sup> Transcript of the Inquiry, 6 July 2023, T5080.21-37 (TRA.00074.00001).

education.<sup>288</sup> I understand that from 1 January 2023, the NSWPF provide a \$3000 financial subsidy to those training on campus at the NSW Police Academy at Goulburn.<sup>289</sup>

- 8.138. I observe that while this evidence emphasises the value of tertiary qualifications, there are, of course, other ways of developing the skills that are of fundamental importance to homicide investigators. Tertiary qualifications are one mechanism for doing so, but by no means the only mechanism. I have every confidence that there are many exceptional officers who have built these skills without undertaking tertiary education.

### Homicide investigator courses

- 8.139. In 1996, the Homicide Investigators Course (**HIC**) was introduced as a consequence of recommendations from the then Standing Committee on Homicide.<sup>290</sup> In late 2005, the HIC was suspended while an application was made to obtain academic accreditation from Charles Sturt University and the NSWPF Academic Board. That process was finalised in mid-2008 and the HIC was re-introduced in December 2008.<sup>291</sup>
- 8.140. Detective Superintendent Doherty's evidence was that "the subject matter and focus of the HIC has evolved over the years to address advancements in technology, improvements in police procedure and changes to the law."<sup>292</sup>
- 8.141. Although the completion of the course is not a prerequisite to joining the Homicide Squad, Detective Superintendent Doherty's experience is that most detectives who join the squad will have completed the course prior to joining.<sup>293</sup> At present the course runs over period of eight days with a final day of examinations.<sup>294</sup> Members of the Homicide Squad who have not completed the HIC prior to joining are required to complete it as soon as practicable after joining the Squad, and must have completed the course in order to become a supervisor and lead investigations.<sup>295</sup>

<sup>288</sup> Transcript of the Inquiry, 6 July 2023, T5081.17–26 (TRA.00074.00001).

<sup>289</sup> Police Association of NSW, 'New recruitment incentives' (Media Release, 11 December 2022), <<https://www.pansw.org.au/knowledgebase/article/KA-01243/>>

<sup>290</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [124] (NPL.9000.0006.0001).

<sup>291</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [125] (NPL.9000.0006.0001); Transcript of the Inquiry, 6 July 2023, T5083.34-39 (TRA.00074.00001).

<sup>292</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [126] (NPL.9000.0006.0001).

<sup>293</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [128] (NPL.9000.0006.0001).

<sup>294</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [129] (NPL.9000.0006.0001).

<sup>295</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [130] (NPL.9000.0006.0001).

- 8.142. The HIC is open to all members of the NSWPF who fulfil the following requirements:<sup>296</sup>
- a. The applicant must have completed the following courses;
    - i. Investigators Course;
    - ii. Advanced Diploma of Police Investigations; and
    - iii. Detectives Designation Course (formerly the Detectives Education Program);
  - b. The applicant must have been placed into a designated detective position and occupy a permanent criminal investigator position within their Command; and
  - c. The applicant must have previously had substantial involvement in a homicide or suspicious death investigation.
- 8.143. Detective Superintendent Doherty was asked a number of questions by Senior Counsel Assisting about the content of the HIC. He said that there is no specific component of the course addressing bias crime, as there are other resources available to officers on that topic, but that the course deals with objectivity and open mindedness.<sup>297</sup> Similarly, there is no specific part of the course dealing with victims or witnesses from minority or marginalised communities, but Detective Superintendent Doherty said there were other optional training courses available dealing with that content.<sup>298</sup>
- 8.144. The 2022 HIC structure is in evidence before the Inquiry.<sup>299</sup> The key topics covered during the HIC are:
- a. Crime scene management;
  - b. Canvassing and Searching;
  - c. Ballistics;
  - d. Initial Response and Homicide;
  - e. Establishing lines of inquiry and associated tasks;
  - f. Investigation planning / management / leadership;
  - g. Utilising services provided by Forensic Services Group;
  - h. Forensic Pathology;
  - i. Role of the Homicide Investigator and Coronial Investigations;

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<sup>296</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [127] (NPL.9000.0006.0001).

<sup>297</sup> Transcript of the Inquiry, 6 July 2023, T5083.41–5084.18 (IRA.00074.00001).

<sup>298</sup> Transcript of the Inquiry, 6 July 2023, T5084.20–5084.45 (IRA.00074.00001).

<sup>299</sup> Exhibit 51, Tab 1Z, Homicide Investigators Course, 2022 (NPL.0100.0003.1161).

- j. Various types of Homicides;
  - k. Unsolved Homicides;
  - l. Incident Room and Information Management;
  - m. Legislation relevant to homicide investigation; and
  - n. Legislation relevant to defence tactics in respect to homicide investigation.
- 8.145. The training provided to homicide detectives, including as part of the HIC, is subject to regular review. The HIC is reviewed at least every three years by the Education Development Unit within the People & Capability Command. Detective Superintendent Doherty gives the example of the practical scenario-based training aspect of the course, which he says, “has been recently updated to further emphasise the importance of keeping an open mind in the course of a homicide investigation.”<sup>300</sup>
- 8.146. In addition to the HIC, there are additional formal training courses available to members of the Homicide Squad.<sup>301</sup> Detective Superintendent Doherty also states that “as part of the application and interview process to join the Homicide Squad, all applicants are assessed to ensure they have suitable experience working on major crime investigations prior to joining the Homicide Squad.”<sup>302</sup>
- 8.147. The Homicide Squad SCC Induction Package dated March 2012 is in evidence before the Inquiry,<sup>303</sup> as is the Homicide Squad SCC Induction Package dated January 2020 (**2020 Induction Package**).<sup>304</sup> The 2020 Induction Package contains the following information concerning education and training:<sup>305</sup>

*The Education and Training unit for State Crime Command is ... responsible for providing training and development opportunities for all staff attached to State Crime Command. This includes coordinating and delivering the mandatory training requirements for all police.*

*The Education and Training unit run M.C.P.E. [Mandatory Continuing Policing Education] lectures throughout the training year in the Training Rooms at Police Headquarters, in addition to coordinating positions for Live-Fire, Def-Tac, and Resuscitation training. You should familiarise yourself with the training requirements you must complete every fiscal training year (July-June) as it is your responsibility to undertake your mandatory training. Failure to comply may affect your pay increments or render you non-operational.*

<sup>300</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [146] (NPL.9000.0006.0001).

<sup>301</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [127] (NPL.9000.0006.0001).

<sup>302</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [127] (NPL.9000.0006.0001).

<sup>303</sup> Exhibit 51, Tab 1ZA, Homicide Squad Induction Package, 2012 (NPL.0100.0003.0151).

<sup>304</sup> Exhibit 51, Tab 1ZB, Homicide Squad Induction Package, 2020 (NPL.0100.0003.0184).

<sup>305</sup> Exhibit 51, Tab 1ZB, Homicide Squad Induction Package, 2020, 24 (NPL.0100.0003.0184).

*It is the responsibility of each individual officer to ensure they meet their annual mandatory training requirements (Live-Fire/Def-Tac, M.C.P.E. lectures, etc.). A list of mandatory training requirements is maintained in the Squad Coordinator's office and should be updated by yourself as required.*

*The Homicide Squad runs training days twice a year specific to the needs of the Squad. The training days are organised by each Team on a rotational basis. Where operationally possible all members of the Squad are to attend these days.*

*If you feel that you have any specific training requirements that need to be addressed then you can bring them to the attention of your supervisor. They can also be included on the periodic Performance Management Scheme reviews.*

- 8.148. Detective Superintendent Doherty gave evidence that there are mandatory courses that homicide detectives have to undertake each year, which are set by the Education and Training Command. Compliance is similarly monitored by the Education and Training Command.<sup>306</sup>

### **Desirable qualities in a homicide investigator**

- 8.149. In his oral evidence, and in response to questions from Senior Counsel Assisting, Detective Inspector Warren agreed that professional curiosity is an important attribute for a homicide detective or other investigator, and that a detective should strive to avoid “blinkered” views” or “tunnel vision”.<sup>307</sup> He said that an “open mind is the key thing there, and ensuring the way you interpret information, I think, is important as well.”<sup>308</sup>
- 8.150. Detective Inspector Warren was asked by Senior Counsel Assisting whether, in giving that evidence, he meant “that you might have tentative case theories but it is very important that case theories remain tentative”, to which he agreed. He also agreed that this was because “you want to avoid making assumptions that are consistent with that case theory and perhaps overlooking signs that are inconsistent with that case theory.”<sup>309</sup>

<sup>306</sup> Transcript of the Inquiry, 6 July 2023, T5085.33–5086.2 (TRA.00074.00001).

<sup>307</sup> Transcript of the Inquiry, 5 July 2023, T4951.26-30 (TRA.00073.00001).

<sup>308</sup> Transcript of the Inquiry, 5 July 2023, T4951.28-30 (TRA.00073.00001).

<sup>309</sup> Transcript of the Inquiry, 5 July 2023, T4951.38-42 (TRA.00073.00001).



- 8.151. Detective Inspector Warren agreed that if an investigator does not keep an open mind, they may overlook important lines of inquiry, and that this is also a reason why it is important to maintain objectivity and to avoid, as far as possible, rigid thinking.<sup>310</sup> He agreed that lateral thinking is valuable, and that there were good reasons not to be too prescriptive.<sup>311</sup> He agreed that there is a risk of confirmation bias, but said he did not know whether detectives were trained to be vigilant about the possibility of confirmation bias in the 1970s and 1980s.<sup>312</sup>
- 8.152. Detective Superintendent Doherty was taken by Senior Counsel Assisting to the Report of the Working Party Reviewing the Effect of Regionalisation on the Investigation of Homicides.<sup>313</sup> He was taken to a portion of the report that provided as follows:<sup>314</sup>

*The Working Party acknowledged the high level of expertise possessed by detectives performing duty in other fields. Nevertheless, it considers the investigation of homicide required both enhanced detective skills and, in addition, special expertise in other areas including:-*

- *a penchant to detail;*
- *the ability to assess the value of factors in isolation;*
- *the ability to evaluate cumulatively;*
- *the ability to conceptualise;*
- *appreciation of forensic-medical matters particularly in relation to changes to the human body;*
- *appreciation of social behaviour and, in particular, deviations from the accepted norm;*
- *ability to plan, control and motivate lengthy complicated investigations;*
- *extraordinary patience;*
- *ability to prepare complicated reports and briefs;*
- *an enhanced knowledge of the rules of evidence;*
- *an ability to present evidence under the most stringent conditions.*

*Some of these skills spring from the individual personality and cannot be acquired by training. Many are sheer anathemas to detectives engaged in other fields of investigation.*

<sup>310</sup> Transcript of the Inquiry, 5 July 2023, T4951.44-4952.6 (TRA.00073.00001).

<sup>311</sup> Transcript of the Inquiry, 5 July 2023, T4952.8-16 (TRA.00073.00001).

<sup>312</sup> Transcript of the Inquiry, 5 July 2023, T4952.18-26 (TRA.00073.00001).

<sup>313</sup> Exhibit 51, Tab 1B, Report of the Working Party, February 1990 (NPL.0100.0003.0830).

<sup>314</sup> Exhibit 51, Tab 1B, Report of the Working Party, February 1990, 10-11 (NPL.0100.0003.0830).

- 8.153. Detective Superintendent Doherty confirmed that these qualities were recognised as important in the 1970s, 1980s and 1990s.<sup>315</sup> He said that the Homicide Squad has always been regarded highly and that it was often the case that those who finished in the top percentage of the Detectives Course would be recruited for the Homicide Squad. He said, “it was trying to get the right person for the job that’s going to be very difficult to work in, it’s very challenging working and they wanted to try to get a certain person and expertise.”<sup>316</sup>
- 8.154. Later, in response to questions from Senior Counsel Assisting, Detective Superintendent Doherty agreed that accuracy and precision in record-keeping, keeping an open mind and being vigilant to set aside personal beliefs or biases were important skills for detectives in the Homicide Squad, in addition to treating witnesses and persons of interest with respect, having professional curiosity, striving to avoid blinkered views or tunnel vision, and maintaining objectivity (including avoiding assumptions that might lead to important lines of inquiry being ignored).<sup>317</sup>
- 8.155. He agreed that it was important to avoid rigid thinking, and that investigators needed to be vigilant about confirmation bias or a tendency to fit facts to a case theory instead of recognising that evidence may point towards a different theory. He also agreed that it was important that investigators be vigilant in relation to conscious or unconscious bias against members of particular communities, because that may affect the quality of an investigation.<sup>318</sup>

### **The value of cultural awareness**

- 8.156. During the course of his oral evidence, Detective Inspector Warren was asked a number of questions by Senior Counsel Assisting concerning the value of cultural awareness for homicide detectives. Detective Inspector Warren agreed that knowledge about a community may assist investigators in making an informed judgement about fruitful lines of inquiry in investigations involving members of that community: an example of relevance to the Inquiry being recognising that an area might be a beat.<sup>319</sup>
- 8.157. In addition, Detective Inspector Warren agreed that another reason that cultural awareness or open mindedness is important is that investigators with “broader horizons and more open minds will tend to be more professionally curious and perceive lines of inquiry that a narrow minded investigator might overlook.”<sup>320</sup>

<sup>315</sup> Transcript of the Inquiry, 6 July 2023, T5046.16-41 (TRA.00074.00001).

<sup>316</sup> Transcript of the Inquiry, 6 July 2023, T5047.35-5048.1 (TRA.00074.00001).

<sup>317</sup> Transcript of the Inquiry, 6 July 2023, T5076.19-5077.6 (TRA.00074.00001).

<sup>318</sup> Transcript of the Inquiry, 6 July 2023, T5077.12-33 (TRA.00074.00001).

<sup>319</sup> Transcript of the Inquiry, 5 July 2023, T4953.13-24 (TRA.00073.00001).

<sup>320</sup> Transcript of the Inquiry, 5 July 2023, T4953.26-32 (TRA.00073.00001).

- 8.158. Detective Inspector Warren also agreed with the proposition that “a climate of trust and confidence between police and members of that community will tend to facilitate the flow of information towards the police from members of that community.”<sup>321</sup> Similarly, he agreed that a climate of suspicion or distrust may hamper the flow of information.<sup>322</sup> Detective Superintendent Doherty agreed that cultural awareness is important for the same reasons.<sup>323</sup>
- 8.159. The importance of cultural awareness cannot be underestimated. Such awareness adds a valuable dimension to the various inquiries made by the NSWPF during an investigation, and may also contribute to solving unsolved homicides or cold cases, including through an appreciation of new lines of inquiry, or lines of inquiry that were not previously appreciated.

### Continuing education of homicide investigators

- 8.160. A specific topic that arose from consideration of the training of homicide investigators, and the value of cultural awareness, was the education available to officers, or required of officers, concerning:
- a. The LGBTIQ community;
  - b. Hate crime; and
  - c. The role of conscious and unconscious bias.
- 8.161. I deal in this section with the education of officers in relation to the LGBTIQ community and in relation to hate crime. I return to the question of education concerning conscious and unconscious bias below in the context of a broader consideration of that topic.
- 8.162. In addition to the general relevance of this type of education to the work of the Inquiry, this issue was also of concern to the Inquiry because the Inquiry has received evidence of a number of specific instances in which officers failed to display cultural awareness or sensitivity, with some instances of overt homophobia.
- 8.163. Many of these examples are historical, although there have arisen some contemporary instances of homophobia or insensitivity. In Counsel Assisting’s submission, the conduct of the officers in the below examples fell short of what is to be expected:
- a. The insensitive and prurient questioning of Mr Brooks in relation to the death of Kenneth Brennan;<sup>324</sup>

<sup>321</sup> Transcript of the Inquiry, 5 July 2023, T4952.45–4953.7 (TRA.00073.00001).

<sup>322</sup> Transcript of the Inquiry, 5 July 2023, T4953.9–11 (TRA.00073.00001).

<sup>323</sup> Transcript of the Inquiry, 6 July 2023, T5077.35–5078.4 (TRA.00074.00001).

<sup>324</sup> See Submissions of Counsel Assisting, 23 June 2023, [29] (SCOI.84129).

- b. The description of Walter Bedser as “a cat” and of another man questioned by police as a “dead set poofter”;<sup>325</sup>
  - c. Disparaging comments made about Mr Meek to his daughters;<sup>326</sup>
  - d. The reference by an officer in the investigation into Mr Meek’s death to the “gay or paedophile movement”;<sup>327</sup>
  - e. References to Samantha Raye as “it” (e.g., “it was wearing a mans Lorus brand digital wrist watch”);<sup>328</sup> and
  - f. Continual references to Wendy Waine as “he” or to her former name, and the treatment of her name, Wendy Waine/Wayne, as a nickname or alias.<sup>329</sup>
- 8.164. Regrettably, however, not every instance of an absence of cultural awareness and sensitivity is historical. As is set out above, the UHT Review Form completed in 2021 relation to Samantha Rose, a trans woman, contains language which Detective Chief Inspector Laidlaw accepted was not acceptable.<sup>330</sup>
- 8.165. In another matter considered by the Inquiry, the NSWPF advised that the UHT encountered a number of difficulties identifying and locating witnesses due to differences between the date of birth and current names of witnesses, with those difficulties arising “especially when witnesses are transgender.”<sup>331</sup> Following a question from the Inquiry, the NSWPF confirmed “...these practical difficulties are not exclusive to transgender witnesses. The NSWPF has long been alive to issues relating to persons use of names other than a person’s legal name and has adapted its methods to account for this.”<sup>332</sup>
- 8.166. In circumstances where systems are in place to account the need to search for people taking into account changes in details such as names, the comment made by the NSWPF regarding the difficulties locating trans witnesses was gratuitous and reinforces the importance of appropriate education and training. I have addressed this comment and my concerns in this regard in greater in detail in **Chapter 15** of this Report. The issue of appropriate education in relation to matters such as appropriate and inclusive language is returned to below.
- 8.167. These examples serve to underscore the importance of acknowledging conscious and unconscious bias in homicide investigations, and the provision of adequate education and training for NSWPF officers.

<sup>325</sup> See Submissions of Counsel Assisting, 23 May 2023, [13] (SCOI.83249).

<sup>326</sup> Exhibit 35, Tab 22B, Letter from Blessington Judd to Commissioner of Police, 29 August 1995, 2 (SCOI.02729.00026).

<sup>327</sup> Exhibit 35, Tab 53, Transcript of ERISP with NP220, 23 March 1995, Q171-A172 (SCOI.10012.00008).

<sup>328</sup> Submissions of Counsel Assisting, 24 March 2023, [118] (SCOI.45171); Exhibit 17, Tab 18, Statement of Constable Wilcher, 8 May 1989 [6] (SCOI.11038.00027); Exhibit 17, Tab 19, Statement of Constable Duncombe, 8 May 1989, [4] (SCOI.11038.00028).

<sup>329</sup> Submissions of Counsel Assisting, 9 June 2023, [17] (SCOI.83653); Exhibit 30, Tab 67A, UHT Case Screening Form, February 2005 (SCOI.02706).

<sup>330</sup> Transcript of the Inquiry, 7 July 2023, T5236.10-31 (TRA.00075.00001).

<sup>331</sup> Exhibit 67, Tab 25, Letter from the NSWPF to the Inquiry, 18 October 2023 (SCOI.86459).

<sup>332</sup> Exhibit 67, Tab 26, Letter from the NSWPF to the Inquiry, 25 October 2023 (SCOI.86458).

## Education about the LGBTIQ community

8.168. I have dealt above with my reasons for accepting the submissions of both Counsel Assisting and the NSWPF in relation to a recommendation concerning education of NSWPF officers concerning the LGBTIQ community.

8.169. I note that two statements which were not tendered at the Investigative Practices Hearing—that of Assistant Commissioner Cooke dated 14 June 2023<sup>333</sup> (**Taradale Statement**) and that of Assistant Commissioner Cooke dated 14 June 2023<sup>334</sup> (**Liaison Officer Statement**) were subsequently tendered at the request of the NSWPF. The submissions of Counsel Assisting did not initially refer to evidence given by Assistant Commissioner Cooke in relation to the education of officers concerning the LGBTIQ community:<sup>335</sup>

*All NSWPF Academy students undertake mandatory LGBTIQ+ training as part of their induction to the force. The session takes several hours and consists of presentations to graduating classes from the Corporate Sponsor, a [Liaison Officer] and a community member. On the most recent occasion, a member of the 78ers' (a participant in the events that took place in 1978) also presented to the class.*

*Further, all NSWPF employees were required to complete a mandatory online LGBTIQ Awareness and Inclusion refresher module in mid-2020. A copy of the refresher training module is attached to this statement at NPL.0100.0001.0309. The refresher course was developed by the Corporate Sponsorship and policy support staff. It is available to all NSWPF employees to recomplete any time they wish to refresh their knowledge.*

8.170. I have taken this evidence into account when considering what recommendations, if any, should be made.

8.171. Detective Inspector Warren also explained in his evidence that the NSWPF utilises PETE to provide education in relation to a wide range of topics including LGBTIQ awareness.<sup>336</sup> He said that officers are subject to mandatory continuing training requirements, and also have access to optional education courses, ordinarily in the form of a PowerPoint or a video presentation, which may run for anything from ten minutes to an hour.<sup>337</sup>

<sup>333</sup> Exhibit 65, Tab 2, Statement of Assistant Commissioner Anthony Cooke (Taradale Statement), 14 June 2023 (NPL.9000.0020.0025).

<sup>334</sup> Exhibit 65, Tab 3, Statement of Assistant Commissioner Anthony Cooke (Liaison Officer Statement), 14 June 2023 (NPL.9000.0020.0001).

<sup>335</sup> Exhibit 65, Tab 3, Statement of Assistant Commissioner Anthony Cooke (Liaison Officer Statement), [76]–[77] 14 June 2023 (NPL.9000.0020.0001).

<sup>336</sup> Transcript of the Inquiry, 5 July 2023, T4954.28-45 (TRA.00073.00001).

<sup>337</sup> Transcript of the Inquiry, 5 July 2023, T4955.7-4956.15 (TRA.00073.00001).

- 8.172. On 28 October 2019, Superintendent Best attended a day long, in-person LGBTIQ awareness course. He described the content as comprising:<sup>338</sup>

*...awareness of the community and the challenges they faced, certainly in relation to historical aspects, and how people might feel towards police based upon what had happened in the past, and that notion of regardless of what you might feel personally, the fact that you're wearing a uniform might elicit responses that aren't directed to you as an individual but to you as a member of an organisation that has had a troubled or challenging past with that organisation – with that group of people.*

- 8.173. Senior Counsel Assisting asked Superintendent Best whether the course had influenced his policing practice, and he said “[p]ersonally for me as an individual, no, because I had that clarity already. So I had already come to that understanding through just my exposure to that community over time.”<sup>339</sup> I observe that Superintendent Best appeared to have a clearer recollection of this course, and its content, than Detective Superintendent Doherty did of the online HATE Crime Awareness Course module, discussed below.

### Education concerning hate crimes

- 8.174. As Counsel Assisting observe in their submissions in chief, it is uncontroversial that the detection and investigation of hate crimes is an important matter. Hate crime is abhorrent. Not only does hate crime have grievous and long-lasting impacts on individuals, it terrorises—and is intended to terrorise—communities who are already frequently vulnerable or marginalised. It is crucial that NSWPF officers are alert to signs that a crime may be a hate crime.
- 8.175. During the Investigative Practices Hearing, the Inquiry received evidence that training in relation to hate crimes (including LGBTIQ hate crimes) is made available to all members of the NSWPF.<sup>340</sup> In his statement, Detective Superintendent Doherty said that this training comprised an online module called the “HATE Crime Awareness Course”.<sup>341</sup> He said that this training was mandatory. However, in his oral evidence Detective Superintendent Doherty accepted that he had been wrong and that the online module was optional, although he recalled mandatory training in relation to bias and victim support.<sup>342</sup>
- 8.176. Detective Superintendent Doherty said in his statement that the HATE Crime Awareness Course module is intended to give officers an overview and understanding of hate crimes, including the definition of hate crime, and to educate officers on hate crime legislation, how to report crimes which may have been motivated by hate or bias on the COPS system, how the NSWPF can support and assist victims of hate crimes, and to develop knowledge around hate crimes,

<sup>338</sup> Transcript of the Inquiry, 4 July 2023, T4869.34-43 (TRA.00072.00001).

<sup>339</sup> Transcript of the Inquiry, 4 July 2023, T4870.7-13 (TRA.00072.00001).

<sup>340</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [136] (NPL.9000.0006.0001).

<sup>341</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [137] (NPL.9000.0006.0001).

<sup>342</sup> Transcript of the Inquiry, 6 July 2023, T5087.22-5088.16 (TRA.00074.00001).

including activities to “provide officers with the mindset and skills required to help prevent, disrupt and respond to hate crimes.”<sup>343</sup>

8.177. In response to my question, Detective Superintendent Doherty said that the online module would take under an hour.<sup>344</sup> Senior Counsel Assisting asked Detective Superintendent Doherty whether he had completed the module and, if so, when he had completed it. He said he had, although he could not recall with any precision when. He agreed that he had taken it less than four years ago but more than one year ago. He recalled it was scenario-based, but could not recall whether there were any questions at the end. He said that as it was an optional course, a supervisor would not be expected to make sure that officers had completed it.<sup>345</sup>

8.178. Detective Superintendent Doherty said in his statement that if lines of inquiry during an investigation suggest a death may have been motivated by hate, prejudice or bias towards the LGBTIQ community, then the Homicide Squad will engage with the EHCU as a “key intelligence tool.”<sup>346</sup> He said:<sup>347</sup>

*The assessment of potential perpetrator-motivations is a core part of a homicide detective’s role; experienced detectives – particularly those within the homicide squad – are well versed in seeking indicators of motivation, which may assist in determining who committed a particular crime and, in turn, determining the appropriate charge to lay. The possibility that anti-LGBTIQ+ bias may have played a role in serious crime (including homicides) has been the subject of increased focus and discussion within the Homicide Squad in recent years.*

8.179. Sergeant Kirgiz gave evidence to the Inquiry on 13 December 2022. He said that frontline police officers have access to the Hate Crime Guidelines dated April 2022 (**2022 Hate Crime Guidelines**) (should they require them), which were disseminated through a state-wide Nemesis message (Nemesis is an internal messaging service used by the NSWPF which goes to every sworn and unsworn officer in the State).<sup>348</sup>

8.180. Sergeant Kirgiz gave evidence that the 2022 Hate Crime Guidelines are actively promoted to frontline officers, disseminated as part of the online HATE Crime Awareness Course discussed above, and were also presented by the EHCU as part of a roll out to ten PACs with the most instances of hate crime. The specific roll out to those ten PACs involved a presentation that goes from 40 minutes to one hour with frontline officers and supervisors.<sup>349</sup> His evidence was that apart from

<sup>343</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [138] (NPL.9000.0006.0001).

<sup>344</sup> Transcript of the Inquiry, 6 July 2023, T5088.25-27 (TRA.00074.00001).

<sup>345</sup> Transcript of the Inquiry, 6 July 2023, T5089.25-39 (TRA.00074.00001).

<sup>346</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [141] (NPL.9000.0006.0001).

<sup>347</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [142] (NPL.9000.0006.0001).

<sup>348</sup> Transcript of the Inquiry, 13 December 2022, T1268.20-30 (TRA.00016.00001).

<sup>349</sup> Transcript of the Inquiry, 13 December 2022, T1268.36-43, 1277.6-33 (TRA.00016.00001).

- his three-week induction period in the EHCU, he had not previously had any training with respect to hate crime.<sup>350</sup>
- 8.181. Sergeant Kirgiz explained that the EHCU provides training to officers concerning identifying and recording bias crimes. It delivers both internal and external training packages. The training packages were modelled around the recommendations of Strike Force Parrabell, and informed by a research study commissioned by Assistant Commissioner Anthony Crandell in accordance with the recommendations of Strike Force Parrabell.<sup>351</sup>
- 8.182. The EHCU also undertook a body of research that included online meetings with other police forces and a review of documents from police forces and prosecuting bodies in the UK and the United States of America USA<sup>352</sup> This research led to the development of the 2022 Hate Crime Guidelines, and online HATE Crime Awareness Course.<sup>353</sup>
- 8.183. The EHCU also delivers presentations during mandatory training days.<sup>354</sup> In addition, it sends out state-wide Nemesis messages concerning any changes to WebCOPS that are hate crime related, or any new laws or procedures.<sup>355</sup>
- 8.184. Assistant Commissioner Crandell gave evidence to the Inquiry on 12 December 2022. He said that in 2018 he believed the NSWPF could improve the education component in relation to bias crimes, as was indicated in the recommendation of Strike Force Parrabell.<sup>356</sup> He expressed the view, that since the publication of the Strike Force Parrabell report, he has seen real changes in the greater commitment of education throughout NSWPF and “particularly criminal investigative training and general training of police offices through investigators courses that now contain bias crime components”, and specifically, within the investigators course, the detectives training and the detectives designation course, there are now modules on bias crime.<sup>357</sup>
- 8.185. In addition to general training being boosted with bias crime components, Assistant Commissioner Crandell also stated that there is a gay and lesbian liaison course, which already had a bias crime component and a forthcoming adult sexual assault investigation course which will incorporate a bias crimes component.<sup>358</sup> Detective Superintendent Doherty similarly referred to the Gay and Lesbian Liaison Officer Course in his oral evidence (although I note that the role in the NSWPF today is the “LGBTIQ+ Liaison Officer”, albeit still sometimes referred to informally as the GLLO).<sup>359</sup>

<sup>350</sup> Transcript of the Inquiry, 13 December 2022, T1253.31-43 (TRA.00016.00001).

<sup>351</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [25] (SCO1.82035).

<sup>352</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [27] (SCO1.82035).

<sup>353</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [28] (SCO1.82035).

<sup>354</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [28] (SCO1.82035).

<sup>355</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [28] (SCO1.82035).

<sup>356</sup> Transcript of the Inquiry, 12 December 2022, T1066.45-1068.31 (TRA.00015.00001).

<sup>357</sup> Transcript of the Inquiry, 12 December 2022, T1067.34-1068.31, 1070.2-11 (TRA.00015.00001).

<sup>358</sup> Transcript of the Inquiry, 12 December 2022, T1067.44-1068.4 (TRA.00015.00001).

<sup>359</sup> Transcript of the Inquiry, 6 July 2023, T5090.8-24 (TRA.00074.00001).



8.186. In addition to the online module available on PETE, a component on bias, unconscious bias perception, and dealing with victims is included in the Mandatory Continuing Police Education in relation to victim support (which is made up of six online modules that all NSWPF officers are required to complete).<sup>360</sup> These modules, in addition to the HATE Crime Awareness Course, relate to bias crime in general, and have a greater focus on victim support than on investigating deaths.<sup>361</sup>

### The relevance of conscious or unconscious bias

8.187. The NSWPF has itself acknowledged that, historically, homophobic attitudes were present within the NSWPF. The relationship, historical and present, between the LGBTIQ community and the NSWPF is canvassed in **Chapter 4** of this Report.<sup>362</sup> As noted above, this leads to the question of whether, and if so to what extent, conscious or unconscious bias may have affected decision making in relation to matters such as investigative steps, exhibit management, and record retention and destruction.

8.188. In the 1970s and 1980s the decision to retain exhibits in each particular case was a decision to be made by the OIC.<sup>363</sup> Assistant Commissioner Conroy was asked whether she could assist the Inquiry with the extent to which those judgements could have been affected by conscious or unconscious bias. She said she could not assist with that and could not comment on whether there was a risk that the judgement of an OIC would be infected by conscious or unconscious bias against a particular community.<sup>364</sup>

8.189. Senior Counsel Assisting asked Assistant Commissioner Conroy whether, knowing what is now known about police attitudes and the attitudes of the wider community in the 1970s and 1980s towards LGBTIQ people, she was able to comment on whether the Commissioner could infer that there is a significant prospect that some OICs were affected by conscious or unconscious bias. She said she was not able to do so, and was likewise unable to comment in relation to the 1990s and the 2000s.<sup>365</sup>

8.190. Senior Counsel Assisting asked Assistant Commissioner Conroy, having taken her through a number of matters where exhibits had been lost or destroyed, whether there was any way of knowing whether the volume of missing exhibits was indicative of the volume of missing exhibits in cases of the same age generally, or whether there were a greater volume of lost exhibits where victims were suspected members of the LGBTIQ community. Assistant Commissioner Conroy said that she did not know.<sup>366</sup> She said she could not comment on the possibility that there

<sup>360</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [139] (NPL.9000.0006.0001).

<sup>361</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [140] (NPL.9000.0006.0001).

<sup>362</sup> See also Submissions of Counsel Assisting 7 June 2023, [158]–[192] (SCOI.84380).

<sup>363</sup> Transcript of the Inquiry, 4 July 2023, T4821.3–7 (TRA.00072.00001).

<sup>364</sup> Transcript of the Inquiry, 4 July 2023, T4821.12–23 (TRA.00072.00001).

<sup>365</sup> Transcript of the Inquiry, 4 July 2023, T4821.25–45 (TRA.00072.00001).

<sup>366</sup> Transcript of the Inquiry, 4 July 2023, T4861.34–47 (TRA.00072.00001).

are more missing exhibits where victims are members of the LGBTIQ community, or on whether there was any way of assessing the extent to which bias may have affected exhibit retention practices.

### Conscious and unconscious bias in investigations

- 8.191. The Inquiry received evidence from the NSWPF concerning the education and training of investigators about conscious and unconscious bias, and the potential impact of bias on investigations.
- 8.192. Detective Inspector Warren acknowledged in his evidence that during training as a detective “it was always instilled to keep that open mind and not to, I guess, lock in on a particular issue because that can cause you to, I guess, yes, as you are saying, a bias toward that particular view.”<sup>367</sup> It is not controversial that, over the period of the Inquiry’s Terms of Reference, homophobia existed within both the broader community and within the NSWPF.
- 8.193. The importance of maintaining open mindedness and the existence of homophobia within both society and the NSWPF raised two interconnected issues, as was identified by Counsel Assisting. The *first* is the impact that conscious or unconscious bias may have had on investigations. The *second* is to what extent training, education and supervision equipped officers to avoid conscious or unconscious bias.
- 8.194. Superintendent Best was asked by Senior Counsel Assisting whether he, and officers more generally, received training about conscious and unconscious bias. He said that they did.<sup>368</sup> He was also asked whether there was a risk of a Crime Scene Officer or an OIC, making a judgement (whether intentional or unintentional) based, in part, on a perception that a victim might be more sympathetic. Superintendent Best said:<sup>369</sup>

*No, I don't think that would happen. I don't think – our staff don't get exposed to the victims, you know? Our staff are – the way – the reason that they are able to survive in our world, in that world of crime scene, is that disconnect and they just come to it with a scientific mind and they approach it as a complex puzzle to make sense of. Not necessarily deliberately, but the very dynamics of a crime scene and the way that they are managed, they are excluded from that world of victims. They are certainly not interviewing victims, speaking to them. They do see that and I think we would have more issues of officers struggling with our environment and the trauma that they are exposed to if they were, additionally, exposed to the traumas of the victims.*

<sup>367</sup> Transcript of the Inquiry, 5 July 2023, T4952.28-34 (TRA.00073.00001).

<sup>368</sup> Transcript of the Inquiry, 4 July 2023, T4884.28-41 (TRA.00072.00001).

<sup>369</sup> Transcript of the Inquiry, 4 July 2023, T4885.8-21 (TRA.00072.00001).

8.195. Superintendent Best said he was unaware of whether there was an appreciation of a risk that officers would take greater care in relation to a sympathetic victim or, conversely, that they might take less care in relation to an unsympathetic victim.<sup>370</sup>

8.196. In reexamination by Senior Counsel, on behalf of the NSWPF, Superintendent Best was asked what he would say to the proposition that in some individual officers there might be an impulse or tendency to work harder and be more thorough in relation to sympathetic victims. He said:<sup>371</sup>

*It's not something that I have experienced. In relation to my investigations, it's about achieving a positive outcome and that notion of making sure that the truth of the matter is exposed and known. But perhaps that notion of extra effort, some of the cases that I've been involved with certainly touch you on some level, but I don't know that that necessarily equates to an investigation that would be any different other than the way that it touches you as an investigator going through that. You are still doing the processes, you are still looking for those outcomes, and it's just that some cases perhaps have an effect on you more than others. I can't think of any time that I've investigated a crime and given it less because perhaps I didn't like the victim or some issue like that.*

8.197. Superintendent Best said that he couldn't think of an example of this kind of behaviour in his investigator colleagues, though he acknowledged that his experience may not be indicative of the whole NSWPF.<sup>372</sup>

8.198. Senior Counsel Assisting also put to Detective Inspector Warren the risk that some investigators—perhaps inadvertently—might work harder or be more thorough when dealing with someone they perceive to be a sympathetic victim. He agreed that this was a possibility.<sup>373</sup> He said he could not assist the Commissioner with whether officers in the 1970s and 1980s had been vigilant in relation to such matters, but that from the late 1990s onwards there had been greater consciousness of these issues and more supervision and oversight of investigations.<sup>374</sup>

8.199. Senior Counsel Assisting asked Detective Superintendent Doherty the same question. He said that:<sup>375</sup>

*Just from my own experience, you know, again, it's human nature when certain victims – and that's well known, if it is a young boy or girl gets murdered or – and there is a lot more media interest or public interest, there's always going to be a lot more reaction and sympathetic reaction, but in terms of an investigation, you have to remain completely mindful of the fact you have to be objective.*

<sup>370</sup> Transcript of the Inquiry, 5 July 2023, T4926.10–19 (TRA.00073.00001).

<sup>371</sup> Transcript of the Inquiry, 5 July 2023, T4942.40–4943.8 (TRA.00073.00001).

<sup>372</sup> Transcript of the Inquiry, 5 July 2023, T4943.10–18 (TRA.00073.00001).

<sup>373</sup> Transcript of the Inquiry, 5 July 2023, T4953.34–40 (TRA.00073.00001).

<sup>374</sup> Transcript of the Inquiry, 5 July 2023, T4953.42–4954.11 (TRA.00073.00001).

<sup>375</sup> Transcript of the Inquiry, 6 July 2023, T5078.25–5079.4 (TRA.00074.00001).

*And I have seen that many a time. Not only with the LGBTIQ community where we've had many instances where we've dealt with victims who have been murdered from that community and resolved those matters, but also, conversely, where sympathy might be difficult to achieve from a community's perspective, for example, we've had victims from who are alleged paedophiles, alleged terrorists, alleged murderers, alleged major crime figures, and we still treat that person as a human being. We do our best to be empathetic with the family, we actually are empathetic with the family. We treat that and work tirelessly in those matters as in any other matter. So I think it is a point where whilst it is a challenge in certain areas not to be influenced by an outburst of emotion through some high-profile public issue, an investigator has to maintain objectivity, and I think, from those examples, we have to be objective in our approach.*

- 8.200. Detective Superintendent Doherty was asked how one trains and educates detectives to ensure that they are able to maintain objectivity. Detective Superintendent Doherty said that “some of that’s from just internally and through our own training, but also a lot of that objectivity and open mindedness and – in the way we deal with that is on the homicide course, but also in terms of general training ... and it’s about being objective and treating every person on their own merit.”<sup>376</sup> He said that the quality of training in relation to these matters had improved over time.<sup>377</sup>
- 8.201. In relation to the UHT, Senior Counsel Assisting asked Detective Chief Inspector Laidlaw whether it was important for people screening or reviewing cases to be vigilant about conscious or unconscious bias. He agreed that it was, and said that in terms of training there was the HATE Crimes Awareness Module on PETE and then a “customer service face-to-face which brings into account unconscious and conscious bias.”<sup>378</sup> He agreed that conscious or unconscious bias can affect the way investigators approach cases, and there is a risk that someone with a conscious or unconscious bias might more readily conclude that a death is not suspicious, and that investigators might work faster where they think of a victim as sympathetic.<sup>379</sup>
- 8.202. Senior Counsel Assisting asked Detective Chief Inspector Laidlaw whether there was a system of management or oversight to combat the risk of conscious or unconscious bias. Detective Chief Inspector Laidlaw said that there is “a review committee that reviews all of the reviewed material”, and that quality assurance is undertaken by a senior investigator within the UHT. The quality assurance document and the triage document are placed before the UHT Review Committee. Detective Chief Inspector Laidlaw said that the UHT Review Committee does not specifically look for conscious or unconscious bias, but that those on the committee are aware of it as experienced detectives and investigators.<sup>380</sup>

<sup>376</sup> Transcript of the Inquiry, 6 July 2023, T5079.8–15 (TRA.00074.00001).

<sup>377</sup> Transcript of the Inquiry, 6 July 2023, T5079.17–19 (TRA.00074.00001).

<sup>378</sup> Transcript of the Inquiry, 6 July 2023, T5133.9–16 (TRA.00074.00001).

<sup>379</sup> Transcript of the Inquiry, 6 July 2023, T5132.39–42 (TRA.00074.00001).

<sup>380</sup> Transcript of the Inquiry, 6 July 2023, T5133.44–5134.27 (TRA.00074.00001).

- 8.203. Detective Chief Inspector Laidlaw was not able to assist in relation to the supervision or oversight that occurred before 2018.<sup>381</sup> He said that at present the Review Committee looks at a review after a review has been completed, and that a triage document is reviewed by Detective Chief Inspector Laidlaw and the other investigation coordinators.<sup>382</sup>

### Submissions concerning the education available to homicide investigators

- 8.204. Counsel Assisting noted that of all the NSWPF witnesses who gave evidence that they had received training concerning the LGBTIQ community, the witness who recalled the content of that training most clearly was Superintendent Best, who had attended an in-person module focussed on the LGBTIQ community.
- 8.205. Counsel Assisting submitted that the present education provided to homicide detectives concerning the LGBTIQ community is insufficient. In making this submission, Counsel Assisting identified that no criticism of the EHCU should be made. However, Counsel Assisting observed that the work of the EHCU relies upon officers engaging voluntarily with material, the majority of which appears to be provided in an online format. It is the officers who may be most in need of this education and training who are unlikely to undertake it voluntarily. The education pointed to by Assistant Commissioner Cooke was mandatory as noted above, but focussed on officers commencing their training, and on an obligatory course in 2020.
- 8.206. As Counsel Assisting identified, the Inquiry has received a substantial volume of evidence concerning the historical attitude of the NSWPF, or some officers within the NSWPF, to members of the LGBTIQ community. This history necessarily affects interactions between the NSWPF and the LGBTIQ community, and is a matter of which officers should be aware. An absence of appreciation of this history may leave officers poorly equipped to deal respectfully and constructively with members of the LGBTIQ community. In addition, it is important officers appreciate that language and understandings used by and in relation to the LGBTIQ community change over time.
- 8.207. In addition, as set out above, Counsel Assisting drew attention to Detective Superintendent Doherty's evidence that experienced detectives "are well versed in seeking indicators of motivation". Counsel Assisting submitted, however, that cultural awareness in relation to the LGBTIQ community may be of central importance to understanding the relevance of particular information, or to identifying what matters at a crime scene are of significance. If officers are not aware of, for example, locations and language of significance to the LGBTIQ community, then it is not clear how they are equipped to detect potential indicators of hate crime in that context. I accept that this is the case.

<sup>381</sup> Transcript of the Inquiry, 6 July 2023, T5135.18-26 (TRA.00074.00001).

<sup>382</sup> Transcript of the Inquiry, 6 July 2023, T5136.24-39 (TRA.00074.00001).

- 8.208. Counsel Assisting ultimately submitted that consideration should be given to a recommendation that NSWPF officers participate in additional mandatory education concerning the LGBTIQ community, the proposed terms of which are summarised below as **Recommendation 8**. Although the NSWPF drew attention, in their submissions, to the fact it was erroneous to say there was no mandatory training of officers in relation to the LGBTIQ community, the NSWPF did not oppose such a recommendation. As I have indicated above, I am satisfied that such a recommendation is appropriate.
- 8.209. The problems with education of officers in relation to the LGBTIQ community may well extend to education concerning other marginalised communities, but that is not a matter within the scope of the Inquiry's Terms of Reference.

### Submissions regarding conscious and unconscious bias

- 8.210. The question of the possible role of conscious or unconscious bias in investigations considered by the Inquiry is one where there is divergence between the submissions of Counsel Assisting and the NSWPF.
- 8.211. In a wide range of cases considered by the Inquiry, Counsel Assisting has made submissions concerning the loss or destruction of documentary or evidentiary material, and deficiencies or oversights in the investigation.
- 8.212. Counsel Assisting submitted that it may well be impossible for a conclusion to be reached that any specific investigative decision or omission was motivated by conscious or unconscious bias. However, given the evidence that conscious or unconscious bias was prevalent in the NSWPF in the 1970s and 1980s, and was not wholly eradicated in the 1990s or 2000s, Counsel Assisting submitted the possibility that conscious or unconscious bias directed to members of the LGBTIQ community affected investigative decisions cannot be discounted.
- 8.213. As is set out in more detail below, Detective Inspector Warren accepted that in a significant number of cases before the Inquiry the investigative oversights or deficiencies were not consistent with proper police practice.
- 8.214. Counsel Assisting submitted that it is not possible to know, from the evidence before the Inquiry, whether this was more common in cases where the victim was or was perceived to be a member of the LGBTIQ community.
- 8.215. Counsel Assisting went on to submit that it is likewise not possible to know, from the evidence before the Inquiry, whether the problems with lost or destroyed exhibits and records affect a greater number of cases where the victims were members of the LGBTIQ community or were perceived to be members of the LGBTIQ community. The evidence before the Inquiry, and particularly a report dated 5 August 2016 prepared by Detective Chief Inspector Lehmann of the UHT (the **Lehmann Report**), supports the proposition that it is a common experience of the UHT to discover that exhibits or records are missing or have been destroyed.

- 8.216. Nevertheless, given the evidence that conscious or unconscious bias was prevalent in the NSWPF in the 1970s and 1980s, and was not wholly eradicated in the 1990s or 2000s, Counsel Assisting submitted that there is a real possibility that the decisions made by individual OICs in relation to cases concerning members or perceived members of the LGBTIQ community were affected by conscious or unconscious bias.<sup>383</sup>
- 8.217. Counsel Assisting acknowledged that the extent of and the effect of such bias, and whether it could be said to have been systemic during the period considered by the Inquiry, is likely unknowable. However, Counsel Assisting submitted that the number of cases before the Inquiry affected by the loss or destruction of investigative material, and the impact this has had upon the work of the Inquiry, requires that this possibility be acknowledged, particularly having regard to what is known concerning the attitudes of the NSWPF (and aspects of the broader community) during periods covered by the Inquiry's Terms of Reference.
- 8.218. Finally, in Counsel Assisting's submission, the existence of homophobia in broader society is insufficient to explain, and certainly insufficient to justify, the possible effect of homophobia on police investigations, and on exhibit and document management.
- 8.219. Counsel Assisting submitted that the duty of a police force to the community requires officers to set aside their personal beliefs or prejudices in order to discharge their obligations to the community they are sworn to serve. I would add that such bias has at all relevant times been inconsistent with a police officer's oath or affirmation of office. Since at least the mid 19th century<sup>384</sup>, police officers in this State have sworn, or more recently affirmed, to serve the Crown "without favour or affection, malice or ill-will". These words continue in the current oath or affirmation of office, in clause 7 of the *Police Regulation 2015*. Although the police officers are entitled to respect for the role they play in protecting the community, the obligations assumed by officers are accompanied by privileges intended to assist them in carrying out their sworn duties. A failure by an officer to discharge their duties impartially and with respect to all members of the community has the capacity to cause great harm. I accept these submissions.
- 8.220. Counsel Assisting submitted that a core aspect of the duty of police officers to the community is to treat all victims of crime as equally deserving of justice, irrespective of their personal characteristics. Although the extent and impact of homophobia in relation to each individual death will never be known, the real possibility that homophobia affected the way investigations were managed is, in itself, a grave matter.<sup>385</sup>

<sup>383</sup> Submissions of Counsel Assisting, 15 September 2023, [128]–[132] (SCOI.85649).

<sup>384</sup> See *Sydney City Incorporation Act 1842* and *Police Regulation Act of 1852*.

<sup>385</sup> Submissions of Counsel Assisting, 15 September 2023, [132]–[135] (SCOI.85649).

- 8.221. However, as Counsel Assisting submitted, “no finding need be made in relation to individual cases in order for the observation to be made that it is possible, indeed likely, that officers investigating some of the cases considered by the Inquiry were affected by conscious or unconscious bias.”<sup>386</sup>
- 8.222. There is a question of whether this is a finding I should make, and also a question concerning any obligation of procedural fairness arising in relation to such a finding.
- 8.223. Given the nature of this contemplated finding, I set out in full the submissions of the NSWPF and of Counsel Assisting in reply. The NSWPF submitted:<sup>387</sup>

*As was observed in the submissions filed on behalf of the Commissioner of Police in Public Hearing 2, the NSWPF is not merely a product of society, but plays an important culture-shaping role in it. That being so, the possible existence of bias within the NSWPF is to be abhorred and denounced, even where that bias may have reflected wider social norms of the time. As noted by Counsel Assisting (CA, [135]) a failure by an officer to discharge their duties impartially and with respect to all members of the community has the capacity to cause great harm.*

...

*A finding that an investigator was motivated not to pursue a particular investigation because of bias would be a grave one. So far as the Commissioner of Police is aware, no such allegations have been raised with any individual officer involved in the investigation of the cases before the Inquiry. That being so, any finding of bias against an individual officer would constitute a very significant departure from the Inquiry’s obligation to afford procedural fairness to persons with an appropriate interest.*

*Even where officers are not specifically named, they will often be readily identifiable by reference to the matters under consideration. Nevertheless, at CA [130], Counsel Assisting submits that it is open to observe not only that such bias is “possible” but that it is “likely” that officers investigating some of the cases considered by the Inquiry were affected by conscious or unconscious bias.*

*This is a very serious assertion. It is so even in circumstances where particular officers are not singled out. To conclude that it is “likely” that some such officers were affected by bias (as distinct from a reference to that “possibility”) would be to cast a pall over the conduct of a large number of investigators whose actions have been the subject of consideration during the course of this Inquiry. The shadow cast by such a finding would extend to include a significant number of officers whose investigations were, by and large, appropriate and thorough. It would also extend to the NSWPF, which is – as an organisation – itself entitled to procedural and substantive fairness.*

<sup>386</sup> Submissions of Counsel Assisting, 15 September 2023, [130] (SCOI.85649).

<sup>387</sup> Submissions of NSWPF, 10 October 2023, [35]–[41] (SCOI.86127).



*Counsel Assisting have identified a small number of comments that are potentially suggestive of homophobia or some form of bias at CA [121]. The conduct set out therein is concerning, and certainly raises the possibility of bias. Nevertheless, even in those cases, there is no evidence of a specific connection between a particular officer's bias and any investigative failing. That Counsel Assisting would urge a finding in line with CA [130] in the absence of any evidence of bias in the vast bulk of cases, and in the absence of any evidence of a connection between a particular officer's bias and an investigative failure, is surprising. A finding in line with such a submission would be devoid of anything approximating a sound foundation.*

*In particular, the finding propounded by Counsel Assisting is a serious finding of the type that attracts the operation of the principles elucidated in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362 and countless cases that that have followed; it should not be arrived at lightly. Given the absence of an appropriate evidentiary foundation, a conclusion that such bias is "likely" to have played a role in investigative failures and/or difficulties in exhibit management cannot properly be reached.*

- 8.224. I observe that Counsel Assisting has not asked me to make a finding that conscious or subconscious bias affected any specific officer's conduct in any particular case. In response to the submissions of the NSWPF, Counsel Assisting submitted:<sup>388</sup>

*The NSWPF accepts that it is possible that conscious or unconscious bias played a part in the investigation conducted in relation to some of the matters before the Inquiry, and it is similarly accepted that this possibility should be publicly acknowledged (NSWPF Submissions [34]). At [35] the NSWPF submits: ...*

*At [Counsel Assisting's written submissions] [130] we submitted that "no finding need be made in relation to individual cases in order for the observation to be made that it is possible, and indeed likely, that officers investigating some of the cases considered by the Inquiry were affected by conscious or unconscious bias." We maintain that submission and respectfully contend that the contentions in the NSWPF Submissions at [35]-[41] should not be accepted.*

*First, the submission is directed to both subconscious and unconscious bias. Subconscious bias does not require the person in question to be acting in a deliberately biased manner. It is accepted by the NSWPF that homophobia existed within society and within the NSWPF during the relevant period. The NSWPF also accepts that comments were made in some matters that are "potentially suggestive of homophobia or some form of bias" ([40]). The Inquiry also received, at the November Hearings, a large amount of evidence concerning the negative experiences of the*

<sup>388</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [59]–[65] (SCOI.86354).

*LGBTIQ community concerning the NSWPF, including conduct going far beyond subconscious bias. The NSWPF did not seek to challenge any of that evidence. In those circumstances, we submit that it is open to the Commissioner to make a finding of the kind identified at [Counsel Assisting's written submissions] [130], which is not targeted at an individual officer or officers, and which is expressed as a likelihood rather than a certainty.*

*Second, this Inquiry has come about in the context of an existing concern regarding the views held by many within society at large about the LGBTIQ community, and in the context of an existing discourse concerning the conduct of the NSWPF in relation to cases that may have been hate crimes. The history leading to this Inquiry included concerns about bias in the way cases were investigated or prosecuted. The fact that bias should not be attributed to the actions of an individual officer does not mean the Commissioner should refrain from drawing inferences from the material that is before the Inquiry about both possibilities and probabilities.*

*In our submission, an acknowledgement that it is possible that bias played a role in some investigative oversights or deficiencies is insufficient. Some may argue, given the widespread homophobia and the volume of investigative deficiencies that have been observed, that it would be surprising indeed if none of the investigative deficiencies were affected by conscious or unconscious bias. In our submission:*

- a. The NSWPF agree that it is possible that some of the oversights or deficiencies were affected by conscious or unconscious bias;*
- b. In light of this concession and the evidence referred to at [61] above, it would be open to find that, in every case where a victim was believed or suspected to be a member of the LGBTIQ community, it is possible that conscious or unconscious bias contributed to the identified investigative oversights or deficiencies;*
- c. In each such case, the possibility could be described as real, not remote. That is, in every case where the victim was believed or suspected to be a member of the LGBTIQ community there is a real, non-remote possibility that the oversights or deficiencies were affected by conscious or unconscious bias;*
- d. Having regard to the number of identified oversights or deficiencies, and the way in which conscious or unconscious bias can be pervasive but unseen, the chance that none of them was affected by conscious or unconscious bias is between low and extremely low; and*
- e. This provides a rational basis for the Commissioner to conclude that it is more likely than not that some of the oversights or deficiencies were affected by conscious or unconscious bias.*

*Recognising the principles in *Briginshaw v Briginshaw*, the finding sought at [Counsel Assisting’s written submissions] [130] is appropriately balanced, by being confined to the proposition that it is likely that some of the investigating officers were affected by conscious or unconscious bias.*

*To the extent that this finding casts a shadow over many investigations, that is a regrettable consequence of the widespread bias in society and in the NSWPF at the time—something which the NSWPF has recognised on many occasions. It can and should be stressed that such a finding is not a criticism of any individual officer. In that context, there is no practical injustice to individual officers in making such a finding. If the Commissioner is satisfied that the evidence supports a finding of likelihood, the Commissioner should make that finding. Findings of that kind are common in contexts where, for example, a Royal Commission has considered a topic which has required consideration of an institutional context. Observations are frequently made about characteristics of that institutional context including, for example, institutional discrimination and racism.*

- 8.225. I accept the submissions of Counsel Assisting, and I consider that it is appropriate to record my finding that it is likely that officers investigating some of the cases considered by the Inquiry were affected by conscious or unconscious bias. I stress, as did the submissions of Counsel Assisting, that this finding is not critical of any individual officer, many of whom may have acted free from bias. However, especially having regard to the evidence I have received including that from the November Hearings, I think it is highly unlikely that *none* or only one or two of the oversights or deficiencies were infected by conscious or unconscious bias. It is the nature of bias, when it is present, that it can be pervasive and can go unnoticed.
- 8.226. The extent to which conscious or unconscious bias played a role in historical investigative decisions is unknowable. However, I consider that it is important that I acknowledge the likelihood that, in some instances before me, it did play a role. I do not reach that conclusion lightly. To the extent this finding casts a pall over many investigations, this is a regrettable consequence of the widespread bias within both society and the NSWPF at the relevant time. It is not a criticism of any individual officer, and it is consistent with a substantial majority of officers having exerted themselves to avoid bias in the way they discharged their duties.

## Forensic testing

- 8.227. “Forensic testing” is a broad term that encompasses many specialised scientific disciplines. It can involve medical, chemical, toxicological, or other expert examination or tests performed on physical evidence, including DNA testing and ballistics, to determine the association of evidence to a crime scene or other incident. Forensic testing has a long history and has evolved with developments in science and technology.
- 8.228. The Inquiry was assisted by the evidence of Ms Neville, who provided a written statement, and gave evidence at the public hearing on 15 August 2023.

- 8.229. On this topic there was substantial agreement, at least in relation to key factual matters, between the submissions of Counsel Assisting and the submissions of the NSWPF. For that reason, this section is primarily drawn from the submissions of Counsel Assisting, with some additional factual matters emphasised in accordance with the submissions of the NSWPF.
- 8.230. This section addresses:
- a. The agencies responsible for DNA and forensic testing in NSW;
  - b. The developments in DNA technology and forensic science between 1970 and 2010, and (where applicable) as at the present day, including the relevance of those developments to the investigation of unsolved homicides or cold case investigations; and
  - c. The procedures followed by the NSWPF and, in conjunction, FASS in respect of arranging the forensic testing of exhibits in relation to the period from 1970 to 2010, and also in respect of the present day.

### The Crime Scene Services Branch (CSSB)

- 8.231. The responsibility for conducting and assisting with scene and laboratory examinations of exhibits to obtain forensic evidence lies with the Crime Scene Services Branch (**CSSB**).
- 8.232. The CSSB was set up in 1938 as the Scientific Investigation Bureau (**SIB**).<sup>389</sup> In the late 1940s it was amalgamated with the existing photographic, ballistics, and handwriting section of the NSWPF and continued to be known as the SIB under the CIB. Later, it became known as the Scientific Investigation Section (**SIS**), and in 1952 a decentralisation process commenced.<sup>390</sup>
- 8.233. In 1973 the SIS moved from CIB and was placed under the Scientific and Technical Services Command (**STSC**). The SIS subsequently returned to the CIB until 1987, and was then transferred to the State Operations Support Group and renamed the Physical Evidence Section (**PES**).<sup>391</sup> The SIS underwent a further name change following the Gibson Review in 1990<sup>392</sup> and became the Crime Scene Operations Branch (**CSOB**), before a name change to CSSB in the mid-2000s.

<sup>389</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [21] (NPL.9000.0003.1533); Transcript of the Inquiry, 4 July 2023, T4870.20-33 (TRA.00072.00001).

<sup>390</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [22] (NPL.9000.0003.1533); Transcript of the Inquiry, 4 July 2023, T4870.43-4871.15 (TRA.00072.00001).

<sup>391</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [22] (NPL.9000.0003.1533); Transcript of the Inquiry, 4 July 2023, T4871.17-23 (TRA.00072.00001).

<sup>392</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [22] (NPL.9000.0003.1533).

- 8.234. The Gibson Review was a review into police physical evidence support services that occurred in 1990 and was facilitated by the then Assistant Commissioner, Bruce Gibson (a former crime scene and ballistics practitioner) at the direction of the then Commissioner of Police, John Avery.<sup>393</sup> The Gibson Review set the direction of what ultimately became the CSSB.
- 8.235. Superintendent Best, a Superintendent in the CSSB since July 2021,<sup>394</sup> gave evidence that the substance and outcome of the Gibson Review was the “modernising” of the CSSB. The Gibson Review resulted in a range of recommendations, including in relation to additional training to ensure that first response officers were aware of what they needed to do to preserve evidence. Superintendent Best said that this recommendation “took hold”. Other recommendations made by the Gibson Review related to the relationship between investigators and crime scene staff, including in relation to who should make decisions about things such as the submission of samples for testing.<sup>395</sup>
- 8.236. The command under which the CSSB sits changed in 1995 when the Forensic Services Group (**FSG**) was formed. In 2017, the FSG was renamed the Forensic Evidence and Technical Services Command (**FETS**), as it is known today.<sup>396</sup> Superintendent Best gave evidence that the various changes of name for both CSSB and FETS were administrative rather than changes to the functions of the service.<sup>397</sup>
- 8.237. As at the present day, the CSSB employs 420 staff and encompasses 18 laboratories (referred to as crime scene sections) located across NSW.<sup>398</sup> The CSSB consists of staff with a range of qualifications who attend crime scenes and conduct laboratory-based examinations to identify, record, and collect physical evidence using forensic science. There are seven geographic areas, referred to as “zones”, responsible for the management of one or a number of crime scene sections under the overarching governance of the CSSB.<sup>399</sup>
- 8.238. The terms “crime scene units”, “physical evidence sections” and “crime scene sections” all refer to the laboratories under the governance of the CSSB which have had various names over the years. These sections “are operational police response units generally housed at or near police stations where staff perform an assortment of forensic examinations.”<sup>400</sup> The examinations performed at the sections include collecting exhibits with forensic value relevant to investigations,

<sup>393</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [23] (NPL.9000.0003.1533).

<sup>394</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [9] (NPL.9000.0003.1533).

<sup>395</sup> Transcript of the Inquiry, 4 July 2023, T4874.2–17 (TRA.00072.00001).

<sup>396</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [25] (NPL.9000.0003.1533); Transcript of the Inquiry, 4 July 2023, T4874.41–4875.12 (TRA.00072.00001).

<sup>397</sup> Transcript of the Inquiry, 4 July 2023, T4871.25–40 (TRA.00072.00001).

<sup>398</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [10]–[12] (NPL.9000.0003.1533).

<sup>399</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [28] (NPL.9000.0003.1533).

<sup>400</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [29]–[30] (NPL.9000.0003.1533).

- fingerprint recovery, shoe and tyre mark comparison, and blood stain pattern analysis.<sup>401</sup> There are also additional, specialised units within the CSSB.<sup>402</sup>
- 8.239. Superintendent Best has given evidence that there are now two “types” of NSWPF officers who provide a forensic response for the CSSB. The first type are officers that undertake forensic examinations. If these officers are sworn police officers, they are referred to as “Forensic Investigators”. If these officers are civilians, they are referred to as “Crime Scene Officers”. The second type of employee are called “Scenes of Crime Officers” (**SOCOs**). SOCOs are civilians who perform non-complex forensic examinations such as forensic photography and DNA swabbing,<sup>403</sup> and are often deployed for examinations of a lower complexity.<sup>404</sup>
- 8.240. The level of training required of an officer performing these roles has steadily increased over the years. Until the mid-1980s, ‘crime scene investigators’ were required to undertake the Detectives Course. This requirement was replaced with a 10-day Crime Scene Examiners course, an 18-day Police Drafting course, and on-the-job training.<sup>405</sup> The training required to become a forensic investigator or crime scene officer also changed following the Gibson Review, which recommended that officers undertake an Associate Diploma in Applied Science (Forensic Science). This recommendation was implemented in 1992–1993.<sup>406</sup>
- 8.241. As at the present day, all civilian officers (Crime Scene Officers and SOCOs) must have undergraduate or postgraduate qualifications in science or forensic science. Forensic Investigators are required to hold an undergraduate policing qualification and must complete a postgraduate forensic science qualification.<sup>407</sup> Forensic Investigators who join the CSSB also participate in a Forensic Investigator training program over a minimum of four years, during which they are also required to complete external qualifications.<sup>408</sup>
- 8.242. Crime Scene Officers and Forensic Investigators will also have completed (or be currently undertaking) further training with the Australian Forensic Science Assessment Body (**AFSAB**). In certain specified instances, including homicides, serious sexual assaults and critical incidents, an AFSAB officer is required to attend.<sup>409</sup> Achieving the highest qualification with AFSAB would ordinarily take around five years. In addition, the AFSAB qualifications mandate yearly and five-yearly reviews to ensure continuing education.<sup>410</sup>

<sup>401</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [32] (NPL.9000.0003.1533).

<sup>402</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [33] (NPL.9000.0003.1533).

<sup>403</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [38]–[40] (NPL.9000.0003.1533).

<sup>404</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [94] (NPL.9000.0003.1533).

<sup>405</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [35]–[36] (NPL.9000.0003.1533).

<sup>406</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [35]–[37] (NPL.9000.0003.1533).

<sup>407</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [41] (NPL.9000.0003.1533).

<sup>408</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [42] (NPL.9000.0003.1533).

<sup>409</sup> Transcript of the Inquiry, 4 July 2023, T4877.34–38 (TRA.00072.00001).

<sup>410</sup> Transcript of the Inquiry, 4 July 2023, T4878.2–11 (TRA.00072.00001).

8.243. Other specialised forensic examinations fall within the scope of FASS.<sup>411</sup>

### The Forensic and Analytical Science Service (FASS)

- 8.244. FASS, in its current form, was established in December 2012<sup>412</sup> within NSW Health Pathology (**NSWHP**).<sup>413</sup> NSWHP is an administrative division of the Health Administration Corporation, which was established on 1 May 2012 under s. 9 of the *Health Administration Act 1982*.<sup>414</sup> The NSWHP Instrument of Establishment dated 14 January 2013 makes NSWHP responsible for the management and coordination of FASS.<sup>415</sup> FASS was established as a unit to provide “integrated, sustainable, responsive, efficient, high quality forensic and analytical scientific services”.<sup>416</sup>
- 8.245. From 1969-2012, FASS was known as the Division of Analytical Laboratories (**DAL**), and prior to 1969 was known as the NSW Health Department Laboratory.<sup>417</sup> Between 1969 and 1986, forensic pathology and forensic biology was part of DOFM, before becoming part of DAL in 1986.<sup>418</sup>
- 8.246. According to Ms Neville, FASS provides three “key services” being: Forensic Medicine; Criminalistics (which includes the Forensic Biology/DNA (**FBDNA**) Unit, the Illicit Drug Analysis Unit and the Chemical Criminalistics Unit); and Forensic & Environmental Toxicology.<sup>419</sup> FASS is also the “custodian” of the NSW DNA database and is responsible for uploading profiles to the NSW and National database, and reporting any DNA database links to NSWPF.<sup>420</sup>
- 8.247. The relationship between FASS and the NSWPF is facilitated by a Service Level Agreement (**SLA**). The current SLA commenced in 2017 and is currently under review.<sup>421</sup> The interaction between the Criminalistics division of FASS and the NSWPF also occurs pursuant to a formalised governance structure.<sup>422</sup>
- 8.248. FASS supports NSWPF investigations in various ways, including through the provision of services related to forensic biology and DNA. FASS and the NSWPF will communicate, where required, about the exhibits or testing process.<sup>423</sup> FASS also conducts educational forums to ensure NSWPF members are aware of the

<sup>411</sup> Transcript of the Inquiry, 4 July 2023, T4875.28–44 (TRA.00072.00001).

<sup>412</sup> Transcript of the Inquiry, 15 August 2023, T5500.7–9 (TRA.00082.00001).

<sup>413</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [13] (SCOI.83528).

<sup>414</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [13] (SCOI.83528).

<sup>415</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [14] (SCOI.83528).

<sup>416</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [14] (SCOI.83528).

<sup>417</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [7] (SCOI.83528).

<sup>418</sup> Transcript of the Inquiry, 15 August 2023, T5500.27–29 (TRA.00082.00001). For ease of reading and consistency, all references to DAL are to FASS or FBDNA.

<sup>419</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [15] (SCOI.83528).

<sup>420</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [19] (SCOI.83528).

<sup>421</sup> Transcript of the Inquiry, 15 August 2023, T5501.1–3 (TRA.00082.00001).

<sup>422</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [25] (SCOI.83528).

<sup>423</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [22]–[23] (SCOI.83528).

testing and methods used by FASS, and so they are aware of the capabilities of FASS and can comprehend the results of the testing that it undertakes.<sup>424</sup>

- 8.249. In appropriate circumstances, NSWPF will submit an exhibit to FBDNA for testing, including in relation to the recovery and extraction of DNA for the purpose of generating a DNA profile.<sup>425</sup> Any DNA profile recovered can then be analysed and compared against reference samples and any profiles uploaded to the DNA database.<sup>426</sup> FASS biologists will also provide expert evidence in relation to DNA testing conducted for court proceedings.<sup>427</sup>

## Evolution of forensic testing in NSW

### Forensic testing from the 1970s to the 1990s

- 8.250. In the 1970s and 1980s, some forms of forensic testing were carried out by CSSB, and other forms of testing were carried out by the predecessors to FASS (for convenience, the balance of these submissions will refer to FASS and not to its predecessor entities which are identified above unless it is necessary to do so). The role of the CSSB (in its various forms) was to carry out some types of scientific analysis, including shoe and tyre impressions and blood stain analysis.<sup>428</sup> However, during this period, some types of forensic testing were only carried out by FASS.
- 8.251. Ms Neville gave evidence that prior to the introduction of DNA testing (which was formally introduced as a service provided by FASS in 1992 and which I address in detail in a separate section below),<sup>429</sup> FASS conducted testing such as tests to identify protein markers and ABO blood groupings,<sup>430</sup> and tests to detect biological materials such as semen, blood and saliva.<sup>431</sup> Ms Neville gave evidence that during this period, this testing was accurate where data was available, but that the availability of possible matches was scarce.<sup>432</sup>
- 8.252. The CSSB was responsible for the identification and collection of items, and then to transitioning those items to FASS. If that needed to occur, CSSB would generate a form and forward the item to the FASS laboratory.<sup>433</sup> All submissions for testing with FASS required the endorsement of the CSSB.<sup>434</sup>

<sup>424</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [24] (SCOI.83528).

<sup>425</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [16] (SCOI.83528).

<sup>426</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [17] (SCOI.83528).

<sup>427</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [21] (SCOI.83528).

<sup>428</sup> Transcript of the Inquiry, 4 July 2023, T4872.9-25 (TRA.00072.00001).

<sup>429</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [72] (NPL.9000.0003.1533).

<sup>430</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [18], [30], [31] (SCOI.83528).

<sup>431</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [28] (SCOI.83528).

<sup>432</sup> Transcript of the Inquiry, 15 August 2023, T5502.2-27 (TRA.00082.00001).

<sup>433</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [55] (NPL.9000.0003.1533).

<sup>434</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [56] (NPL.9000.0003.1533).



- 8.253. In the 1970s and 1980s, the process for having an exhibit forensically tested depended on the type of exhibit. CSSB crime scene staff would attend a scene at the request of the OIC. When a forensic test could be undertaken, it was the responsibility of the OIC to make that request to the relevant area of CSSB. Decisions about the precise nature of the testing that was to be conducted were made by the CSSB in conjunction with the OIC, as were any decisions about what exhibits should be collected.<sup>435</sup> A decision to have an exhibit tested could be made at any point in the exhibit life cycle.<sup>436</sup>
- 8.254. The relationship between the OIC and a CSSB officer remained unchanged into the 1990s, although the Gibson Review (discussed above) impacted aspects of exhibit management, including the triaging of samples sent to FASS.<sup>437</sup> The Gibson Review recommended that the CSSB Crime Scene Officer should be the sole point of contact between the OIC and FASS when evidence had been collected by the CSSB Officer. This system was implemented following the Gibson Review.<sup>438</sup>
- 8.255. Decisions in relation to which exhibits required forensic examination were made by the Crime Scene Officer in conjunction with the OIC, and then decisions concerning the test procedures used were made by the FASS scientist.<sup>439</sup> An OIC could make a direct request to FASS in some circumstances.<sup>440</sup> The Commissioner’s Notice setting out the process for submitting an exhibit to FASS is in evidence before the Inquiry, as is a 1999 Police Service Circular that amended the Notice, including by adding additional contamination protocols.<sup>441</sup>
- 8.256. In the 1970s and 1980s, officers who filled the role of “Exhibit Officers” were required to record the status and movement of items sent for forensic examination in their exhibit books.<sup>442</sup> Superintendent Best said in his statement that in his assessment, “on occasions during the 1970s and 1980s once an exhibit was transferred to either CSSB or FASS, there was a reduction in the effective recording of information about the status and location of that exhibit by Exhibit Officers and others.”<sup>443</sup> In his oral evidence, Superintendent Best explained that he meant that the role of the Exhibit Officer was made more difficult by the fact that the Exhibit Officer was not able to physically sight the exhibits.<sup>444</sup> He went on to say:<sup>445</sup>

*So what I was pointing towards was how that system works well or did work well, even though it was an exhibit book, when we had an exhibit*

<sup>435</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [54] (NPL.9000.0003.1533).

Transcript of the Inquiry, 4 July 2023, T4879.5–15; 4879.41–4880.7 (TRA.00072.00001).

<sup>436</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [57] (NPL.9000.0003.1533).

<sup>437</sup> Transcript of the Inquiry, 4 July 2023, T4880.13–27 (TRA.00072.00001).

<sup>438</sup> Transcript of the Inquiry, 5 July 2023, T4921.40–4922.20 (TRA.00073.00001).

<sup>439</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [68] (NPL.9000.0003.1533).

<sup>440</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [69] (NPL.9000.0003.1533).

<sup>441</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [72] (NPL.9000.0003.1533).

<sup>442</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [62] (NPL.9000.0003.1533).

<sup>443</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [62] (NPL.9000.0003.1533).

<sup>444</sup> Transcript of the Inquiry, 5 July 2023, T4924.5–14 (TRA.00073.00001).

<sup>445</sup> Transcript of the Inquiry, 5 July 2023, T4924.28–35 (TRA.00073.00001).

*officer whose sole task was to maintain the continuity and the safety of those exhibits, versus when they physically left their presence, and then, because it wasn't there in front of them, the requirement for those monthly updates sort of could fall away.*

- 8.257. At this time, transport of the item was completed by the OIC, a delegate of the OIC, or the Exhibit Officer, after completion of a form referred to as a “P.377”.<sup>446</sup> Once testing was completed, the results would be provided to the station with carriage of the investigation and the OIC would arrange the exhibit’s retrieval.<sup>447</sup> Superintendent Best said in his statement that:<sup>448</sup>

*From my review of the relevant records, there were times where an officer attending CSSB or FASS to deliver exhibits for testing may be asked to collect exhibits when testing was complete to return them to the relevant police station if the officer was from the same station (i.e., on occasions, exhibits would have been collected and transported as a result of logistical convenience rather than pre-arranged collection). There were also instances where an item would be destroyed and/or consumed during the analysis process and the exhibit entry would be reconciled with a copy of the analysis certificate. Such processes greatly reduced the effectiveness of the NSWPF exhibit management system to effectively track the exhibits that went to laboratories for analysis during this period. As I explain below, developments since this period have alleviated such difficulties.*

- 8.258. Superintendent Best, in his oral evidence, explained that he was not aware of a process or a system, other than case finalisation, that would trigger officers to turn their minds to exhibits that may have been with DAL.<sup>449</sup> Exhibit management procedures remained the same as those described above throughout the 1990s and the 2000s until the introduction of EFIMS.<sup>450</sup> Computerised exhibit tracking was introduced in March 2011.<sup>451</sup> The management of exhibits and documentary records by the NSWPF from 1970 is discussed further below.
- 8.259. Superintendent Best gave evidence that it has not been, and is not, possible for CSSB to attend every incident. The CSSB is, and has been, subject to guidance concerning when it is necessary to notify or call out the CSSB.<sup>452</sup> Guidance was first developed in the 1990s by categorising investigations.<sup>453</sup>

<sup>446</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [63] (NPL.9000.0003.1533).

<sup>447</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [64] (NPL.9000.0003.1533).

<sup>448</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [65] (NPL.9000.0003.1533).

<sup>449</sup> Transcript of the Inquiry, 5 July 2023, T4927.16–19 (TRA.00073.00001).

<sup>450</sup> Transcript of the Inquiry, 5 July 2023, T4927.26–39 (TRA.00073.00001).

<sup>451</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [66]–[67] (NPL.9000.0003.1533).

<sup>452</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [76]–[77] (NPL.9000.0003.1533); Exhibit 51, Tab 2T, CSOB Notification and Call Out Guidelines, 1 June 2000 (NPL.9000.0003.1144); Exhibit 51, Tab 2U, CSOB Notification and Call Out Guidelines, 1 December 2005 (NPL.9000.0003.1147).

<sup>453</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [90] (NPL.9000.0003.1533).

- 8.260. Superintendent Best was asked by Senior Counsel Assisting about expectations around securing a crime scene. He agreed that the first few hours were crucial in any investigation, but said that once a scene had been secured there was nothing driving urgency in obtaining items for forensic analysis except the need to identify an offender to limit the risk of that offender being at large.<sup>454</sup>
- 8.261. Superintendent Best was asked whether he would expect a crime scene to be secured until the first report 24 hours later and said, “[n]ot necessarily, no.” He explained, however, that it would be common for officers to be deployed to a crime scene, finish that crime scene and submit a situation report within a 12-hour shift.<sup>455</sup> He said a formal review would come as soon as possible, but definitely within the stipulated two week period.<sup>456</sup> He was not sure whether this sort of process was a formal one in the 1990s, though he said it did occur because he had participated in them, and that it was an aspect of training in the homicide course that he had completed.<sup>457</sup>
- 8.262. Where CSSB officers did not attend a scene, the PES was responsible for providing advice to investigators concerning the handling and packaging of exhibits requiring forensic examination.<sup>458</sup> In 1998, in response to increasing requests for DNA recovery, 180 police positions were assigned to police stations across NSW to provide a forensic response to crimes. These positions were called Local Area Fingerprint Gatherers (**LAFGs**). There was also significant recruitment to the CSSB in 2001.<sup>459</sup>

### The 2000s to present

- 8.263. The period between 2000 and the present day has been characterised by a dramatic change in the procedures followed by the NSWPF in arranging for the testing of the exhibits, and the technology that is available to conduct those tests.
- 8.264. Superintendent Best explained that, in terms of the procedures followed by the NSWPF in arranging for the testing of exhibits, the biggest change was the introduction of “automation” in 2011.<sup>460</sup>
- 8.265. Prior to 2011, and in the ordinary course, a biologist from FASS would decide what types of samples should be targeted and which areas should be swabbed or identified for a tape lift or other analysis, although Crime Scene Officers would also have played a role in the collection of exhibits.<sup>461</sup>

<sup>454</sup> Transcript of the Inquiry, 5 July 2023, T4931.2-21 (TRA.00073.00001).

<sup>455</sup> Transcript of the Inquiry, 5 July 2023, T4931.23-35 (TRA.00073.00001).

<sup>456</sup> Transcript of the Inquiry, 5 July 2023, T4931.37-42 (TRA.00073.00001).

<sup>457</sup> Transcript of the Inquiry, 5 July 2023, T4931.44-4932.10 (TRA.00073.00001).

<sup>458</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [79] (NPL.9000.0003.1533); Transcript of the Inquiry, 5 July 2023, T4933.2-15 (TRA.00073.00001).

<sup>459</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [82] (NPL.9000.0003.1533).

<sup>460</sup> Transcript of the Inquiry, 5 July 2023, T4933.24-46 (TRA.00073.00001).

<sup>461</sup> Transcript of the Inquiry, 5 July 2023, T4935.5-15 (TRA.00073.00001).

- 8.266. After 2011, the decision-making process of what to target for forensic analysis was “handed over” to the Crime Scene Officers and automation meant those exhibits did not need to be handled by any person before they were tested.<sup>462</sup> According to Superintendent Best, automation resulted in greater efficiencies and reduced the possibility that exhibits would become contaminated.
- 8.267. Superintendent Best also gave evidence that during this period, more decisions about forensic testing started to be made by the OIC, with little or no input from CSSB staff.<sup>463</sup> As at the present day, decisions concerning forensic testing lie with the OIC (in the case of a Strike Force or other major inquiry), or otherwise with an officer from CSSB. An analysis request can be sent through EFIMS directly to FASS or to a crime scene section depending on the nature of the testing required.<sup>464</sup> According to Superintendent Best, the “general practice” is for the OIC and CSSB to make joint decisions as to the forensic testing required in relation to any particular exhibit.<sup>465</sup>
- 8.268. As noted above, in the 1990s, guidance was given to investigating officers concerning when was necessary to notify or call out the CSSB.<sup>466</sup> However, in 2018 such guidance was removed, and 24-hour coverage by CSSB was implemented in Sydney metropolitan areas. Specialised regional guidance was also developed.<sup>467</sup> In major or complex investigations from around this time, a formal review process was undertaken to discuss case specifics and identify forensic opportunities.
- 8.269. The first aspect of this review process was the making of a report within 24 hours. This would then be followed by a review within two weeks of that initial report and ongoing monthly reviews.<sup>468</sup> The protocol governing the CSSB response is in evidence.<sup>469</sup> Almost all requests from an investigating officer will be met by the CSSB, deploying either a SOCO or a Forensic Investigator/Crimes Scene Officer. An AFSAB trained CSSB officer must be deployed to all homicides, critical incidents and counter-terrorism investigations.<sup>470</sup>

<sup>462</sup> Transcript of the Inquiry, 5 July 2023, T4934.41–4935.3(TRA.00073.00001).

<sup>463</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [70] (NPL.9000.0003.1533).

<sup>464</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [83] (NPL.9000.0003.1533).

<sup>465</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [85] (NPL.9000.0003.1533).

<sup>466</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [76]–[77] (NPL.9000.0003.1533); Exhibit 51, Tab 2T, CSOB Notification and Call Out Guidelines, 1 June 2000 (NPL.9000.0003.1144); Exhibit 51, Tab 2U, CSOB Notification and Call Out Guidelines, 1 December 2005 (NPL.9000.0003.1147).

<sup>467</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [91]–[92] (NPL.9000.0003.1533).

<sup>468</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [78] (NPL.9000.0003.1533).

<sup>469</sup> Exhibit 51, Tab 2ZE, Crime Scene Manual – Initial Response and Scene Attendance, April 2023 (NPL.9000.0003.0021).

<sup>470</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [94] (NPL.9000.0003.1533); Transcript of the Inquiry, 5 July 2023, T4934.45–4935.9 (TRA.00073.00001).

- 8.270. Generally, the CSSB officer will contact the OIC, assess the crime scene, and formulate a scene management plan in order to maximise the recovery of potential forensic evidence.<sup>471</sup> Given the expertise of investigative teams and the ability of OICs to refer exhibits to the CSSB and FASS, it is not necessary for the CSSB to attend a scene purely to obtain exhibits which will later be subject to forensic testing.<sup>472</sup> The CSSB has issued guidelines concerning relevant topics.<sup>473</sup>
- 8.271. In major or complex investigations, a formal review process is undertaken to discuss forensic opportunities. In cases that are not major or complex, that discussion will take place between CSSB officers and the OIC, either at the scene or afterwards. There are limited times when no immediate forensic response is required.<sup>474</sup>
- 8.272. Superintendent Best also gave evidence that developments in technology over this period have allowed forensic investigators to take smaller subsamples from items of interest.<sup>475</sup> Most items submitted to FASS for testing are now subsamples. Most subsamples for FASS analysis are taken from the crime scene or exhibit and transported by courier to FASS while the original exhibit is retained at the relevant police station.<sup>476</sup> Once subsample results are provided, a CSSB representative will review the case and assess the value of further testing of the exhibit.<sup>477</sup> A priority system exists for forensic testing which is based upon risk management.<sup>478</sup>
- 8.273. Superintendent Best was asked by Senior Counsel Assisting about the prioritisation of testing and explained that it was a question of “risk and capacity”. The greatest risk is where there is an offender who has not been identified and there is a risk that the offender may commit another crime before that identification occurs. This is the highest level of priority, described as “critical”.<sup>479</sup> There are also “priority” cases, with prioritisation being determined by the seriousness of the offence or otherwise on a case-by-case basis.<sup>480</sup>
- 8.274. Superintendent Best gave evidence about the interaction between Crime Scene Officers and forensic pathologists. He explained that Crime Scene Officers will attend a post-mortem where there are suspicious circumstances, but that at present there was not a practice of forensic pathologists attending crime scenes.<sup>481</sup>

<sup>471</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [93] (NPL.9000.0003.1533).

<sup>472</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [96] (NPL.9000.0003.1533).

<sup>473</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [97] (NPL.9000.0003.1533).

<sup>474</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [86]–[88] (NPL.9000.0003.1533).

<sup>475</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [98]–[100] (NPL.9000.0003.1533).

<sup>476</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [99] (NPL.9000.0003.1533).

<sup>477</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [100] (NPL.9000.0003.1533).

<sup>478</sup> Exhibit 51, Tab 2, Statement of Superintendent Best, 24 April 2023, [100]–[103] (NPL.9000.0003.1533).

<sup>479</sup> Transcript of the Inquiry, 5 July 2023, T4936.8–11 (TRA.00073.00001).

<sup>480</sup> Transcript of the Inquiry, 5 July 2023, T4939.4–13 (TRA.00073.00001).

<sup>481</sup> Transcript of the Inquiry, 5 July 2023, T4936.42–4937.25 (TRA.00073.00001).

- 8.275. Superintendent Best gave evidence that the innovations at CSSB are continuing. Superintendent Best explained in his statement that:<sup>482</sup>

*... the NSWPF is currently undertaking a procurement exercise to acquire an upgraded forensic case management system known as "Forensic Register". Forensic Register is a computer-based system which provides for evidence recording and collection, forensic examinations and reviews, digital image capture and retention, storage of digital files, diagrams, examination and analysis results into a single record which is available to NSWPF and FASS staff. The system is currently used in all comparable jurisdictions in Australia and has the potential to increase efficiencies both in the work of FASS itself (for example, by reducing the amount of manual recording and inputs into reports) and the communication between NSWPF and FASS. For example, currently CSSB staff are required to utilise three different systems to manage case notes, exhibit management and job requests. All these will now be conducted within the one system which will automatically workflow into FASS, who will also have complete vision over the case. It will also have powerful analytical tools which over time, will inform on the validity of certain high-volume tasks (such as, swabbing of certain areas on stolen motor vehicles or public place surfaces such as toilet door handles).*

*The procurement process is ongoing; however, I am involved in this process and I have a high degree of confidence in its completion and implementation in the near future.*

## DNA testing and technology

### DNA testing

- 8.276. One of the key developments in forensic science since 1970 has been the development of DNA testing. It appears that the ability to test an item for DNA started to emerge in the 1980s. However, according to Ms Neville, prior to 1989 any item that needed to be tested for DNA was sent overseas.<sup>483</sup> Ms Neville confirmed in oral evidence that this did occur in practice, although she believed it only occurred rarely.<sup>484</sup>

<sup>482</sup> Exhibit 51, Tab 2, Statement of Superintendent Roger Best, 24 April 2023, [126] (NPL.9000.0003.1533); Transcript of the Inquiry, 5 July 2023, T4939.45-4940.18 (TRA.00073.00001).

<sup>483</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [34] (SCOI.83528).

<sup>484</sup> Transcript of the Inquiry, 15 August 2023, T5503.6-8 (TRA.00082.00001).

- 8.277. FASS itself started to do DNA testing in around 1989/1990 using a technique called Restriction Fragment Length Polymorphism (**RFLP**). According to Ms Neville, this technique “provided a capability for discrimination but was limited by requiring large sample sizes of good quality DNA”<sup>485</sup> (ideally a sample approximately as large as or larger than a 20c piece<sup>486</sup>) and it was rare and labour intensive.<sup>487</sup> It also relied on matching DNA to a specifically nominated person, as there was no DNA database to compare samples against until 2000.<sup>488</sup>
- 8.278. In around 1994 or 1995, a new testing method involving Polymerase Chain Reaction (**PCR**) was introduced at FASS.<sup>489</sup> Ms Neville described PCR as having many advantages over the RFLP method, including in relation to its ability to “amplify degraded DNA”<sup>490</sup> but noted that at least initially, it had a “low discriminating power between individuals”.<sup>491</sup>
- 8.279. To overcome these limitations, and in order to operate with DNA of a lesser quality and quantity, a different type of PCR testing was developed which involved the use of short tandem repeats (**STR**) “markers”.<sup>492</sup> According to Ms Neville, this is now the “method of choice”.<sup>493</sup> In the course of oral evidence, Ms Neville described the use of STR markers in the following way:<sup>494</sup>

*... when we're looking at DNA, we're looking at a number of areas on the DNA. So... if I look at one marker, I'm looking at one area on the DNA which is different between different people. So, it might be like looking at one characteristic, to say you have brown eyes. I'm just looking at one area on the DNA to say what type the person has at that marker.*

*If I look at two markers, I'm getting more information about the person. So, you have brown eyes and curly hair. So, each time I add a marker, I'm adding another characteristic to inform about that person's characteristics.*

*...*

*If I was doing a statistical calculation to determine how many people in the population would have that particular combination, it will get rarer and rarer the more markers you add on.*

<sup>485</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [35] (SCOI.83528).

<sup>486</sup> Transcript of the Inquiry, 15 August 2023, T5502.38-40 (TRA.00082.00001).

<sup>487</sup> Transcript of the Inquiry, 15 August 2023, T5502.34-45 (TRA.00082.00001).

<sup>488</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [35] (SCOI.83528).

<sup>489</sup> Transcript of the Inquiry, 15 August 2023, T5503.10-21 (TRA.00074.00001).

<sup>490</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [36] (SCOI.83528).

<sup>491</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [37] (SCOI.83528); See also Transcript of the Inquiry, 15 August 2023, T5503.10-21 (TRA.00082.00001).

<sup>492</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [38] (SCOI.83528); Transcript of the Inquiry, 15 August 2023, T5503.45-5504.1 (TRA.00082.00001).

<sup>493</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [38] (SCOI.83528).

<sup>494</sup> Transcript of the Inquiry, 15 August 2023, T5504.9-27 (TRA.00082.00001).

- 8.280. In 1997, a “10-marker multiplex kit” called “Profiler” was introduced and in 1998, “Profiler Plus” began to be used (which targeted “9 markers and a sex marker”).<sup>495</sup> Ms Neville described it as a “really good advancement for us” which began to be used on a “regular basis”.<sup>496</sup> According to Ms Neville, the kit “significantly improved the discriminating power”, and was sensitive and reliable.<sup>497</sup> Shortly thereafter, and since the early 2000s, FASS became able to recover skin cells referred to as ‘trace’ or ‘touch’ DNA.<sup>498</sup>
- 8.281. According to Ms Neville, the “next big leap” in the ability to test for DNA occurred after 2012 when “PowerPlex 21” began to be used.<sup>499</sup> PowerPlex 21 gave FASS the ability to test for “20 highly variable markers as well as a sex marker”.<sup>500</sup> According to Ms Neville, “the potential to discriminate between different individuals was enhanced greatly... we needed less DNA to develop a profile. It could also work with more degraded samples”.<sup>501</sup>
- 8.282. In 2013, new interpretation software called “STRmix” began to be used at FASS, which Ms Neville described as “an expert system that applies a fully continuous approach to DNA profile interpretation and is particularly useful for mixtures of a more complex nature.”<sup>502</sup> According to Ms Neville, the software “improved the capacity for some profiles which were previously unable to be interpreted to become useful for identification purposes,”<sup>503</sup> including DNA mixtures of up to five people.<sup>504</sup>
- 8.283. Although the STRmix software still requires the input of a biologist,<sup>505</sup> before the introduction of the STRmix software, FASS was limited to the manual interpretation of DNA profiles which Ms Neville described as “binary”, and was limited to interpretations of mixed DNA profiles “of lower complexity (typically no more than 2 contributors), reasonable quantities of DNA and good quality DNA.”<sup>506</sup> Ms Neville explains, however, that this manual “methodology continues to be applied by biologists for DNA data of a non-complex nature including single source profiles, and mixtures of lower complexity.”<sup>507</sup>

<sup>495</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [40]–[41] (SCOI.83528).

<sup>496</sup> Transcript of the Inquiry, 15 August 2023, T5504.3–5 (TRA.00082.00001).

<sup>497</sup> Transcript of the Inquiry, 15 August 2023, T5504.26–29 (TRA.00082.00001).

<sup>498</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [29] (SCOI.83528).

<sup>499</sup> Transcript of the Inquiry, 15 August 2023, T5507.5–13 (TRA.00082.00001).

<sup>500</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [49] (SCOI.83528).

<sup>501</sup> Transcript of the Inquiry, 15 August 2023, T5507.15–18 (TRA.00082.00001).

<sup>502</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [75] (SCOI.83528); Transcript of the Inquiry, 15 August 2023, T5512.17–23 (TRA.00082.00001).

<sup>503</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [73] (SCOI.83528).

<sup>504</sup> Transcript of the Inquiry, 15 August 2023, T5512.18–19 (TRA.00082.00001).

<sup>505</sup> Transcript of the Inquiry, 15 August 2023, T5514.6–14 (TRA.00082.00001).

<sup>506</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [74] (SCOI.83528); see also Transcript of the Inquiry, 15 August 2023, T5512.1–6 (TRA.00082.00001).

<sup>507</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [74] (SCOI.83528).



- 8.284. According to Ms Neville, since the introduction of PowerPlex 21, the STRmix software, and other developments in technology around the same time (including the ability to conduct familial searching and the introduction of the “3500xl genetic analysers”), the capability of DNA testing at FASS improved dramatically.<sup>508</sup>
- 8.285. Since this time, further advances have been made in specialised DNA analysis, such as male specific “Y-STR” typing which targets DNA exclusively from male individuals and which can link males on the paternal line.<sup>509</sup> FASS can also now conduct mitochondrial DNA testing which can assist in analysing highly compromised samples (such as skeletal remains), which is of use in missing persons investigations. It can be used to match against relatives on the maternal line.<sup>510</sup> Most recently, since around 2021, FASS is able to analyse samples to predict ancestry and external physical characteristics using technology called Massively Parallel Sequencing. This technology can also increase the ability to discriminate between individuals,<sup>511</sup> and has increased the ability of FASS to identify unknown remains when “you’ve nowhere else to go”.<sup>512</sup>
- 8.286. Finally, Ms Neville gave evidence that a number of advances have been made in the ability to identify contributors to a DNA profile. These advances include the way in which links are made (scene to scene matches and person to scene matches). They also include the ability to search for contributors to mixed profiles and conduct familial searches.<sup>513</sup> Ms Neville gave evidence, consistent with the evidence of Superintendent Best, that advances have been made in increasing the automation used in DNA processing which has, amongst other things, reduced the possibility of contamination which can occur with manual handling.<sup>514</sup>
- 8.287. Ms Neville says that currently, the “analytical system at FASS... has the capability to generate an uploadable autosomal DNA profile from as little as 10 cells, although the optimal target is approximately 120 cells.”<sup>515</sup> Ms Neville described 120 cells as “a tiny amount”, noting that “it’s measured in picograms as opposed to grams”<sup>516</sup> (a picogram is one trillionth of a gram). Ms Neville also gave evidence that the techniques available in the present day are “so sensitive... that even after the passage of decades, you still have that capability of perhaps getting a DNA profile”.<sup>517</sup>

<sup>508</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [46]–[53] (SCOI.83528).

<sup>509</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [56]–[62] (SCOI.83528).

<sup>510</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [63]–[64] (SCOI.83528).

<sup>511</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [65]–[66] (SCOI.83528).

<sup>512</sup> Transcript of the Inquiry, 15 August 2023, T5517.18-44 (TRA.00082.00001).

<sup>513</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [67]–[70] (SCOI.83528).

<sup>514</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [54]–[55] (SCOI.83528).

<sup>515</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [53] (SCOI.83528); Transcript of the Inquiry, 15 August 2023, T5509.2–8 (TRA.00082.00001).

<sup>516</sup> Transcript of the Inquiry, 15 August 2023, T5509.10-15 (TRA.00082.00001).

<sup>517</sup> Transcript of the Inquiry, 15 August 2023, T5528.22-25 (TRA.00082.00001).

- 8.288. Ms Neville gave evidence that these developments have improved DNA testing at each analytical step, being: extraction, quantification, amplification, and capillary electrophoresis.<sup>518</sup> Ms Neville gave evidence that by “enhancing the performance at each step of the process, more DNA profiles are recovered a suitable for upload to the DNA databases, which is a key tool to identify possible contributors to the samples” (emphasis in original).<sup>519</sup>
- 8.289. However, and despite the above, Ms Neville emphasised that DNA profiling is fundamentally probabilistic (albeit that probabilities in favour of a match can be very high). Any profile “match” will be reported with a statistical calculation, or the probability that the DNA came from the identified person.<sup>520</sup>

#### FORENSIC PROJECTS TO REVIEW HISTORICAL CASES

- 8.290. In relation to the review of historical cases generally (not just homicides), Ms Neville provided the example of the Cold Case Justice Program which was run by FASS from 2008 to 2012 in conjunction with the NSWPF, in which approximately 2,000 sexual assault cases and 80 unsolved homicides were reviewed, and samples were retested using new technology.<sup>521</sup>
- 8.291. While that program ended, Ms Neville explained that historical cases continue to be reviewed by FASS (with cooperation from NSWPF), under the purview of a Cold Case Coordinator and the Forensic Evidence Advisory Committee.<sup>522</sup> Other programs include the Sexual Assault Investigation Kit Back-Capture (July 2022–December 2023),<sup>523</sup> and the Human Skeletal Remains Initiative (**HSRI**) (initiated in 2018), which has catalogued all unknown remains within NSW and uploaded them on the National database.<sup>524</sup>
- 8.292. When asked about the ability of FASS to undertake historical work, Ms Neville gave evidence that the capability is there, but it would require an assessment of what needed to be undertaken, and the resources required to do so.<sup>525</sup> When undertaking previous historical work, Ms Neville noted that specific resources were allocated in order to facilitate that work.<sup>526</sup>
- 8.293. Ms Neville gave evidence that if a historical project were to be undertaken, a systematic or tiered approach would be best. Given the effect of time on the quality of DNA, particularly where it has been stored in suboptimal conditions and/or was a small sample, such an approach would involve the examination of samples to determine how they have been stored, and analysis of the samples which have been

<sup>518</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [46] (SCOI.83528).

<sup>519</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [52] (SCOI.83528).

<sup>520</sup> Transcript of the Inquiry, 15 August 2023, T5528.47–5529.9 (TRA.00082.00001).

<sup>521</sup> Transcript of the Inquiry, 15 August 2023, T5519.42–5520.7 (TRA.00082.00001).

<sup>522</sup> Transcript of the Inquiry, 15 August 2023, T5520.18–33 (TRA.00082.00001).

<sup>523</sup> Transcript of the Inquiry, 15 August 2023, T5520.35–5521.7 (TRA.00082.00001).

<sup>524</sup> Transcript of the Inquiry, 15 August 2023, T5521.9–43 (TRA.00082.00001).

<sup>525</sup> Transcript of the Inquiry, 15 August 2023, T5530.45–5531.5 (TRA.00082.00001).

<sup>526</sup> Transcript of the Inquiry, 15 August 2023, T5531.1–5 (TRA.00082.00001).

best stored or protected would be the starting point for that body of work.<sup>527</sup> For example, Ms Neville gave evidence that with current technology, even after the “passage of decades”, testing techniques are sensitive enough to be able to get a DNA profile, although it is possible the profile obtained is only a partial profile.<sup>528</sup>

- 8.294. Ms Neville also explained that FASS was constrained by its resourcing. Ms Neville gave evidence that the complexity of the DNA testing undertaken may require more time from each biologist.<sup>529</sup> According to Ms Neville:<sup>530</sup>

*we’re absolutely stretched at the current time to deal with our current operations in addition to major validation projects so that we can keep bringing the innovative methodologies online, which we must do to ensure the currency of what we’re doing for the New South Wales community in terms of forensic investigations. So, we are under-resourced at the moment to meet the current requirements of what we need to do in forensic biology.*

## DNA technology

### INTRODUCTION OF DNA DATABASES

- 8.295. The NSW DNA database commenced in 2000, concurrently with the commencement of the *CFP Act*. The *CFP Act*, together with regulations made pursuant to it, regulate the access, use and management of the NSW DNA database. The Secretary of NSW Health is the person responsible for the care, control and management of the database, and it is managed by FASS in accordance with set procedures based on the legislation; all searching and matching against the database is performed only by authorised FASS staff.<sup>531</sup> The National Criminal Investigation DNA Database (**NCIDD**) was established in 2001 and is managed by the Australian Criminal Intelligence Commission (formerly CrimTrac).<sup>532</sup>
- 8.296. According to Ms Neville, in the absence of a DNA database, there was “no capability to search a crime scene profile against a database of individuals”. DNA samples could only be compared based on a specific request and as against nominated individuals.<sup>533</sup>
- 8.297. Even after the introduction of the NSW DNA database and the *CFP Act*, the “database was limited by its size for quite some time”,<sup>534</sup> because only samples taken after the commencement of the *CFP Act* could be entered in the database.<sup>535</sup> Furthermore, at first, the NSW DNA database only allowed for “direct searching

<sup>527</sup> Transcript of the Inquiry, 15 August 2023, T5531.39–5532.2 (TRA.00082.00001).

<sup>528</sup> Transcript of the Inquiry, 15 August 2023, T5528.20–25 (TRA.00082.00001).

<sup>529</sup> Transcript of the Inquiry, 15 August 2023, T5530.30–39 (TRA.00082.00001).

<sup>530</sup> Transcript of the Inquiry, 15 August 2023, T5530.34–43 (TRA.00082.00001).

<sup>531</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [43] (SCOI.83528).

<sup>532</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [44] (SCOI.83528).

<sup>533</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [42] (SCOI.83528).

<sup>534</sup> Transcript of the Inquiry, 15 August 2023, T5505.23–24 (TRA.00082.00001).

<sup>535</sup> Transcript of the Inquiry, 15 August 2023, T5532.11–17 (TRA.00082.00001).

- of autosomal DNA”.<sup>536</sup> Both Counsel Assisting and the NSWPF referred to these initial limitations in submissions.<sup>537</sup>
- 8.298. However, the ability to match DNA profiles as against the database has also improved over time. The ability to conduct person to scene matching was possible from 2007, while scene to scene matching was possible from 2014.<sup>538</sup> The introduction of the STRmix software in 2013, as discussed above, also “significantly increased the amount of usable DNA profiles able to be compared to potential contributors.”<sup>539</sup> Since January 2021, the searching/matching capabilities as against mixed DNA profiles has increased with the ability to conduct a “one off ‘point in time’ search”.<sup>540</sup>
- 8.299. According to Ms Neville, following the development of DNA databases, DNA profiling became a more routine investigative tool. FASS conducts DNA testing when the NSWPF submits exhibits for “examination and testing including the identification of biological substances, recovery and extraction of DNA, generation of DNA profiles, interpretation, and reporting of findings”.<sup>541</sup>
- 8.300. The NSWPF also sends FASS reference samples from individuals for the purposes of “DNA analysis and comparison to crime profiles on the DNA database”.<sup>542</sup> The database is live, and searching is continuous. Uploading and linking on the NSW DNA database occurs in real time.<sup>543</sup>
- 8.301. Ms Neville gave evidence about the different forms of database matching which FASS can undertake: “there is the direct matching, just matching DNA profiles that are developed from a crime scene sample to persons, but there’s also a whole range of other matching that we can do around familial matching.”<sup>544</sup>
- 8.302. There is a dedicated “links team” within the FBDNA Case Management Unit that provides the NSWPF DNA Management Unit with intelligence links following direct matching of scene to scene and person to scene samples on the DNA databases.<sup>545</sup> Link information is provided to NSWPF via EFIMS, or as a report to the NSWPF DNA Management Unit.<sup>546</sup>

<sup>536</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [79] (SCOI.83528).

<sup>537</sup> Submissions of Counsel Assisting, 15 September 2023, [226] (SCOI.85649); Submissions of NSWPF, 10 October 2023, [51] (SCOI.86127).

<sup>538</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [81] (SCOI.83528); confirmed in oral evidence, see Transcript of the Inquiry, 15 August 2023, T5518.6-20 (TRA.00082.00001).

<sup>539</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [68] (SCOI.83528).

<sup>540</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [86] (SCOI.83528).

<sup>541</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [16] (SCOI.83528).

<sup>542</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [17] (SCOI.83528).

<sup>543</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [84] (SCOI.83528).

<sup>544</sup> Transcript of the Inquiry, 15 August 2023, T5507.19-22 (TRA.00082.00001).

<sup>545</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [67] (SCOI.83528).

<sup>546</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [19]–[20] (SCOI.83528).

- 8.303. Ms Neville gave evidence that the NSWPF also has the capability to “request DNA profiles from FBDNA to search on Interpol databases or provide to another country to search on a specific database. This is generally requested through the NSWPF DNA Management Unit and facilitated through the Australian Federal Police.”<sup>547</sup>

### FAMILIAL SEARCHING

- 8.304. The ability to conduct familial searching against the NSW DNA database began in 2013, while familial searching on the national level became possible in 2018.<sup>548</sup> Ms Neville described the familial searching process as the process of “looking for profiles of people, individuals, on the database that... [are] sharing a lot with that crime scene sample... not a direct match, but they’re sharing quite a lot.”<sup>549</sup> Familial searching will often be conducted in the absence of a direct match.
- 8.305. If a familial search is made, the relevant database will generate candidates “who seem to share quite a bit [of DNA]” automatically, and then FASS looks “at that list and we use some of our additional capabilities to see whether they could be a relative or not”.<sup>550</sup> Reports are also provided to the NSWPF “who may pursue investigation of the potential biological relative in their enquiries.”<sup>551</sup>
- 8.306. The ability to conduct familial searches was enhanced by the use of Y-STR testing which has allowed FBDNA to link individuals and males on the same paternal line.<sup>552</sup> Ms Neville describes this as a “highly valuable tool”. Ms Neville gave evidence that if the database is searched and a result is returned whereby “that Y profile is the same as the Y profile from the crime scene sample, well, now you’ve got a direct match that says these could be paternally related individuals”.<sup>553</sup> The complement, mitochondrial DNA sequencing, has provided for the direct matching of people on the same maternal line.<sup>554</sup>

### FORENSIC INVESTIGATIVE GENETIC GENEALOGY

- 8.307. During the course of the Investigative Practices Hearing, Ms Neville also gave the following evidence in relation to the use of public DNA databases (that is, databases where members of the public can upload a DNA profile) and forensic investigative genetic genealogy (**FIGG**):<sup>555</sup>

<sup>547</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [83] (SCOI.83528); confirmed in oral evidence at Transcript of the Inquiry, 15 August 2023, T5518.38-40 (TRA.00082.00001).

<sup>548</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [70] (SCOI.83528); Transcript of the Inquiry, 15 August 2023, T5517.10-16; T5518.31-34 (TRA.00082.00001).

<sup>549</sup> Transcript of the Inquiry, 15 August 2023, T5517.10-16; T5507.42-45 (TRA.00082.00001).

<sup>550</sup> Transcript of the Inquiry, 15 August 2023, T5507.47–5508.4 (TRA.00082.00001).

<sup>551</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [78] (SCOI.83528).

<sup>552</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [57] (SCOI.83528).

<sup>553</sup> Transcript of the Inquiry, 15 August 2023, T5508.12-29 (TRA.00082.00001).

<sup>554</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [64] (SCOI.83528).

<sup>555</sup> Transcript of the Inquiry, 15 August 2023, T5519.7–5522.22 (TRA.00082.00001).

*Q. Are you aware of what relationship there is, if any, between those databases, or those enterprises, and forensic investigations?*

*A. Well, I think with those private companies that do the profiling that would be for ancestry and phenotyping, those profiles can be uploaded onto the public databases, like the big one is GEDmatch, so if people opt to put their profile onto those public databases, then if forensic genetic genealogy is being used, they would be searching against those profiles generated by private companies.*

*Q. Thank you, Ms Neville. The various techniques we've been talking about in relation to DNA and the advances in what can be done with DNA analysis over not just the last 20 years but especially over the last 20 years - to what extent are those techniques of analysis available in relation to exhibits that may have been collected from a crime scene 20, 30, 40 years ago?*

*A. Well, the techniques are all available, they are all there. If any case is reviewed and submitted for further testing, that can happen. In particular, the samples that have been retained within the stored forensic biology facility are the most amenable to applying the new technologies, because they have been stored in optimised conditions and protected from any inadvertent contamination. So, there is a lot of opportunity for reviewing old cases and applying technology to achieve outcomes that wouldn't have been achieved at the time, and there has been a lot of work done in that space over the years.*

*Q. Ms Neville, I asked you some questions before the break about commercial DNA databases, or commercial databases, genealogy databases, to which investigators may sometimes have access. Are you aware of whether there are restrictions on the extent of access that police have to those sorts of commercial databases?*

*A. Yes. I believe the component of the large GEDmatch database has restricted numbers of people that any police investigation can compare their profiles against. So, the people have to opt in to be part of a criminal investigation. I think there is a particular portal, if you like, or component of GEDmatch that is applicable for criminal investigations, and the people themselves who upload their profiles that they've achieved through direct consumer testing, like ancestry.com or whoever, they upload it onto GEDmatch, but they have to opt in to be part of a criminal investigation.*

- 8.308. The Inquiry obtained a statement from Associate Professor Jodie Ward to provide further info on the use of public databases and FIGG. Associate Professor Ward is the Program Lead of the National DNA Program for Unidentified and Missing Persons (**National DNA Program**) within the National Missing Persons Coordination Centre (**NMPCC**) at the Australian Federal Police (**AFP**). She is also an Adjunct Associate Professor within the Centre for Forensic Science at the University of Technology Sydney.<sup>556</sup>
- 8.309. Associate Professor Ward explained that there are approximately 2500 long-term missing persons (persons missing for longer than 3 months) and 750 sets of unidentified human remains in Australia. Many of these have been archived as cold cases for decades.<sup>557</sup> The NMPCC was granted \$3.594 million under the *Proceeds of Crime Act* (2002) to establish and undertake the National DNA Program. The National DNA Program commenced on 1 July 2020 and, following the recent granting of a 6-month extension, is due to end on 30 June 2024.<sup>558</sup> Associate Professor Ward explained:<sup>559</sup>
- The aim of this Australian-first [National DNA Program] was to develop and apply a suite of contemporary forensic techniques to scientifically link unidentified human remains and long-term missing persons cases. In effect, the establishment of this national capability aimed to create a “one-stop-shop” of forensic techniques for human remains identification to assist state and territory police resolve these cases.*
- 8.310. Associate Professor Ward explains that “FIGG combines advanced DNA testing, searches of law enforcement accessible genetic genealogy databases, and traditional genealogy research to provide investigative leads that can assist to identify unknown individuals.”<sup>560</sup> Where it is authorised by police or the relevant coronial agency, the National DNA Program uses FIGG for unidentified human remains cases that have not been able to be resolved using standard forensic testing and state, national and international law enforcement databases.<sup>561</sup>
- 8.311. Associate Professor Ward explained that the National DNA Program (and other law enforcement agencies across the world) currently only have access to two public DNA databases: GEDmatch and FamilyTreeDNA. Other databases are not accessible due to their respective terms of service and use and privacy policies which prevent law enforcement use.<sup>562</sup>

<sup>556</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [2] (SCOI.86601).

<sup>557</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [5] (SCOI.86601).

<sup>558</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [4] (SCOI.86601).

<sup>559</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [6] (SCOI.86601).

<sup>560</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [10] (SCOI.86601).

<sup>561</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [11] (SCOI.86601).

<sup>562</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [18] (SCOI.86601).

- 8.312. GEDmatch and FamilyTreeDNA allow a user to “opt in” to the use of their DNA profile for law enforcement purposes. GEDmatch additionally permits users to opt in for the use of their DNA profile for the purpose of identifying human remains and identifying the perpetrators of violent crimes, or only for the purposes of identifying human remains. FamilyTreeDNA does not distinguish in this way.<sup>563</sup> The National DNA Program was required to apply for a law enforcement account and agree to the relevant terms of service and use and privacy policies.<sup>564</sup>
- 8.313. Where a suitable DNA profile can be obtained, the National DNA Program will upload it to one of both of the public law enforcement accessible genetic genealogy databases for searching: GEDmatch and/or FamilyTreeDNA.<sup>565</sup> To date, three cases have been resolved as a result of the leads generated through the Program’s FIGG capability.<sup>566</sup> Not all sample types are suitable to be processed using the Program’s FIGG capability because the Program’s method requires a certain quantity and quality of DNA to be recovered.<sup>567</sup>
- 8.314. In relation to the genealogy process, Associate Professor Ward explains:<sup>568</sup>

*If suitable genetic matches are found on public DNA databases, the [National DNA Program’s] contracted genetic genealogist will use genealogy techniques and public information to build out their family trees until they discover (typically deceased) ancestors in common. From there, they will research relevant family lines forward to recent generations to find closer (ideally living) relatives of the unknown individual. They may also work with law enforcement who can use investigative techniques, non-public information and targeted DNA testing to fill in some branches of the tree and rule out others. The aim is to find a present-day family with a missing or unaccounted-for relative.*

*The genealogy process may take days to years depending on the number and types of genetic matches obtained and the availability of public and non-public records. The [National DNA Program’s] FIGG capability can typically link genetic relatives up to the fifth degree (e.g. second cousins). Alternative methods ... may be able to link to more distant relatives (e.g. third or fourth cousins) because more genetic information is analysed.*

*Once suitable investigative leads are generated, the [National DNA Program] will provide these to the investigating law enforcement agency. It is the responsibility of this agency to investigate any potential familial links with the unidentified human remains, communicate with any genetic relatives to obtain family history information and/or genetic information, and/or conduct reference and confirmatory testing.*

<sup>563</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [18]–[21] (SCOI.86601).

<sup>564</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [22] (SCOI.86601).

<sup>565</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [15] (SCOI.86601).

<sup>566</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [16] (SCOI.86601).

<sup>567</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [17] (SCOI.86601).

<sup>568</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [23]–[25] (SCOI.86601).



- 8.315. The NMPCC has run a number of public campaigns in 2022 and 2023 to support the National DNA Program’s use of DNA testing, including FIGG, to resolve unidentified human remains cases. The campaigns are designed to educate members of the public and families of long-term missing persons about the National DNA Program’s use of DNA testing and FIGG, and to encourage people to contribute DNA to a law enforcement or public DNA database (depending on their known relationship to a missing person).<sup>569</sup> If a person has an account with a consumer genomics testing company, they are able to download their profile and then upload it to GEDmatch and/or FamilyTreeDNA for free.<sup>570</sup>
- 8.316. The use of FIGG by Australian law enforcement agencies is increasing in both coronial and criminal cases.<sup>571</sup> Associate Professor Ward explains that:

*[t]he [National DNA Program’s] FIGG capability provides agencies with an accessible, timely and quality-assured option for undertaking FIGG for unidentified human remains cases, especially to aid the resolution of long-term missing persons cases where the person has not been formally reported missing to police and/or no suitable comparative ante-mortem data is available.*

- 8.317. Associate Professor Ward predicts that the National DNA Program will have more success identifying unidentified human remains as more Australians (and a greater number and diversity of individuals across the world) upload their consumer genomics profile to GEDmatch and/or FamilyTreeDNA and consent to law enforcement use.<sup>572</sup> She goes on to say:<sup>573</sup>

*The [National DNA Program’s] demonstrated use of FIGG for producing investigative leads that have assisted to resolve cold and current unidentified human remains cases in a cost and time efficient manner (i.e. compared to the investigative and forensic hours dedicated to these cases prior to FIGG), fares well for the continued use of FIGG for coronial cases previously thought unsolvable and its expanded use for criminal cases.*

- 8.318. On 7 November 2023, the Inquiry wrote to the NSWPF identifying that a proposed recommendation was being considered in relation to FIGG and available public DNA databases. On 9 November 2023, the NSWPF advised that it has recently undertaken a review and assessment of the use of FIGG in the context of NSWPF investigations. The NSWPF advised that the use of FIGG is “resource intensive” and that data and privacy considerations are “potentially complex given the personal and health-related information likely to be produced during the FIGG process”.<sup>574</sup>

<sup>569</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [26] (SCOI.86601).

<sup>570</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [27] (SCOI.86601).

<sup>571</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [28] (SCOI.86601).

<sup>572</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [29] (SCOI.86601).

<sup>573</sup> Exhibit 51, Tab 18B, Statement of Associate Professor Jodie Ward, 3 November 2023, [30] (SCOI.86601).

<sup>574</sup> Exhibit 51, Tab 18C, Letter from Katherine Garaty to Enzo Camporeale, 9 November 2023 (SCOI.86600).

- 8.319. In light of its review and assessment process, the NSWPF has developed standard operating procedures in relation to FIGG (**FIGG SOPs**), which set out the conditions that are required to be met in order for a case to be deemed eligible, following which the Commander of FETS must approve its use.<sup>575</sup>
- 8.320. The NSWPF advised that it would welcome a referral from the Inquiry in relation to individual cases where the Inquiry considers the use of FIGG may be fruitful. Following such a referral, the NSWPF would assess the case against the criteria in the FIGG SOPs which would guide the ultimate determination of whether FIGG is utilised in that case.<sup>576</sup>

#### FUTURE OF DNA TECHNOLOGY

- 8.321. I observe that one lesson to be learned from the experience with DNA in the 1990s is that decisions (including about lines of investigation and what exhibits should be collected/stored) should be made mindful of the possibility that technology like this could become much more significant in coming years.
- 8.322. The FIGG method may prove to be another area in which the rapid improvement of forensic technology yields significant breakthroughs in the coming years and decades.
- 8.323. The Inquiry also received evidence about the use of artificial intelligence (**AI**) technology in the Forensic Biology/DNA department at FASS.<sup>577</sup> According to FASS, it is currently using, or is exploring how to apply, AI methodology and software in their practices. FASS describes the use of AI technology as “in its infancy within the [forensic biology/DNA] discipline”, but predicts that AI might “have future benefits to help optimize DNA collection practices to effectively target evidentiary DNA associated with a criminal offence”.<sup>578</sup>
- 8.324. The use of AI is, undoubtedly, a realm for rapid technological advancement across the world and in many disciplines. The evidence from FASS demonstrates that FASS is alive to the advancement possibilities which AI may provide.
- 8.325. As a final observation, in light of the evidence provided above, I perceive that there is significant scope for the improvements in DNA technology to positively contribute to the future work of the NSWPF, and encourage the NSWPF to make allowances for this in their ongoing exhibit practices.

<sup>575</sup> Exhibit 51, Tab 18C, Letter from Katherine Garaty to Enzo Camporeale, 9 November 2023 (SCOI.86600).

<sup>576</sup> Exhibit 51, Tab 18C, Letter from Katherine Garaty to Enzo Camporeale, 9 November 2023, 2 (SCOI.86600).

<sup>577</sup> Exhibit 51, Tab 18D, Letter from C Cochrane to the Inquiry re use of Artificial Intelligence (AI) in Forensic Biology/DNA at the Forensic & Analytical Science Service (FASS), 13 November 2023, 1-2 (SCOI. 86611).

<sup>578</sup> Exhibit 51, Tab 18D, Letter from C Cochrane to the Inquiry re use of Artificial Intelligence (AI) in Forensic Biology/DNA at the Forensic & Analytical Science Service (FASS), 13 November 2023, 1-2 (SCOI. 86611).

## Evidence from NSWPF witnesses concerning the evolution of DNA testing and technology

8.326. According to Assistant Commissioner Conroy, DNA was “the most substantial forensic testing capability” developed over the course of the 1990s and the 2000s.<sup>579</sup> Assistant Commissioner Conroy agreed that the careful gathering, labelling and retaining of exhibits is a “critical matter for investigations”, and that it becomes even more important in relation to unsolved cases with the passage of time.<sup>580</sup> In response to questions from Senior Counsel Assisting, Assistant Commissioner Conroy gave the following evidence concerning the availability of DNA and awareness of the possibility of DNA testing within the NSWPF:<sup>581</sup>

*Q. But before the moratorium [in 2002, see [8.606] below], when biological material was taken into custody, if dealing with an unsolved homicide, would there ever be a good reason to make a conscious decision to destroy that biological material?*

*A. Well, prior to DNA evidence, DNA technology becoming available, then I imagine that the investigator wouldn't put their mind to that. So in the '70s and the '80s when DNA was not available, when an exhibit was collected that had biological evidence in it, the only value to that would have been for semen detection or for blood grouping, and that was being done at the Forensic Analytical Science Service, and then once that testing and that report had been returned to the NSW Police Force, then realistically there was no other evidentiary value to that exhibit.*

*Q. What about at least in the '90s, when DNA testing was understood to be a reality, by then would there be a good reason for it?*

*A. It migrated very slowly into the NSW Police Force investigative cycle, so DNA first became available to us in 1992 but it was – it didn't change our processes, it was just a capability or a test that FASS could do at that time should the unique circumstances enable that test to be done. It really wasn't until 1998 and the development of Profiler Plus that we had an ability and a validated process to use DNA more routinely in investigations.*

*Q. If the question I'm about to ask is outside your knowledge, say so, but it would seem – it must have been obvious to Homicide detectives by at least the early '90s that DNA technology was on the scene and likely to advance?*

<sup>579</sup> Transcript of the Inquiry, 4 July 2023, T4805.23-27. (TRA.00072.00001).

<sup>580</sup> Transcript of the Inquiry, 4 July 2023, T4813.35-44 (TRA.00072.00001).

<sup>581</sup> Transcript of the Inquiry, 4 July 2023, T4816.19-4517.7 (TRA.00072.00001).

*A. I can't put myself in the minds of the investigators. It was very early in the evolution of DNA in the 1990s. As I said, '98 was really when we saw the biggest change in DNA with the Profiler Plus system being able to identify biological evidence.*

8.327. Assistant Commissioner Conroy agreed with the proposition, put by Senior Counsel Assisting, that by 1989 there were NSW cases where DNA testing took place through the sending of samples overseas.<sup>582</sup> By 1992, DNA testing was available to the NSWPF, though in a “limited capacity”.<sup>583</sup> At this time, Assistant Commissioner Conroy explained that:<sup>584</sup>

*It was still in its infancy of being implemented as a law enforcement purpose and so we needed a large amount of, like, gross biological material, so blood, saliva or semen, so – and we didn't have the typing kits that we have available today and we didn't have a national DNA database. So there was a limited capacity about when we would use it and from '92 to '98 it was still a last-resort examination done at a special request. It wasn't a routine examination that we did for every exhibit. So we would still do blood grouping as a matter of course and then DNA could be potentially applied to an individual case.*

8.328. Assistant Commissioner Conroy was asked by Senior Counsel Assisting whether she could assist the Commissioner with the proposition that police officers in the NSWPF should have known that forensic science had developed significantly over the course of the 20<sup>th</sup> Century and that these advances were likely to continue. She was not able to do so.<sup>585</sup> She agreed that there were cases from the 1970s and 1980s where exhibits were retained, and DNA technology formed the basis for reinvestigation and breakthroughs in the case.<sup>586</sup>

8.329. Superintendent Best agreed that DNA was “on the cards” by 1990.<sup>587</sup> He explained that in the 1990s DNA was:<sup>588</sup>

*...limited in its application for investigations because it was requiring such large quantities of gross biological material, typically blood, and scenes where you had blood at a scene, you were invariably looking at a victim's blood, so the ability to match via DNA that blood to the victim, it's helpful at some level but not ground-breaking in relation to investigations. It was really when that trace DNA came in that we found some really ground-breaking abilities within that to solve crime.*

<sup>582</sup> Transcript of the Inquiry, 4 July 2023, T4817.24-27 (TRA.00072.00001).

<sup>583</sup> Transcript of the Inquiry, 4 July 2023, T4817.38-41 (TRA.00072.00001).

<sup>584</sup> Transcript of the Inquiry, 4 July 2023, T4866.28-38 (TRA.00072.00001).

<sup>585</sup> Transcript of the Inquiry, 4 July 2023, T4820.24-30 (TRA.00072.00001).

<sup>586</sup> Transcript of the Inquiry, 4 July 2023, T4820.43–8421.1 (TRA.00072.00001).

<sup>587</sup> Transcript of the Inquiry, 5 July 2023, T4918.15-16 (TRA.00073.00001).

<sup>588</sup> Transcript of the Inquiry, 5 July 2023, T4918.21-31 (TRA.00073.00001).

- 8.330. The first experience that Superintendent Best had with DNA testing as an officer was in 1998.<sup>589</sup> In 1999 swabs were introduced for collecting samples for DNA testing. Prior to this time, the collection process had remained the same as officers would already take samples for blood grouping.<sup>590</sup>
- 8.331. Superintendent Best was asked by Senior Counsel Assisting whether officers in the 1970s and 1980s should have been alive to the significant developments in technology and the prospective developments in technology. He said that his view is that they wouldn't have been, because the outcomes sought by officers from the CSSB were predominantly in relation to fingerprinting.<sup>591</sup>
- 8.332. Senior Counsel Assisting took Superintendent Best to aspects of the Gibson Review that touched upon developments in different types of forensic technology.<sup>592</sup> He said that he was unable to give a definitive answer about the extent to which officers in the 1970s and 1980s were aware of developments in forensic science, although common sense told him that people would have recognised that it was important to keep abreast of developments in this field.<sup>593</sup>
- 8.333. Superintendent Best said that he was hesitant to make a “broad comment” about the 1970s and 1980s because he was trying to “think of what would be fair for them and then in doing so, what point of reference would they have to look at and go “Okay, this is an amazing advancement””.<sup>594</sup>
- 8.334. Detective Superintendent Doherty gave evidence about the changes that the availability of DNA testing made to the way exhibits were stored and managed, in response to questions from Senior Counsel Assisting. He said:<sup>595</sup>

*Well, it's a point now where going back in many decades ago, you know, there was points where, I suppose, the – having an exhibit that may be fingerprinted and blood tested, there was no foresight in relation to what would have happened down the track in relation to the advances in DNA technology. So whilst an item may have been photographed and swabbed or fingerprinted, it should have been retained but I suppose back in the day they weren't looking at what could have happened in the future where DNA and forensic process enhancement came along and would have given us the ability then to test for DNA.*

- 8.335. Senior Counsel Assisting asked Detective Superintendent Doherty whether he included the 1990s in the period during which he said there was no foresight in relation to DNA. He said that “for all serious crime, exhibit management was important and those items should have been retained. It's a point where the

<sup>589</sup> Transcript of the Inquiry, 5 July 2023, T4928.36-41 (TRA.00073.00001).

<sup>590</sup> Transcript of the Inquiry, 5 July 2023, T4928.31-44 (TRA.00073.00001).

<sup>591</sup> Transcript of the Inquiry, 5 July 2023, T4913.8-37 (TRA.00073.00001).

<sup>592</sup> Transcript of the Inquiry, 5 July 2023, T4914.17-4918.8 (TRA.00073.00001).

<sup>593</sup> Transcript of the Inquiry, 5 July 2023, T4916.43-4917.26 (TRA.00073.00001).

<sup>594</sup> Transcript of the Inquiry, 5 July 2023, T4919.2-10 (TRA.00073.00001).

<sup>595</sup> Transcript of the Inquiry, 6 July 2023, T5043.16-26 (TRA.00074.00001).

- advances in DNA, for my memory and recollection, was more in the UK and was coming through from the mid '90s to the late '90s, not so much the early '90s.”<sup>596</sup> He said that while people may have known about DNA in the early 1990s, it “wasn’t really available for us in the early ‘90s.”<sup>597</sup>
- 8.336. In reexamination by Senior Counsel for the NSWPF, Detective Superintendent Doherty was asked about the period when DNA testing first became available and used in NSW. He gave evidence that there was a two-part process, whereby both testing and a database to compare results to was important. He said that a database did not develop until the late 1990s to the early 2000s.<sup>598</sup>
- 8.337. In further examination by Senior Counsel Assisting, Detective Superintendent Doherty accepted that the first benefit of DNA in forensic analysis was matching it with known samples.<sup>599</sup> It was put to him by Senior Counsel Assisting that before the database had been developed, and while samples were gradually accumulating, it was clear that the database would grow over time and more DNA samples would be acquired.<sup>600</sup> He said that he could not assist the Commissioner with whether or not it was obvious in the early 1990s that the database would grow over time.<sup>601</sup>
- 8.338. Senior Counsel Assisting asked Detective Chief Inspector Laidlaw whether he agreed that physical exhibits are “critically important” to unsolved homicides, to which he replied “[o]f course they are, yes.” He agreed that the loss, contamination and deterioration of physical exhibits is a major obstacle to the success of any investigation, and that it has been known for many more than two decades how transformative scientific advances can be to forensic science.<sup>602</sup>
- 8.339. Detective Chief Inspector Laidlaw agreed that, based on his experience in the NSWPF in the 1970s and 1980s, investigators and forensic investigators were aware of the transformative power of scientific advancement. However, he said that “it was mainly fingerprints. There was no concept of transference of DNA.”<sup>603</sup> He accepted, however, that there was a concept of transference, that is of a perpetrator leaving signs that could be picked up by physical evidence. He agreed that it was appreciated that technology had advanced and was likely to continue to advance to improve the things that could be picked up. Detective Chief Inspector Laidlaw confirmed that this was well known in the 1970s, and that this was a good reason to keep physical exhibits.<sup>604</sup>

<sup>596</sup> Transcript of the Inquiry, 6 July 2023, T5043.28-44 (TRA.00074.00001).

<sup>597</sup> Transcript of the Inquiry, 6 July 2023, T5044.23-41 (TRA.00074.00001).

<sup>598</sup> Transcript of the Inquiry, 6 July 2023, T5094.18-41 (TRA.00074.00001).

<sup>599</sup> Transcript of the Inquiry, 6 July 2023, T5098.10-15 (TRA.00074.00001).

<sup>600</sup> Transcript of the Inquiry, 6 July 2023, T5098.45-5099.8 (TRA.00074.00001).

<sup>601</sup> Transcript of the Inquiry, 6 July 2023, T5099.27-32 (TRA.00074.00001).

<sup>602</sup> Transcript of the Inquiry, 6 July 2023, T5151.16-39 (TRA.00074.00001).

<sup>603</sup> Transcript of the Inquiry, 6 July 2023, T5151.33-39 (TRA.00074.00001).

<sup>604</sup> Transcript of the Inquiry, 6 July 2023, T5151.33-5152.14 (TRA.00074.00001).

8.340. Detective Inspector Warren was also questioned about the use of DNA technology by the NSWPF in the early 1990s.<sup>605</sup> Detective Inspector Warren indicated that by November 1991, DNA technology was understood as a viable technology, however it was not available in police investigations until the mid to late 1990s.<sup>606</sup> Detective Inspector Warren stated that the use of DNA technology was not something he was actively considering in the early 1990s, however he also noted that he was not active in criminal investigations at that point in time.<sup>607</sup>

### Conclusion concerning the evolution of DNA testing and technology

8.341. One question that arises in the context of the evidence concerning the evolution of DNA technology, is at what point it could reasonably be expected that knowledge about DNA technology should have informed police policy in relation to matters such as the retention of exhibits.

8.342. It is important not to allow hindsight to affect consideration of what could reasonably be expected of NSWPF officers in relation to the evolving capabilities of DNA. Ms Neville's evidence was that FASS started DNA testing in 1989/1990, but that it was "rare and labour intensive" at this time, and that PCR became available in 1994/1995. For that reason, Counsel Assisting submitted that it is reasonable that officers during some periods may not have turned their mind to the potential evolution of DNA capabilities.

8.343. When asked about the practice of officers in the 1990s, Dr Allsop considered that there likely was not a widespread understanding of the potential advancements in DNA testing which informed handling and retention of exhibits and samples.<sup>608</sup>

8.344. However, Counsel Assisting suggested that it might also be said that the evolution in science and its relevance to criminal investigation over the 20<sup>th</sup> Century should have indicated that the retention of exhibits and samples in *unsolved* cases was particularly important. Even if a particular technology did not exist at a particular time, it was foreseeable that technology and scientific advancements would allow more information to be extracted in the future. The extent to which criticism could be made on this basis would depend upon the nature of the material that was not collected, stored or retained.

8.345. I have dealt with the question of whether I should make general observations about the management of exhibits and records at the commencement of this Chapter. I accept the submission of Counsel Assisting that:<sup>609</sup>

<sup>605</sup> Transcript of the Inquiry, 5 July 2023, T4999 (TRA.00073.00001).

<sup>606</sup> Transcript of the Inquiry, 5 July 2023, T4999.6–9 (TRA.00073.00001).

<sup>607</sup> Transcript of the Inquiry, 5 July 2023, T4999.15–27 (TRA.00073.00001).

<sup>608</sup> Transcript of the Inquiry, 15 August 2023, T5540.28–5541.10 (TRA.00082.00001).

<sup>609</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [34] (SCOI.86354).

*...it was foreseeable by the early 1990s that DNA technology was available as a forensic technique and was likely to improve over time. No doubt that awareness became clearer and more widespread over time, and the Commissioner may be more inclined to consider that exhibits in individual cases should have been considered for DNA testing (or retained for possible DNA testing) by the mid-1990s. We also maintain the submission, consistent with the last sentence of NSWPF Submissions [125], that irrespective of DNA technology, many lost exhibits had other potential forensic value, and a putative future prosecution would risk being undermined by their loss or destruction.*

- 8.346. This is the basis on which I approach consideration of this issue in the context of individual cases.

## The Unsolved Homicide Team

### Establishment of the UHT

- 8.347. The UHT was established as a team within the Homicide Squad in 2004.<sup>610</sup> Detective Chief Inspector Laidlaw, who at the time of this Inquiry is the Investigation Coordinator of the Review Team within the UHT and the Coronial Team within the Homicide Squad, explained in his statement that it was established partly to address coronial recommendations.<sup>611</sup> It was initially referred to as the “Unsolved Homicide Unit”.<sup>612</sup>
- 8.348. Detective Chief Inspector Laidlaw gave evidence that between 1985 and 1994, unsolved homicide investigations would remain with the Patrol in which the incident occurred until new information became available. There were occasions where matters were informally reviewed by new investigators on the basis that a new investigator might provide a different view or a new perspective (referred to as a “fresh eye approach”). However, there was no systematic procedure in place for the management or review of unsolved homicide cases.<sup>613</sup> It appears that, subject to what is said below, this continued until the establishment of the UHT in 2004.
- 8.349. Between 1997 and 2001, if an investigation into an unsolved homicide or suspicious death failed to identify a suspect—or if a suspect was identified but there was insufficient evidence to charge someone—the investigation would remain with the investigative team at the Patrol in which it occurred, unless the Major Crime Squad was leading the investigation, in which case it would remain with that Squad.<sup>614</sup>

<sup>610</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023 [16] (NPL.9000.0019.0001); Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [70] (NPL.9000.0006.0001).

<sup>611</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [26]–[27] (NPL.9000.0019.0001).

<sup>612</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [70] (NPL.9000.0006.0001).

<sup>613</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [26]–[27] (NPL.9000.0019.0001).

<sup>614</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [27] (NPL.9000.0019.0001).



- 8.350. Detective Chief Inspector Laidlaw was not aware of any unsolved homicides or suspicious deaths which were reviewed in the 1997–2001 period. In his view, this was because the resources available at that time did not allow the Homicide Squad to undertake reviews or reinvestigations. He said that if matters were reviewed, it would have been an informal process undertaken by the Patrol or Command responsible for the original investigation.<sup>615</sup>
- 8.351. Detective Chief Inspector Laidlaw was not aware of any systematic process or procedure for the review of unsolved homicides before 2004.<sup>616</sup> He said that, prior to 2004, a file would remain with the original team that had investigated the incident.<sup>617</sup> He was not aware of matters being reviewed or reinvestigated before 2004, but said that it is possible that this would not have come to his attention.<sup>618</sup>
- 8.352. Upon its creation in 2004 the UHT was only a “review mechanism” and there was no investigative arm.<sup>619</sup> Detective Superintendent Doherty gave evidence that “[s]ince its inception, the UHT remains a core component of the Homicide Squad.”<sup>620</sup>
- 8.353. UHT detectives do not receive specific training beyond what is required in order to join the Homicide Squad.<sup>621</sup> Detective Chief Inspector Laidlaw said in his oral evidence that he did not consider that there were particular skills which are recognised to be important for dealing with unsolved homicides that require special development.<sup>622</sup>
- 8.354. Detective Chief Inspector Laidlaw said that having an open mind is the first and foremost important skill for a detective in the UHT, and that “you have to be inquisitive, an inquisitive nature, and ask questions ... And you certainly have to have a passion for what you do, and commitment.”<sup>623</sup> He confirmed that these are important skills for any homicide detective or any police officer. Detective Chief Inspector Laidlaw did not identify any skills that he would recognise as particularly important specifically for the role of an unsolved homicide detective.<sup>624</sup>

<sup>615</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [31] (NPL.9000.0019.0001).

<sup>616</sup> Transcript of the Inquiry, 6 July 2023, T5104.31-34 (TRA.00074.00001).

<sup>617</sup> Transcript of the Inquiry, 6 July 2023, T5104.44-5105.6 (TRA.00074.00001).

<sup>618</sup> Transcript of the Inquiry, 6 July 2023, T5105.8-14 (TRA.00074.00001).

<sup>619</sup> Transcript of the Inquiry, 6 July 2023, T5104.14-20 (TRA.00074.00001).

<sup>620</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [70] (NPL.9000.0006.0001).

<sup>621</sup> Transcript of the Inquiry, 6 July 2023, T5106.47-5107.3 (TRA.00074.00001).

<sup>622</sup> Transcript of the Inquiry, 6 July 2023, T5107.5-19, T5107.36-5108.5 (TRA.00074.00001).

<sup>623</sup> Transcript of the Inquiry, 6 July 2023, T5107.23-30 (TRA.00074.00001).

<sup>624</sup> Transcript of the Inquiry, 6 July 2023, T5107.36-5108.5 (TRA.00074.00001).

- 8.355. In 2008, the investigative teams included a metropolitan unit as well as three smaller regional units, which were each comprised of four investigators. The regional units investigated unsolved homicide cases within those regional areas.<sup>625</sup> UHT SOPs from June 2009 are in evidence before the Inquiry.<sup>626</sup> In around 2012, the UHT's parameters were expanded to include pre-1970 and post-2001 homicide cases.<sup>627</sup>
- 8.356. In 2013, a review of the UHT was undertaken by senior management within the NSWPF. A recommendation was made to centralise the UHT to the metropolitan office of the UHT. The restructure was approved by Senior Executive in 2015, with the effect that there are now four investigative teams and one review team.<sup>628</sup>

### Structure and operation of the UHT

- 8.357. At the time of this Inquiry, the UHT comprises 38 personnel organised into one "Review Team" (**Review Team**) and four "Investigation Teams" (**Investigation Team**).<sup>629</sup> There are two intelligence analysts attached to the UHT, and the teams are managed by three Investigation Coordinators accountable to the Commander of the Homicide Squad (presently Detective Superintendent Doherty).<sup>630</sup>
- 8.358. The aim of the UHT is to monitor the status of, review, prioritise and reinvestigate historical unsolved homicides and suspicious missing persons cases.<sup>631</sup> As noted above, at its inception the UHT did not have an investigative function or capacity. That capacity was introduced in around 2008.<sup>632</sup>
- 8.359. The UHT presently operates in accordance with SOPs published in 2022 and most recently reviewed in 2023 (**UHT SOPs**).<sup>633</sup> According to the UHT SOPs, a "cold case" is:<sup>634</sup>

*...generally an unsolved homicide or suspicious missing person where an offender is undetected, typically for a period of some years. These cases can be inactive due to a lack of information to advance it to an active case. An unsolved case would normally remain open but in active for five years or more.*

*One of the key factors in triggering an open inactive unsolved case to an open active case, is advances in forensic technology, witness coming forward, investigative opportunities develop with persons of interest.*

<sup>625</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [80] (NPL.9000.0006.0001).

<sup>626</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [81] (NPL.9000.0006.0001).

<sup>627</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [83] (NPL.9000.0006.0001); Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [66] (NPL.9000.0019.0001).

<sup>628</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [84]–[85] (NPL.9000.0019.0001).

<sup>629</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 5 (NPL.0100.0003.0793).

<sup>630</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [36]–[37] (NPL.9000.0019.0001).

<sup>631</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [21] (NPL.9000.0019.0001).

<sup>632</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [23] (NPL.9000.0019.0001).

<sup>633</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 4 (NPL.0100.0003.0793); Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [86]–[88] (NPL.9000.0006.0001).

<sup>634</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 4 (NPL.0100.0003.0793).

*There is a great deal of sensitivity surrounding the activation of unsolved cases, particularly for the victim's family and friends but also within communities.*

- 8.360. The UHT SOPs identify that “[o]ne of the most significant challenges for the UHT is determining which unsolved case is reviewed and determined a priority to reinvestigate amongst the hundreds of cases recorded.”<sup>635</sup> The UHT SOPs explain that:<sup>636</sup>

*Each case is subject to a triage process which is incorporated in the overall review process. It is recognised that several critical aspects will impact on the ability to successfully investigate an unsolved case. It is for those reasons each case is prioritised against several considerations including Forensic Opportunities, Key Witness Availability, Suspect Availability, Investigative Opportunities, Locating Relevant Exhibits and Documentation and Community Impact.*

- 8.361. In his oral evidence, Detective Chief Inspector Laidlaw gave evidence that the practice in the UHT is, at least in some respects, not consistent with the 2022 SOPs; for example, UHT team members may contact witnesses during the review process, despite the 2022 SOPs providing that no witness is to be contacted as part of the review.<sup>637</sup>
- 8.362. Counsel Assisting submitted that it would be appropriate for steps to be taken to ensure that the practice of the UHT is consistent with the SOPs, or that the SOPs are amended to reflect the actual practice of the UHT.
- 8.363. The NSWPF noted in submissions that SOPs are regularly reviewed to ensure consistency with proper practice. It is accepted by the NSWPF that “it is appropriate to be given to further reviewing those SOPs to ensure that they accurately reflect the full range of accepted practices within the UHT.”<sup>638</sup>
- 8.364. The UHT is responsible for monitoring, reviewing and reinvestigating cases in circumstances where:<sup>639</sup>
- a. A case has been to an inquest and is referred by the Coroner to the UHT;
  - b. A case is one of selected historical homicides or suspicious missing cases where an investigation has led to an “open” finding;
  - c. A case has led to a charge of murder but the alleged offender was acquitted (other than on the basis of mental illness or self-defence); or
  - d. A direction has been made by the Commander of the Homicide Squad.

<sup>635</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 4-5 (NPL.0100.0003.0793).

<sup>636</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 4-5 (NPL.0100.0003.0793).

<sup>637</sup> Transcript of the Inquiry, 6 July 2023, T5155.39-5156.14 (TRA.00074.00001).

<sup>638</sup> Submissions of NSWPF, 10 October 2023, [13] (SCOI.86127).

<sup>639</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 6 (NPL.0100.0003.0793).

- 8.365. The 2022 UHT SOPs state that the UHT is not responsible for the reinvestigation of cases that have not been the subject of an inquest or that are “current, incomplete or insufficient”, although they may assist investigators in a consultative capacity.<sup>640</sup> Notwithstanding the SOPs, there are cases the Inquiry is aware of (such as that of James Meek), where the matter appears to have come to the attention of the UHT notwithstanding the fact that no inquest was held. This may have occurred because there was a criminal trial.
- 8.366. Against the possibility that there is no process for ensuring suspected homicides that have not proceeded to an inquest are referred to the UHT, Counsel Assisting initially submitted that consideration should be given to a recommendation that an audit be undertaken to ensure that any matters in this category are drawn to the attention of the UHT (and, if appropriate, consideration be given to the appropriateness of an inquest in relation to them). Following submissions from the NSWPF and reply submissions from Counsel Assisting, I have been persuaded to make a recommendation in different terms. I have dealt with that proposed recommendation below.

### The UHT Tracking File

- 8.367. The UHT maintains the UHT Tracking File. The UHT Tracking File is a spreadsheet which contains information concerning cases referred to the UHT. A version of the UHT Tracking File capturing all cases falling within the period from 1970–2010 was produced by the NSWPF to the Inquiry. Consequently, the Inquiry does not have before it the current or “live” version of the UHT Tracking File. Rather, it has before it a point-in-time extract from the UHT Tracking File.
- 8.368. The UHT Tracking File was first created upon the establishment of the UHT in 2004.<sup>641</sup> The process of identifying and recording available exhibits for matters entered into the UHT Tracking File at its inception occurred during the initial review process between 2004 and 2008.<sup>642</sup>
- 8.369. Detective Chief Inspector Laidlaw described it as a record management system rather than an investigation management system.<sup>643</sup> In his statement, Detective Chief Inspector Laidlaw said that since the inception of the UHT Tracking File there have been improvements in the amount of detail it captures in relation to each investigation.<sup>644</sup>

<sup>640</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 6 (NPL.0100.0003.0793).

<sup>641</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [57] (NPL.9000.0019.0001).

<sup>642</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [103] (NPL.9000.0019.0001).

<sup>643</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [72] (NPL.9000.0019.0001).

<sup>644</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [73]–[74] (NPL.9000.0019.0001).

- 8.370. The UHT Tracking File is now primarily updated in the context of coronial recommendations, where the Coroner has made a recommendation that an investigation or a suspicious missing persons case be referred to the UHT for monitoring or further investigation. In addition, unsolved matters may be referred for consideration or review where those cases have been retained by police stations and are yet to go before the Coroner.<sup>645</sup> In this regard, as canvassed above, the 2022 SOPs provide that the UHT does not deal with matters where there has not been an inquest.
- 8.371. The UHT receives information daily from a range of sources. If information is considered to be significant, the Investigations Coordinator is advised, and the information is disseminated to the OIC of any existing investigation.<sup>646</sup> The information is then recorded in a “case management shell”. Between 1970 and 2000, this shell was called “Strike Force Palace” (**SF Palace**). As of 2001, this shell has been referred to as “Strike Force Palace 2” (**SF Palace II**).<sup>647</sup>
- 8.372. SF Palace and SF Palace II do not involve reinvestigation of unsolved matters, rather they “allow the creation of the associated investigation files on e@gle.i to enable the electronic recording of any information pertaining to the investigation and any documentation associated with any triage or review.”<sup>648</sup>
- 8.373. Detective Chief Inspector Laidlaw explained in his statement that:<sup>649</sup>
- ...in the context of performing the triage process, the Review Team will identify any available documentation, exhibits or evidence in connection with an investigation and input that data into e@gle.i so it is available for the ultimate reviewer of the file. This is particularly necessary where documentation and exhibits pertaining to older investigations have not been captured or input into the current systems because those investigations pre-date the electronic investigation management systems used by the NSWPF, (formerly Taskforce Information Management System (TIMS) and now e@gle.i).*
- 8.374. The UHT’s cases are categorised as “undetected” (where nobody has been detected and charged), “unresolved” (where a person has been charged and acquitted other than by reason of self-defence or mental illness, or where proceedings have not finalised and an arrest warrant for the alleged perpetrator exists), “undeterminable” (where a Coroner is unable to determine a person died of homicide and/or is unable to find that a missing person is deceased), and “solved” (where a person has been detected and charged and the prosecution has been successful).<sup>650</sup>

<sup>645</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [67]–[69] (NPL.9000.0019.0001).

<sup>646</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 7 (NPL.0100.0003.0793).

<sup>647</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 7 (NPL.0100.0003.0793).

<sup>648</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [76] (NPL.9000.0019.0001).

<sup>649</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [76] (NPL.9000.0019.0001).

<sup>650</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 6 (NPL.0100.0003.0793). Detective Chief Inspector Laidlaw’s oral evidence on this topic is at Transcript of the Inquiry, 6 July 2023, T5120.3-5123.36 (TRA.00074.00001).

- 8.375. Detective Chief Inspector Laidlaw gave evidence in his statement of 13 June 2023 that, at that time, there were 829 matters listed in the UHT Tracking File divided as follows:<sup>651</sup>
- a. 442 matters categorised as “undetected”;
  - b. 139 matters categorised as “undetermined”;
  - c. 132 matters categorised as “unresolved”;
  - d. 92 matters characterised as “solved”; and
  - e. 24 matters categorised as “not homicide”.
- 8.376. I refer to these figures below, and to slightly different figures received during the Investigative Practices Hearing, in the context of the UHT Tracking File Aide Memoire.<sup>652</sup>
- 8.377. The “undetected” and “undetermined” categories were created in around 2018; matters now in these categories were previously categorised as “unsolved”.<sup>653</sup> The categories in the file are not fixed and may change if further information or evidence comes to light.<sup>654</sup> Detective Chief Inspector Laidlaw gave evidence that while the 2022 UHT SOPs refer to “undeterminable” rather than “undetermined” matters, his understanding is that these terms mean the same thing.<sup>655</sup>
- 8.378. Once a review is completed, if a matter is to be reinvestigated then management of the reinvestigation becomes the responsibility of the OIC. If reinvestigation is not possible, then the matter will remain with the Review Team for monitoring.<sup>656</sup>
- 8.379. All cases on the UHT Tracking File are monitored for further intelligence and information.<sup>657</sup> The two intelligence officers assigned to the UHT monitor intelligence reports received by the NSWPF and assess whether information received is relevant to a matter on the UHT Tracking file.<sup>658</sup> If relevant information is identified, then it is added to the UHT Tracking File and the intelligence officers contact the Investigation Coordinators and Team Leaders to discuss the potential impact of the information on current categorisation and/or priority assigned to a case.<sup>659</sup> Any DNA or fingerprint matches recorded by FASS or FETS will be notified to the UHT.<sup>660</sup>

<sup>651</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [77] (NPL.9000.0019.0001).

<sup>652</sup> Exhibit 54, UHT Tracking File Aide Memoire, Undated (SCOI.84314).

<sup>653</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [78] (NPL.9000.0019.0001).

<sup>654</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [79] (NPL.9000.0019.0001).

<sup>655</sup> Transcript of the Inquiry, 6 July 2023, T5123.6-28. (TRA.00074.00001).

<sup>656</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [80] (NPL.9000.0019.0001).

<sup>657</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [140] (NPL.9000.0019.0001).

<sup>658</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [141] (NPL.9000.0019.0001).

<sup>659</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [142] (NPL.9000.0019.0001).

<sup>660</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [43] (NPL.9000.0019.0001).

8.380. In response to questions from Senior Counsel Assisting, Detective Chief Inspector Laidlaw said it was not the case that there was a specific person responsible for administering the UHT Tracking File. He said that the only people who had access were the three Investigation Coordinators, the Team Leaders within the Review Team, and the two Detective Senior Constables, together with two intelligence staff.<sup>661</sup>

### The Review and Investigation Teams

8.381. The Review Team comprises two Detective Sergeants and two Detective Senior Constable investigators. They are assisted by two Intelligence Analysts. The main roles of the Review Team are information management and maintaining the “triage” and “review” process.<sup>662</sup>

8.382. An investigator can apply to join the UHT without having previously served on the Homicide Squad. However, they must have successfully completed training to be designated as a detective within the NSWPF.<sup>663</sup> In his evidence, Detective Chief Inspector Laidlaw set out the training that a person would need to undergo in order to become a detective, and that is also a matter dealt with above.<sup>664</sup>

8.383. Once assigned to the UHT, a person is required to undertake the HIC, although Detective Chief Inspector Laidlaw observed that in his experience most officers assigned to the Homicide Squad, and to the UHT, have already undertaken the HIC.<sup>665</sup> Detective Chief Inspector Laidlaw gives the following evidence concerning additional training:<sup>666</sup>

*Based on my experience as an officer within the Homicide Squad, there is no specific training provided to investigators within the UHT, outside the training and major criminal investigations experience required of any officer to enable them to join the Homicide Squad. Based on my experience working as an officer within the Homicide Squad and the UHT, I believe that the experience and training required of all officers prior to joining the Homicide Squad makes them well equipped to perform the roles and responsibilities of an officer serving within the UHT.*

8.384. Detective Chief Inspector Laidlaw’s evidence is that, like the Homicide Squad, the UHT is a highly sought after squad within the NSWPF.<sup>667</sup>

<sup>661</sup> Transcript of the Inquiry, 6 July 2023, T5120.34-46. (TRA.00074.00001).

<sup>662</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 7 (NPL.0100.0003.0793).

<sup>663</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [42] (NPL.9000.0019.0001).

<sup>664</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [42]–[46] (NPL.9000.0019.0001).

<sup>665</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [46] (NPL.9000.0019.0001).

<sup>666</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [47] (NPL.9000.0019.0001).

<sup>667</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [48] (NPL.9000.0019.0001).

## The triage and review process

- 8.385. The triage and review process utilised by the UHT was the subject of evidence from Detective Chief Inspector Laidlaw both in his statement and orally.
- 8.386. There are some submissions by both Counsel Assisting and the NSWPF which it is convenient to deal with as I move through the evidence concerning the triage and review process.
- 8.387. Counsel Assisting submitted that became clear during Detective Chief Inspector Laidlaw's evidence that there was a disjunct between the theoretical operation of the UHT, as set out in his statement, and the practical operation of the UHT, as emerged during his evidence. I accept that Counsel Assisting were not seeking to suggest that Detective Chief Inspector Laidlaw was not candid in his evidence, either in writing or orally.<sup>668</sup> In my assessment, Detective Chief Inspector Laidlaw was a candid witness.
- 8.388. As Counsel Assisting point out, it became apparent from documents produced to the Inquiry following the first tranche of public hearings concerning investigative practices that no reviews occurred between 2013 and 2017 due to a lack of resources. I accept that this is a significant departure from the planned operation of the UHT. It is not a matter that Detective Chief Inspector Laidlaw referred to in his statement but I acknowledge, as identified by Counsel Assisting and emphasised by the NSWPF, that he was not in a leadership role in the UHT during that period, and was not a member of the UHT at all until 2017.
- 8.389. The NSWPF observed in their written submissions that there were "very significant impositions" on the resources of the UHT during the period from 2013 to 2017. In a more general sense, the NSWPF also noted that it is regularly necessary for resources within the UHT to be redirected to assist the Homicide Squad in the investigation of critical incidents.<sup>669</sup> In light of the finite resources of the NSWPF, the NSWPF submitted that it was "neither surprising, nor inappropriate, that active investigations in relation to recent deaths will, on occasion, take priority over the review and/or reinvestigation of historical deaths".<sup>670</sup> The NSWPF further noted that the resourcing of the UHT may be effected by the timetabling requirements of court proceedings or coronial inquests, over which it has no control.<sup>671</sup>

<sup>668</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [90] (SCOI.86354).

<sup>669</sup> Submissions of NSWPF, 10 October 2023, [78] (SCOI.86127).

<sup>670</sup> Submissions of NSWPF, 10 October 2023, [79]–[82] (SCOI.86127).

<sup>671</sup> Submissions of NSWPF, 10 October 2023, [83] (SCOI.86127).



- 8.390. I accept these submissions of the NSWPF, and acknowledge that there are many demands on the UHT. At times, unsolved cases will be deprioritised to meet other demands. My concerns about aspects of the operation of the UHT are canvassed below. While I do not comment on resource allocation, I do make observations about concerns I have that, where resources *have* been allocated to the UHT, those resources appear not to have been used effectively.

### The screening process prior to 2018

- 8.391. Detective Chief Inspector Laidlaw explained in his statement that prior to 2018, when the present triage process was introduced, cases were screened by a reviewing officer, and the reviewing officer would complete a case screening form. This would be subject to “quality assurance” by the UHT investigation coordinators.<sup>672</sup>
- 8.392. Each case was given a priority rating of “nil”, “low”, “medium” or “high”, and matters rated “low”, “medium” or “high” were referred to Investigation Support within the SCC, which would allocate the matters for reinvestigation.<sup>673</sup> Cases rated “nil” priority would progress to an independent review panel where a case would either be returned for further review, closed or suspended.<sup>674</sup> The case screening process was not to involve investigation.<sup>675</sup>
- 8.393. The SOPs of the UHT dated 17 March 2006 (**2006 UHT SOPs**) explain that:<sup>676</sup>

*It is probable that a large number of cases requiring further investigation will be identified and that these cases will have varying likelihood of being solved. The prioritisation process is based on the premise that cases with the greatest likelihood of success receive the highest priority for resources. It is also concerned with identifying cases that should be suspended due to there being no realistic prospect of resolution.*

- 8.394. In relation to the tracking of unsolved homicides, the 2006 UHT SOPs explain that:<sup>677</sup>

*The Unsolved Homicide Unit has the responsibility of maintaining the list of unsolved homicides and tracking the status of each. At the time the Unsolved Homicide Unit commenced (1 March 2004) the list contained 366 unsolved homicides for the period 1970 to 2000. 12 of these cases were double homicides and two triple homicides, making a total of 350 unsolved cases. An additional 36 cases have been identified that may require inclusion in the unsolved homicide list.*

<sup>672</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [119] (NPL.9000.0019.0001).

<sup>673</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [81] (NPL.9000.0019.0001).

<sup>674</sup> Exhibit 51, Tab 1L, UHT SOPs, 17 March 2006, 16–17 (NPL.0100.0003.0771).

<sup>675</sup> Exhibit 51, Tab 1N, UHT Metropolitan Country Regions SOPs, June 2009, 5 (NPL.0100.0003.0808); Exhibit 51, Tab 1L, UHT SOPs, 17 March 2006, 5, (NPL.0100.0003.0771).

<sup>676</sup> Exhibit 51, Tab 1L, UHT SOPs, 17 March 2006, 9 (NPL.0100.0003.0771).

<sup>677</sup> Exhibit 51, Tab 1L, UHT SOPs, 17 March 2006, 19–20 (NPL.0100.0003.0771).

*In addition to the 1970-2000 homicides there are still a number of high profile cases from the 1960's (such as the Bogle/Chandler and Wanda Beach murders). In some cases the offender is likely to still be alive. Cases for years after 2000 will be added to the unsolved homicide list on an annual basis (i.e. 2001 cases will be added to the unsolved homicide list in 2005 etc). Other cases will come into the list on an irregular basis, such as when a prosecution ends with an acquittal or a 'no bill' by the DPP or when an on-going investigation ends without the case being solved. All new cases entering the unsolved list will be subjected to case screening.*

*The case screening process will form the basis of prioritising cases for investigation. Some cases will inevitably return to the unsolved homicide list after they have been further investigated. These cases will need to be reviewed via the case screening process on a regular basis. At present, it is suggested that each case returning to the unsolved homicide list be reviewed every three to five years.*

*The Unsolved Homicide Review Unit will list all cases on a database/tracking system and collate the completed case screening forms.*

*The Unsolved Homicide List will be continuously updated to indicate the status and priority of each case (e.g. undergoing case screening; currently being investigated; to be further screened in 2006 etc).*

- 8.395. The 2009 UHT SOPs essentially replicate the process set out in the 2006 UHT SOPs. Detective Chief Inspector Laidlaw was unable to give evidence, beyond what was contained in the 2006 and 2009 UHT SOPs, about what triggered screening of a matter between 2009 and 2017 (the period 2004–2008 being taken up with the initial screening process after the creation of the UHT).<sup>678</sup>
- 8.396. Prior to 2016, any exhibits listed in the UHT Tracking File would be retained by the Command where the incident took place, stored in that Command's Exhibit Room, and managed in accordance with the usual processes for storage, management and auditing of exhibits.<sup>679</sup>
- 8.397. In around August 2016, as set out above, a project was commenced consistent with the recommendations in the Lehmann Report to locate and identify exhibits relating to unsolved homicide investigations, record them within EFIMS and e@gle.i and store them at the Metropolitan Exhibit and Property Centre (**MEPC**).<sup>680</sup>

<sup>678</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [92]–[93] (NPL.9000.0019.0001).

<sup>679</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [105] (NPL.9000.0019.0001).

<sup>680</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [106] (NPL.9000.0019.0001).

## Current review process

- 8.398. At the time of this Inquiry, there are four stages of the current triage and review process. Detective Chief Inspector Laidlaw explained:<sup>681</sup>

*I understand the triage process was implemented in response to a restructure of how reviews of unsolved homicides and suspicious missing persons cases were managed within the NSWPF. What was originally only a one stage review process was split into two stages. The first stage is a triaging process performed and managed by the UHT Review Team. The second stage is a review, which I explain in more detail below at paragraphs 111 to 128.*

*Where a case has been referred to the UHT by the Coroner, that matter will not be triaged or reviewed by the UHT ...in most cases, unless new evidence or information is uncovered which would justify an immediate triage process. The justification for this five-year period is that all available evidence would have been reviewed and considered by the Coroner at the time of the Inquest. The five-year period allows for the passage of time to take effect, which allows for new or fresh information to be identified or new evidence to be obtained through improved forensic technologies or investigative methodologies, which may be used to progress the investigation.*

### FIRST STAGE: TRIAGE

- 8.399. The first stage of the current triage and review process is a triage conducted by the UHT Review Team. The triage determines whether or not a matter should be progressed to review.<sup>682</sup> The triage involves review of an unsolved homicide using a standard review form.<sup>683</sup> When a case is referred to the UHT from the Coroner it will not ordinarily be triaged or reviewed for five years unless fresh information or evidence is received in the interim which requires immediate attention.<sup>684</sup>
- 8.400. Detective Chief Inspector Laidlaw described the triage as “essentially an initial review of the file.”<sup>685</sup> The template triage form is in evidence before the Inquiry.<sup>686</sup> The process of identifying and collecting any available exhibits also occurs during the triage process, and “the Review Team will consider and assess the availability or viability of any exhibits (for instance, if the records demonstrate those exhibits may have been degraded or destroyed).”<sup>687</sup>

<sup>681</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [83]–[84] (NPL.9000.0019.0001).

<sup>682</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 8 (NPL.0100.0003.0793).

<sup>683</sup> Exhibit 51, Tab 6E, Template Triage Form, Undated (NPL.0100.0018.0008).

<sup>684</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 8 (NPL.0100.0003.0793).

<sup>685</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [86] (NPL.9000.0019.0001).

<sup>686</sup> Exhibit 51, Tab 6E, Template Triage Form, Undated (NPL.0100.0018.0008).

<sup>687</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [87] (NPL.9000.0019.0001).

- 8.401. The triage process can take weeks or months to complete, dependent on factors such as the time taken to locate exhibits and the amount of information requiring input into electronic systems.<sup>688</sup> Once the triage form is complete it is provided to Detective Chief Inspector Laidlaw for review.<sup>689</sup>
- 8.402. Detective Chief Inspector Laidlaw disclosed in the course of his oral evidence that there are presently 19 triage documents which have been waiting for his review for the last 12 months. He gave evidence that he had not reviewed these triages because there were matters (other than any assistance provided in relation to the Inquiry) that had taken the majority of his time. At one point, Detective Chief Inspector Laidlaw suggested that he had not prioritised looking at these matters because there are not presently people available who are of sufficient quality to conduct the reviews – “we need the right investigators to look at these reviews”.<sup>690</sup> It is difficult to see how this could provide a justification for Detective Chief Inspector Laidlaw to fail to perform his own function in relation to the triage documents.
- 8.403. Detective Chief Inspector Laidlaw gave evidence that his superiors were not aware, until he gave evidence before the Inquiry, that these 19 triage documents were awaiting his review, and that he had not sought additional resources to undertake this task.<sup>691</sup> However, he said he was aware that at some point prior to December 2019 a request was made for more personnel. He said, “because nothing eventuated, I didn’t follow it up.”<sup>692</sup>
- 8.404. In relation to this matter, the NSWPF in its written submissions directed attention to Detective Chief Inspector Laidlaw’s earlier evidence that there was a problem with a lack of officers available to conduct reviews.<sup>693</sup> I accept that this goes some way to explain the prioritisation of other matters. However, as the NSWPF accepts, this does not provide a justification for triages not being progressed in a timely manner.<sup>694</sup>
- 8.405. In around 2018, cases from 2014 onwards were prioritised for triaging because it was thought that it was more likely that information and documentation would be recorded on e@gle.i and that the triage could therefore be completed more efficiently.<sup>695</sup>

<sup>688</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [88] (NPL.9000.0019.0001).

<sup>689</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [89] (NPL.9000.0019.0001).

<sup>690</sup> Transcript of the Inquiry, 7 July 2023, T5189.45-5190.47 (TRA.00075.00001).

<sup>691</sup> Transcript of the Inquiry, 7 July 2023, T5191.30-46 (TRA.00075.00001).

<sup>692</sup> Transcript of the Inquiry, 7 July 2023, T5192.4-5193.42 (TRA.00075.00001).

<sup>693</sup> Submissions of NSWPF, 10 October 2023, [86] (SCOI.86127).

<sup>694</sup> Submissions of NSWPF, 10 October 2023, [86] (SCOI.86127).

<sup>695</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [95]–[96] (NPL.9000.0019.0001).

8.406. Prioritisation of matters for triage commences with officers in the Review Team identifying matters categorised as “undetected”.<sup>696</sup> These cases are triaged before other cases (specifically, before “undetermined” cases) because they are perceived to represent a more significant opportunity for reinvestigation.

8.407. As a general rule, the oldest cases categorised as “undetected” are generally selected as a priority for triage.<sup>697</sup> Detective Chief Inspector Laidlaw explains:<sup>698</sup>

*... While it is still the case that more recent matters on the UHT Tracking File may present a greater opportunity for investigation (given the availability of records and witnesses), given the limited resources available within the UHT Review Team to conduct this triage process and the time each triage takes to complete, this change in process was seen as necessary by the UHT senior management team to ensure the oldest cases on the tracking file were triaged before, for example, witnesses passed away or investigative opportunities for some reason became unavailable due to the passage of time.*

*That said, there are circumstances where new information or intelligence may come to light which warrants another case on the UHT Tracking File taking priority, as it represents a better opportunity for reinvestigation based on that new information. The process of prioritising another matter on the Tracking File to ensure it is triaged ahead of other cases in these circumstances is managed by me in consultation with the Review Team and the other Investigation Coordinators in the UHT. I would assess the new information or intelligence relevant to the matter and would allocate it to one of the Review Team members for triage.*

8.408. While the intention is that all cases in the UHT Tracking File will be triaged by the Review Team, “the prioritisation and triaging of these cases is necessarily dependent on the resources available to the Review Team and the UHT more generally, and the availability of qualified officers to undertake those triages.”<sup>699</sup> If the triage process identifies that there is no realistic prospect of further investigation progressing the matter, then a matter will not proceed to review. This type of case will remain on the UHT Tracking File for monitoring.<sup>700</sup>

<sup>696</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [99] (NPL.9000.0019.0001).

<sup>697</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [98]–[99] (NPL.9000.0019.0001).

<sup>698</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [99]–[100] (NPL.9000.0019.0001).

<sup>699</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [101] (NPL.9000.0019.0001).

<sup>700</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [90] (NPL.9000.0019.0001).

## SECOND STAGE: REVIEW

- 8.409. The second stage of the review process is a “more detailed paper/desktop review of the investigation file”, and does not involve any reinvestigation.<sup>701</sup> If a case is allocated for review, it is provided to an investigator in one of the Investigation Teams who will undertake a range of steps including retrieving the case file and existing briefs of evidence, obtaining court transcripts, identifying and locating existing exhibits, recovering COPS reports, and ascertaining all known suspects, persons of interest and witnesses.
- 8.410. The 2022 UHT SOPs state that an investigator is not to contact any suspects or witnesses, and is not to contact the next of kin or family of the deceased person, but will complete a *pro forma* case screening report.<sup>702</sup> However, in practice, contact with suspects and/or witnesses may occur with the consent of the reviewing officer’s superior officer.<sup>703</sup>
- 8.411. As noted above, in 2018, the one stage review process was split into the two stage triage and review process now in place.<sup>704</sup> At that time, a decision was made by senior management within the NSWPF to assign reviews outside the UHT to other squads within the SCC, together with Detectives Offices within PACs and Patrols. By 2021, it was identified that a large number of these reviews had not been completed, and the UHT requested the return of all uncompleted reviews.<sup>705</sup>
- 8.412. Once a matter is allocated for review following the triage process, the priority of matters listed for review will depend on the information available in connection with the investigation and which cases represent the best opportunity for reinvestigation. The process of prioritising and allocating cases for review involves consultation between Detective Chief Inspector Laidlaw and the Investigation Coordinators. Detective Chief Inspector Laidlaw said in his statement that at any given time each UHT investigator will be allocated one review to be conducted in conjunction with any reinvestigations they are conducting.<sup>706</sup>

<sup>701</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [111] (NPL.9000.0019.0001).

<sup>702</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 8–9 (NPL.0100.0003.0793).

<sup>703</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [118] (NPL.9000.0019.0001).

<sup>704</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [112]–[113] (NPL.9000.0019.0001).

<sup>705</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [114]–[116] (NPL.9000.0019.0001).

<sup>706</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [128] (NPL.9000.0019.0001).

### THIRD STAGE: SOLVABILITY ASSESSMENT

- 8.413. Thirdly, following completion of the review report, the UHT management team consults with the reviewing officer and the UHT Review Team leader to complete a “solvability assessment” and to give a priority rating to cases for consideration for future reinvestigation. This is done using a *pro forma* case solvability assessment form, which is a matrix document that uses scores based on the findings from the review report. An aggregate ratings score determines the priority to be given to the unsolved case compared to other unsolved cases.<sup>707</sup> If new information is received, the UHT management team will redetermine the solvability assessment and adjust the priority.<sup>708</sup>
- 8.414. The solvability assessment is not the only matter that is relevant to the determination of priority. There are other factors relevant to priority, including the existence of fresh and compelling evidence which might warrant an application under the *Crimes (Appeal and Review) Act 2001 (CAR Act)*, the victim being a child or an elderly or vulnerable person, or the victim having been sexually assaulted.<sup>709</sup> The time taken to complete a review will vary significantly depending on the size of the investigation and what is encompassed in the review of the matter.<sup>710</sup>

### FOURTH STAGE: UHT REVIEW COMMITTEE

- 8.415. Fourthly, once the review report and the solvability assessment have been completed, the UHT Review Committee “will determine the quality assurance of the review and priority rating”.<sup>711</sup> The UHT Review Committee then considers whether a case should be reinvestigated, including by assigning a priority rating.<sup>712</sup> The ultimate decision concerning reinvestigation rests with the UHT Investigation Coordinators and needs to be endorsed by the Commander of the Homicide Squad.<sup>713</sup> If a decision is made that a case should be reinvestigated, it is allocated to an Investigation Team.<sup>714</sup>
- 8.416. Cases where further investigative opportunities have been identified will be allocated to the UHT Investigation Teams for reinvestigation, with priority determined by the priority rating given by the UHT Review Committee.<sup>715</sup> Cases given a priority rating of zero will not be recommended for reinvestigation on the basis that there are no further investigative opportunities. Those cases remain on the UHT Tracking File for monitoring by the Review Team, and will be reassessed if new information or evidence comes to light, or if new forensic technology comes into existence.<sup>716</sup>

<sup>707</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 8–9 (NPL.0100.0003.0793).

<sup>708</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 9 (NPL.0100.0003.0793).

<sup>709</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 10 (NPL.0100.0003.0793).

<sup>710</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [122] (NPL.9000.0019.0001).

<sup>711</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 11 (NPL.0100.0003.0793).

<sup>712</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector David Laidlaw, 13 June 2023, [120]–[121] (NPL.9000.0019.0001).

<sup>713</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 11 (NPL.0100.0003.0793).

<sup>714</sup> Exhibit 51, Tab 6A, produced at Exhibit 51, Tab 1M, UHT SOPS (Version 2.0), 2022, 11 (NPL.0100.0003.0793).

<sup>715</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [122] (NPL.9000.0019.0001).

<sup>716</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [124] (NPL.9000.0019.0001).

- 8.417. If a case is opened for reinvestigation it is assigned to one of the UHT Investigation Teams, and the Team Leader will commence a SCC Strike Force for the investigation.<sup>717</sup> Ordinarily, the officer responsible for conducting the review will be appointed as the OIC of the reinvestigation. Investigative plans are developed in consultation with the Investigation Coordinator within the UHT, and others in the UHT Investigation or Review Teams.<sup>718</sup> The UHT has access to all the strategies, technologies and opportunities that are available to the Homicide Squad.<sup>719</sup>
- 8.418. The UHT Review Committee is generally convened every three to six months and will consider all completed review reports, which is ordinarily five to ten.<sup>720</sup>

### General issues arising in relation to screening or triage forms

- 8.419. It is also appropriate for me to deal, in this section, with some general issues arising in relation to screening, triage and review forms. Issues arising in particular matters are dealt with in the context of those matters.
- 8.420. The Inquiry has before it screening, triage or review forms in a number of matters that identify lines of inquiry where those lines of inquiry were either not implemented or were not implemented for many years, even a decade or more. Senior Counsel Assisting asked Detective Chief Inspector Laidlaw if this was a common occurrence and he said, “I can only say I hope not”. Senior Counsel Assisting asked whether he knew one way or the other and he said he did not.<sup>721</sup>
- 8.421. Senior Counsel Assisting asked Detective Chief Inspector Laidlaw how matters would be dealt with under the 2022 UHT SOPs if the Inquiry identifies further lines of inquiry. Detective Chief Inspector Laidlaw said: “if new information is being gleaned as a result of this Commission, then we are able to assess it and then act upon that.”<sup>722</sup> In relation to the question of how long it would take before the UHT looked at any given case, Detective Chief Inspector Laidlaw said that he could only undertake that it would be done “as soon as possible.” He said he was unable to assist me any further in relation to that issue.<sup>723</sup>
- 8.422. Senior Counsel Assisting drew Detective Chief Inspector Laidlaw’s attention to forms where particular cells or particular parts of the form were incomplete or unpopulated. Detective Chief Inspector Laidlaw agreed that the Inquiry should assume in relation to those forms that the form is incomplete and may never have been completed.<sup>724</sup> Detective Chief Inspector Laidlaw said that

<sup>717</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [129]–[130] (NPL.9000.0019.0001).

<sup>718</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [129]–[134] (NPL.9000.0019.0001).

<sup>719</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [137] (NPL.9000.0019.0001).

<sup>720</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [125] (NPL.9000.0019.0001).

<sup>721</sup> Transcript of the Inquiry, 7 July 2023, T5242.40-5243.3 (TRA.00075.00001).

<sup>722</sup> Transcript of the Inquiry, 7 July 2023, T5243.17-20 (TRA.00075.00001).

<sup>723</sup> Transcript of the Inquiry, 7 July 2023, T5243.22-24; T5243.5-5244.29 (TRA.00075.00001).

<sup>724</sup> Transcript of the Inquiry, 7 July 2023, T5243.31-46 (TRA.00075.00001).



matters identified by the Inquiry would be assessed by the UHT, including in relation to matters currently categorised as “undetermined” or “unresolved”.<sup>725</sup>

- 8.423. The NSWPF submitted that the failure of the UHT to implement recommendations made in screening, triage or review forms was reflective of capacity issues within the UHT.<sup>726</sup> Whilst the NSWPF urged that in assessing the forms, the Inquiry must keep in mind their nature as internal working documents created for triage purposes, the NSWPF acknowledged that there were several review forms which were clearly incomplete.<sup>727</sup>
- 8.424. I accept these submissions, although I observe that the fact that documents are internal working documents does not explain the forms being incomplete, or the use of objectionable language. I acknowledge that the failure to implement investigative recommendations may well have been reflective of capacity issues. The NSWPF has acknowledged that, where this is the case, decisions not to implement investigations due to insufficient capacity should be recorded.<sup>728</sup>

### Case reviews in 2004–2008

- 8.425. The UHT conducted a review of unsolved homicide offences after its establishment in 2004 and identified 366 unsolved homicide offences from the period 1970 to 2000.<sup>729</sup> Detective Superintendent Doherty explained that as there was no information available to prioritise cases for review, the UHT performed a screening of all 366 cases starting with the most recent and working back in time.<sup>730</sup> The SOPs of the UHT dated 17 March 2006 are in evidence before the Inquiry.<sup>731</sup>
- 8.426. Detective Superintendent Doherty’s evidence was that, over the course of the review of the 366 cases, additional cases came to light.<sup>732</sup> Detective Superintendent Doherty said in his statement that, between 2004 and 2008, over 400 unsolved homicide cases from the period 1970–2000 were reviewed, and 201 of those were identified as warranting consideration for reinvestigation.<sup>733</sup> As I explain below, there is some doubt as to the accuracy of these figures.
- 8.427. In response to my questions, Detective Chief Inspector Laidlaw said that while there should be a list of the 201 cases initially identified as warranting consideration for reinvestigation, he was not sure where any such list was.<sup>734</sup> Senior Counsel Assisting asked Detective Chief Inspector Laidlaw whether he could explain what had occurred in relation to the other 199 cases (i.e., 400 minus 201) not identified

<sup>725</sup> Transcript of the Inquiry, 7 July 2023, T5244.42-46 (TRA.00075.00001).

<sup>726</sup> Submissions of NSWPF, 10 October 2023, [293] (SCOI.86127).

<sup>727</sup> Submissions of NSWPF, 10 October 2023, [294] (SCOI.86127).

<sup>728</sup> Submissions of NSWPF, 10 October 2023, [461] (SCOI.86127).

<sup>729</sup> Transcript of the Inquiry, 6 July 2023, T5109.25-27 (TRA.00074.00001).

<sup>730</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [71]–[72] (NPL.9000.0006.0001); Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [58]–[62] (NPL.9000.0019.0001).

<sup>731</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [57] (NPL.9000.0006.0001).

<sup>732</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [75] (NPL.9000.0006.0001).

<sup>733</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [76] (NPL.9000.0006.0001).

<sup>734</sup> Transcript of the Inquiry, 6 July 2023, T5110.38-5111.39 (TRA.00074.00001).

as warranting consideration for reinvestigation. He said that he could not, and was not sure whether those cases would remain on the UHT Tracking File or not.<sup>735</sup> This apparent lack of knowledge about aspects of this initial 2004–2008 review is regrettable.

- 8.428. The Inquiry issued a summons to the NSWPF seeking, relevantly, records comprising the source of Detective Superintendent Doherty’s knowledge that 201 cases were identified as warranting reinvestigation, and any records identifying which matters comprised the 366 cases referred to by Detective Superintendent Doherty (NSWPF146). No material was produced in response to this summons.
- 8.429. The “initial screening and quality assurances processes” used by the UHT are set out in the 2006 UHT SOPs. Those processes involved reviewing each case for:<sup>736</sup>
- a. The availability of documents, physical evidence and witnesses;
  - b. Whether there was a viable or available suspect;
  - c. Whether the existence of new technologies could be utilised to further the investigation;
  - d. The passage of time and associated impacts on the investigation; and
  - e. Whether there were any leads or lines of inquiry available.
- 8.430. Detective Superintendent Doherty said in his statement that:<sup>737</sup>

*Each of the above factors was scored and each case assigned a priority (high, low, medium, or nil). Cases assigned a ‘nil’ priority were identified for closure or suspension. Cases in that category would not be further reviewed unless additional information came to light. The remaining 201 cases were assigned a priority of high, medium or low depending on the score they received. Cases in each of these three categories were regarded as at least potentially warranting further investigation.*

*Nine of those 201 cases were re-opened for investigation at the outset. Those cases were reopened because the information received by the UHT review team suggested they were likely to present the best opportunities for successful reinvestigation. It was decided that those cases should be prioritised accordingly and they were assigned to the PAC and Homicide Squad for investigation.*

*However, at the time, there was not sufficient capacity within the Homicide Squad (or elsewhere with the NSWPF) to allocate the remaining 192 cases to a team or teams for reinvestigation. Accordingly, in around 2008, investigative teams were established within the UHT which expanded the*

<sup>735</sup> Transcript of the Inquiry, 6 July 2023, T51110.6-12 (TRA.00074.00001).

<sup>736</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [76] (NPL.9000.0006.0001).

<sup>737</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [77]–[79] (NPL.9000.0006.0001); see also Exhibit 51, Tab 6, Statement of Detective Chief Inspector Laidlaw, 13 June 2023, [64] (NPL.9000.0019.0001).

*remit of the UHT to not only review unsolved homicides or suspicious deaths, but to also conduct re-investigations into cases which were assessed as warranting a further investigation. The investigative capacity and number of units assigned to the UHT significantly increased at this time to the numbers it has today.*

- 8.431. Detective Chief Inspector Laidlaw did not know how those initial nine cases were selected or whether there was a list of those nine cases in existence.<sup>738</sup> Detective Chief Inspector Laidlaw said that during the 2004 to 2008 period “quality control was by the investigation coordinator at the time”.<sup>739</sup>
- 8.432. The NSWPF has not been able to provide a list of the cases warranting consideration for reinvestigation, nor of the nine cases that were reopened for investigation.<sup>740</sup> It is correct that, as is observed by the NSWPF, “[a]dditional information may, of course, have been able to be obtained from the officers who were involved in that initial review.”<sup>741</sup> That is no doubt true, but I do not regard the expectation that the NSWPF would be able to furnish the Inquiry with this information as an unreasonable one. Nor was the Inquiry in a position to know which officers were likely to be able to provide insight into this topic.
- 8.433. In his oral evidence, Detective Chief Inspector Laidlaw said that the cases that were the subject of this initial review should still be on the UHT Tracking File. He said that cases were not taken off the UHT Tracking File, but that he was not aware of any policy prohibiting anything being deleted from the UHT Tracking File. He did not know whether cases had been taken off the UHT Tracking File over the last 20 years, and accepted that this may have happened. He was not aware of any record of any cases that may have been taken off the UHT Tracking File.<sup>742</sup>
- 8.434. Detective Chief Inspector Laidlaw accepted in his oral evidence that the process conducted from 2004 to 2008 was not comprehensive and that only 329 of the 400 cases identified were reviewed in that time. He was unable to explain what had happened to the other 71 matters.<sup>743</sup> In addition, Detective Chief Inspector Laidlaw agreed that a number of cases being considered by the Inquiry, and referred to below, should have been reviewed as part of this initial review and were not. As indicated above, there does not appear to be any complete record of what actually took place as part of this review in 2004 to 2008.

<sup>738</sup> Transcript of the Inquiry, 6 July 2023, T5113.14–29 (TRA.00074.00001).

<sup>739</sup> Transcript of the Inquiry, 6 July 2023, T5111.2–9 (TRA.00074.00001).

<sup>740</sup> Submissions of NSWPF, 10 October 2023, [73] (SCOI.86127).

<sup>741</sup> Submissions of NSWPF, 10 October 2023, [73] (SCOI.86127).

<sup>742</sup> Transcript of the Inquiry, 6 July 2023, T5113.35–5114.26 (TRA.00074.00001).

<sup>743</sup> Transcript of the Inquiry, 6 July 2023, T5129.2–22 (TRA.00074.00001).

8.435. As I observed at the beginning of this Chapter, in the context of matters of consensus between the NSWPF and Counsel Assisting, there is agreement between the NSWPF and Counsel Assisting that the initial review was not comprehensive and that this represented a significant missed opportunity. However, the NSWPF also submitted that any criticism of the review must be viewed in the context of the “extraordinarily difficult task”, its relative novelty, and the “no doubt significant resources constraints they were subject to”.<sup>744</sup> I accept those submissions.

#### CASES NOT REVIEWED IN 2004–2008

8.436. Counsel Assisting also submitted that there are cases being considered by the Inquiry which are present on the UHT Tracking File and that were not reviewed in the initial review process between 2004 and 2008, or that have not been reviewed at all. The period between 2004 and 2008 is significant because the evidence of Detective Chief Inspector Laidlaw and Detective Superintendent Doherty was that the UHT sought to review all (approximately) 400 cases on the list of unsolved cases during this period (although as noted above there is currently only a record of 329 unsolved cases being reviewed in that period).<sup>745</sup>

8.437. As is set out above, the Inquiry has been told that there is no list of what cases comprised the initial list of unsolved cases to be reviewed by the UHT. However, there are cases which are on the UHT Tracking File, and which on any view should have been identified and reviewed in 2004–2008.

8.438. The first of these is the case of Robert Malcolm. The circumstances of Mr Malcolm’s death are set out in **Chapter 5**. Mr Malcolm was killed in 1992 and his death was obviously a homicide. Detective Chief Inspector Laidlaw agreed that it would be very odd if that case were not on the list of the unsolved homicides from the start, and identified that it would be an “undetected” case.<sup>746</sup> Detective Chief Inspector Laidlaw agreed that this matter would have been appropriate to be screened or reviewed in the 2004 to 2008 period, and that he was not aware of any reason why it wouldn’t be screened or reviewed in that period.<sup>747</sup>

8.439. The second is the case of James Meek. The circumstances of Mr Meek’s death are set out in **Chapter 5**. Detective Chief Inspector Laidlaw identified that Mr Meek’s death would have been classified as “unsolved” and would have received a lower priority on the UHT Tracking File until “such time as any information came forward or new evidence or even forensic techniques became available.”<sup>748</sup>

<sup>744</sup> Submissions of NSWPF, 10 October 2023, [91] (SCOI.86127).

<sup>745</sup> Transcript of the Inquiry, 6 July 2023, T5109.29 - 47 (TRA.00074.00001); Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [74]–[76] (NPL.9000.0006.0001).

<sup>746</sup> Transcript of the Inquiry, 6 July 2023, T5156.40-5157.37 (TRA.00074.00001).

<sup>747</sup> Transcript of the Inquiry, 6 July 2023, T5157.43-5158.3 (TRA.00074.00001).

<sup>748</sup> Transcript of the Inquiry, 6 July 2023, T5158.10-23 (TRA.00074.00001).

- 8.440. Senior Counsel Assisting asked whether any active step would be taken to obtain new evidence, and Detective Chief Inspector Laidlaw said “Well, if there were exhibits involved in that matter, I would assume that they would then be identified [sic] that they could be – go before new forensic analysis.”<sup>749</sup> Senior Counsel Assisting asked how that would occur if the matter was not the subject of screening or review. Detective Chief Inspector Laidlaw said that it would “be a matter of going through these – some of these matters to identify if there are forensic possibilities.”<sup>750</sup> Detective Chief Inspector Laidlaw could not offer any explanation for why this matter would not have been reviewed during the 2004–2008 period.<sup>751</sup>
- 8.441. The third of these cases is that of William Rooney. The circumstances of Mr Rooney’s death are set out in **Chapter 5**. Detective Chief Inspector Laidlaw agreed with the proposition put to him by Senior Counsel Assisting that Mr Rooney’s death would have been classified as “undetermined” (on the current classification) because the Coroner returned an open finding in May 1987.<sup>752</sup> Detective Chief Inspector Laidlaw agreed that this open finding was returned before the advent of DNA, and that this is a matter that may be “ripe for review.”<sup>753</sup> Detective Chief Inspector Laidlaw said that this matter should have been on the UHT Tracking File in 2004. He agreed that this matter should have been reviewed during the 2004–2008 period, and could not offer any reason why it was not.<sup>754</sup>
- 8.442. The fourth of these cases is that of Richard Slater. The circumstances of Mr Slater’s death are set out in **Chapter 5**. He died in 1980 as a consequence of what was obviously an assault. Once again, Detective Chief Inspector Laidlaw agreed that the case should have been captured among the first 366 identified in 2004, and should have been reviewed during the initial five-year period. He said that if it had not been reviewed in that period then he did not have an explanation for that.<sup>755</sup>
- 8.443. Mr Slater’s case is listed on the UHT Tracking File as “unresolved”. Senior Counsel Assisting asked Detective Chief Inspector Laidlaw whether it was correct for a matter to be recorded as “unresolved” when charges were brought but the matter was then no-billed. Detective Chief Inspector Laidlaw said “I suppose that’s a terminology used within our tracking – within that scope of what is unresolved. It could be – and I don’t know the reasoning why the matter was no-billed, nor when the matters are withdrawn, whether there’s just not enough evidence to convict the person who we say has committed the crime.”<sup>756</sup>

<sup>749</sup> Transcript of the Inquiry, 6 July 2023, T5158.27-29 (TRA.00074.00001).

<sup>750</sup> Transcript of the Inquiry, 6 July 2023, T5158.33-40 (TRA.00074.00001).

<sup>751</sup> Transcript of the Inquiry, 6 July 2023, T5159.22-24 (TRA.00074.00001).

<sup>752</sup> Transcript of the Inquiry, 6 July 2023, T5159.37-39 (TRA.00074.00001).

<sup>753</sup> Transcript of the Inquiry, 6 July 2023, T5159.46-47 (TRA.00074.00001).

<sup>754</sup> Transcript of the Inquiry, 6 July 2023, T5160.15-22 (TRA.00074.00001).

<sup>755</sup> Transcript of the Inquiry, 7 July 2023, T5160 (TRA.00075.00001).

<sup>756</sup> Transcript of the Inquiry, 7 July 2023, T5201.25-38 (TRA.00075.00001).

- 8.444. Senior Counsel Assisting asked whether, if that were the case, a matter like this would be a good candidate for review by the Review Team to consider whether there was more evidence. Detective Chief Inspector Laidlaw said “[t]o consider, but one would hope that all the evidence that was obtained would have been before the judicial process.”<sup>757</sup>
- 8.445. Detective Chief Inspector Laidlaw agreed with the proposition put by Senior Counsel Assisting that unsolved homicides are matters where there may have been matters overlooked or particular investigative steps not taken, although he said this was put “in a broad-brush sense” and did not think that was the case on average.<sup>758</sup> He said that his team would have this possibility in mind when reviewing cases.<sup>759</sup> He also agreed that this is a reason that even in a matter “no-billed” in 1983 there may be material that the Review Team would pick up. He said “...there could be. It’s not to say these matters won’t get triaged and reviewed. They’re just not given the priority because of that.”<sup>760</sup> It is difficult to understand a rational basis for deprioritising all such cases when the reason for a no-bill or charges being withdrawn may readily be overtaken by later developments in technology.
- 8.446. The final case falling into this category is that of Brian Walker. The circumstances of Mr Walker’s death are set out in **Chapter 5**. Mr Walker’s case is listed as “unresolved” on the UHT Tracking File. Mr Walker died on 23 July 1992. A person of interest was committed to trial, but the ODPP directed that the prosecution be discontinued on the basis that there was no reasonable prospect of conviction.<sup>761</sup> Detective Chief Inspector Laidlaw accepted that if the matter was obviously a homicide, it should have been on the UHT Tracking File from 2004.<sup>762</sup>
- 8.447. The NSWPF acknowledged that there are several cases before the Inquiry that were not reviewed in the initial review period between 2004 and 2008, and some cases that have still not been reviewed.<sup>763</sup> The NSWPF observed that, given the Inquiry has not sought evidence from those involved in the initial review process, there is no evidence as to why these cases were not reviewed at that time. Regardless, subject to acknowledging the difficulties which confronted those officers during the initial review, the NSWPF accepted that the review should have extended to these cases.<sup>764</sup>
- 8.448. I am satisfied the evidence before me is sufficient, as is implicitly acknowledged by the NSWPF, to conclude that these matters should have been reviewed in the initial review process. If there was an explanation for why any particular matter was not reviewed, the NSWPF did not place evidence of it before me.

<sup>757</sup> Transcript of the Inquiry, 7 July 2023, T5201.32-38 (TRA.00075.00001).

<sup>758</sup> Transcript of the Inquiry, 7 July 2023, T5201.43-5202.22 (TRA.00075.00001).

<sup>759</sup> Transcript of the Inquiry, 7 July 2023, T5202.24-26 (TRA.00075.00001).

<sup>760</sup> Transcript of the Inquiry, 7 July 2023, T5202.43-45 (TRA.00075.00001).

<sup>761</sup> See Submissions of Counsel Assisting, 6 February 2023, [2], [39]–[41] (SCOI.82378).

<sup>762</sup> Transcript of the Inquiry, 7 July 2023, T5210.3-10 (TRA.00075.00001).

<sup>763</sup> Submissions of NSWPF, 10 October 2023, [286] (SCOI.86127).

<sup>764</sup> Submissions of NSWPF, 10 October 2023, [287] (SCOI.86127).

## Case reviews between 2009 and 2017

- 8.449. Detective Chief Inspector Laidlaw gave evidence that 76 files were screened during the nine years between 2009 and 2017.<sup>765</sup> This indicates an average of fewer than nine cases screened each year during this period. However, as noted below, there were no screenings conducted at all between 2013 and 2017.
- 8.450. The Inquiry has before it an “issues paper” entitled “Homicide Squad Review – Response to Homicide Squad Review on 29 March 2018. Ongoing capacity issues at the Homicide Squad.” In their written submissions, Counsel Assisting drew my attention to the following relevant passages (emphasis added):<sup>766</sup>

*Accumulation/Volume. The unsolved matters are accumulating faster than they can be solved. It is worth noting that there have been 3 Detective Chief Inspectors working within the Unsolved Unit who have reported off sick and never returned after working within the Unit. Recent auditing and reclassification of unsolved matters has determined the sheer volume of work that remains. With current capacity limitation it will take over 900 years to clear the backlog even if no further matters are added to the list. Moreover, this does not include the large number of missing persons and unsolved homicides still held by PACs and PDs or the unidentified remains which taken together will triple the current investigations held at the squad.*

...

*These interrelated issues also have many command and corporate risks associated with them. Notwithstanding the changes already made to partially mitigate these risks (see current position) many remain both in terms of immediate and future risks. They include:*

- (1) *Perpetuating accumulation of unsolved matters. Given current solvability rates and current capacity levels, and even if there were no more murders committed in NSW, the squad would never be able to complete matters [sic] currently held. Given that murders will continue to occur and given that they will occur at a greater rate than they are solved, the ongoing accumulation of cases will only increase.*

<sup>765</sup> Transcript of the Inquiry, 6 July 2023, T5129.26 (TRA.00074.00001).

<sup>766</sup> Submissions of Counsel Assisting, 15 September 2023, [475] (SCOI.85649).

- (2) *Extending the duration of investigations.* The greater the accumulation of investigations the less capacity to investigate, the greater time each investigation takes, the less capacity there is to absorb new workload. This generates a perpetual cycle that means things continuously get worse in terms of solvability even if the rate of homicide decreases. If this continues the NSWPF will be unable to resolve homicide matters unless an offender is arrested in the first 7-10 days. This means that the NSWPF will not meet its obligations to the community, primary or secondary victims.

- 8.451. In addition, a memorandum from Detective Superintendent Scott Cook, the then-Commander of the Homicide Squad records that:<sup>767</sup>

*Based on the current holdings and from the year 1972 onwards there are 763 unsolved homicide matters. If suspended (and rejected) matters are removed the total drops to 571. The number of these cases which have actually been reviewed is small, in fact, there have been no reviews conducted in relation to unsolved homicide matters since 2013. This has been due to significant staff shortages and the demand for resources required for current and new investigations, including critical incident investigations.*

#### STRIKE FORCE NEIWAND

- 8.452. Between October 2017 until late 2017, Strike Force Neiwand considered the deaths of Mr Russell, Mr Warren and Mr Mattaini.<sup>768</sup> As is identified by Counsel Assisting, the Inquiry has before it a Case Screening Form in relation those matters dated 14 August 2013.<sup>769</sup> I deal elsewhere with the submissions of Counsel Assisting in Public Hearing 2 and the NSWPF in relation to Strike Force Neiwand.

- 8.453. Strike Force Neiwand made the following findings:

*In relation to Mr Warren:*

*“WARREN’S disappearance – cause and manner of death remain **‘undetermined’** despite the 2005 ‘homicide’ findings of the Coroner, which list it as a homicide. It is recommended that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available...”<sup>770</sup>*

*In relation to Mr Russell:*

*“The manner of RUSSELL’S death should be reclassified as **‘undetermined’** despite the 2005 ‘homicide’ findings of the Coroner.*

<sup>767</sup> Exhibit 53, Tab 54, NSWPF internal memorandum from DSI Scott Cook – “Approval sought to commence new strategy to address backlog in unsolved homicide investigations”, 21 December 2017, 3 (NPL.0205.0001.0774).

<sup>768</sup> Submissions of Counsel Assisting, 7 June 2023, [341], [504]–[505] (SCOI.84380).

<sup>769</sup> Exhibit 6, Tab 162B, Review of an Unsolved Homicide Case Screening Form – John Russell, Ross Warren and Gilles Mattaini, 14 August 2013 (NPL.0135.0001.0001).

<sup>770</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, 62 (SCOI.74883).



*It is recommended that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available.*<sup>771</sup>

*In relation to Mr Mattaini:*

*“... it can be suggested that MATTAINI may well have taken his own life rather than met with foul play. ... MATTAINI's disappearance – cause and manner of death remain **‘undetermined’**. It is recommended that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available.”<sup>772</sup>*

- 8.454. As set out above, the “undetected” and “undetermined” categories were created in around 2018. Previously, matters in these categories were categorised as “unsolved”.<sup>773</sup> Ordinarily a case where a verdict of likely homicide was returned by the Coroner would be classified as “undetected”, and cases classified in that way are prioritised for review ahead of cases with an “undetermined” classification.<sup>774</sup>
- 8.455. Senior Counsel Assisting asked Detective Chief Inspector Laidlaw whether he was aware that although the Coroner returned a finding of homicide in relation to the deaths of Mr Warren and Mr Russell, those matters were reclassified as “undetermined” as a consequence of the recommendations of Strike Force Neiwand.
- 8.456. Detective Chief Inspector Laidlaw said that he was aware that this was one of the outcomes of Strike Force Neiwand.<sup>775</sup> Senior Counsel Assisting then asked Detective Chief Inspector Laidlaw whether it was correct that his evidence was that the purpose of classifying matters was to determine priority. Detective Chief Inspector Laidlaw agreed that this was the case.<sup>776</sup> Detective Chief Inspector Laidlaw agreed that unless new information came to light, all matters classified as “undetected” would be reviewed before coming to the “undetermined” matters, and that the review of those “undetected matters” could “easily take more than 20 years”.<sup>777</sup>
- 8.457. Detective Chief Inspector Laidlaw agreed that a consequence of the reclassification was that those two cases would be deprioritised, and that it could be the case that they would not be looked at for more than 20 years. He was not able to assist the Inquiry with the question of whether this consequence was likely to be known to those involved in Strike Force Neiwand.<sup>778</sup>

<sup>771</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, 42 (SCOI.74882).

<sup>772</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, 11 (SCOI.74881).

<sup>773</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector David Laidlaw, 13 June 2023, [78] (NPL.9000.0019.0001).

<sup>774</sup> Transcript of the Inquiry, 6 July 2023, T5122.8-5124.19 (TRA.00074.00001).

<sup>775</sup> Transcript of the Inquiry, 7 July 2023, T5207.13-5208.11 (TRA.00075.00001).

<sup>776</sup> Transcript of the Inquiry, 7 July 2023, T5208.13-22 (TRA.00075.00001).

<sup>777</sup> Transcript of the Inquiry, 7 July 2023, T5208.24-33 (TRA.00075.00001).

<sup>778</sup> Transcript of the Inquiry, 7 July 2023, T5208.44-5209.18 (TRA.00075.00001).

- 8.458. Submissions have been made to the Inquiry separately about inferences that are available as to the conduct and motivation of Strike Force Neiwand.<sup>779</sup> Counsel Assisting observed that if those submissions were accepted, the consequence of the reclassification (i.e., deprioritisation so that the cases might not be looked at for 20 years or more) makes the conduct all the more serious.
- 8.459. The NSWPF sought to rely upon its submissions made during Public Hearing 2 in response to Counsel Assisting's concerns regarding Strike Force Neiwand. I deal with those submissions elsewhere. However, the NSWPF accepts that the classification of the Warren and Russell matters as "undetermined" would have resulted in a decrease in the priority afforded to those cases.

### Case reviews between 2018 to present

- 8.460. As set out above, the version of the UHT Tracking File before the Inquiry only pertains to homicides that occurred between 1970 and 2010. The Inquiry has before it a document entitled the UHT Tracking File Aide Memoire. The UHT Tracking File Aide Memoire was initially prepared by the staff of the Inquiry and was subsequently updated and annotated by representatives of the NSWPF. Like the version of the UHT Tracking File before the Inquiry, the UHT Tracking File Aide Memoire relates to homicides that occurred between 1970 and 2010.<sup>780</sup>
- 8.461. The system used by the UHT changed significantly in 2018. However, in the five years since 2018, 20% of cases have not been triaged.<sup>781</sup> In his oral evidence, and by reference to the UHT Tracking File Aide Memoire, Detective Chief Inspector Laidlaw said that of the homicides allocated to the UHT where the death occurred between 1970 and 2010, 572 matters had been triaged and 125 had not.
- 8.462. Initially, the figure of untriated cases was thought to be 213, but that figure of 213 included some cases that had been solved and some that were not homicides.<sup>782</sup> Detective Chief Inspector Laidlaw said he could not assist the Inquiry in relation to how long those 125 unsolved suspected homicide cases had been on the UHT Tracking File, but agreed that it would be at least seven years because the latest matter on the version of the UHT Tracking File produced to the Inquiry was from August 2016.<sup>783</sup>

<sup>779</sup> Submissions of Counsel Assisting, 7 June 2023, Part D (SCOI.84380).

<sup>780</sup> Exhibit 54, UHT Tracking File Aide Memoire, Undated (SCOI.84314).

<sup>781</sup> Transcript of the Inquiry, 6 July 2023, T5126.43-5127.4 (TRA.00074.00001).

<sup>782</sup> Transcript of the Inquiry, 6 July 2023, T5124.45-5125.18 (TRA.00074.00001).

<sup>783</sup> Transcript of the Inquiry, 6 July 2023, T5125.20-47 (TRA.00074.00001).

- 8.463. In response to questions from Senior Counsel Assisting, Detective Chief Inspector Laidlaw gave evidence that the UHT did not have enough people do to triages and reviews. He said, “we’re moving a backlog of triage forms in the review area and they’re unable to be reviewed because we can’t resource them adequately.”<sup>784</sup> I asked whether more resources had been requested and Detective Chief Inspector Laidlaw said they had not.<sup>785</sup>
- 8.464. Detective Chief Inspector Laidlaw said in his oral evidence that no triages had been completed since the beginning of the Inquiry because the Review Team had been assisting Detective Inspector Warren’s team in collating data for the Inquiry.<sup>786</sup> As noted above, Detective Chief Inspector Laidlaw’s evidence was that there were 19 triage forms which were awaiting his assessment for over 12 months. He was unable to say when he expected he would be able to review them.<sup>787</sup> Having regard to the evidence set out below, it is apparent that there have been significant difficulties with progressing UHT matters for some time, and certainly from well before the commencement of the Inquiry.
- 8.465. During the course of oral evidence, I asked whether he had drawn this matter to the attention of the Commissioner of the NSWPF, and he said he had not.<sup>788</sup> When he was asked why he had not drawn this matter to the Commissioner of the NSWPF’s attention he said:<sup>789</sup>

*If I can reiterate what I said before, we’re going from a backlog of – we are we’ve still got triage forms that have been completed that we cannot even get out to review because there is so many of them. That’s why, in 2008, the investigative arm of Unsolved became an investigative arm, because there was so much of a backlog of case screen/triage forms then, that they were just sort of sitting there. So that’s why that – that concept – it’s still there, it’s – it’s just another important aspect of policing in general, sir, is how I see it.*

- 8.466. Detective Chief Inspector Laidlaw agreed that there were 291 cases where a review had not been completed. He said that in fact there were 178 cases that had not been reviewed and 19 which were what he described as “ongoing investigations”, although he went on to say that those 19 he referred to were the 19 on his desk (awaiting assessment as to whether they should be referred to review).<sup>790</sup> These figures only account for 197 cases. The reason for this discrepancy remains unexplained.

<sup>784</sup> Transcript of the Inquiry, 6 July 2023, T5126.11-14 (TRA.00074.00001).

<sup>785</sup> Transcript of the Inquiry, 6 July 2023, T5126.16-18 (TRA.00074.00001).

<sup>786</sup> Transcript of the Inquiry, 6 July 2023, T5127.6-12 (TRA.00074.00001).

<sup>787</sup> Transcript of the Inquiry, 6 July 2023, T5127.34-36 (TRA.00074.00001).

<sup>788</sup> Transcript of the Inquiry, 6 July 2023, T5127.38-43 (TRA.00074.00001).

<sup>789</sup> Transcript of the Inquiry, 6 July 2023, T5128.8-17 (TRA.00074.00001).

<sup>790</sup> Transcript of the Inquiry, 6 July 2023, T5128.33-42 (TRA.00074.00001).

- 8.467. It was put to Detective Chief Inspector Laidlaw by Senior Counsel Assisting that this did not seem like many to have been reviewed in nine years. Detective Chief Inspector Laidlaw said “No it’s possibly not, no”, but explained that “an investigation can be one lever arch folder or it could be 200 lever arch folders” and “there’s no set parameters around the time to do the review, because some are quite long and lengthy.”<sup>791</sup> Detective Chief Inspector Laidlaw said initially that the 76 matters being reviewed in this time was consistent with having the balance right between the volume of reviews and the time taken on each review.<sup>792</sup> Other information before the Inquiry suggests that the reason for the low number of matters screened between 2009 and 2017 was in part because no matters at all were screened from 2013–2017.
- 8.468. Detective Chief Inspector Laidlaw was unable to assist with some aspects of the NSWPF annotations on the UHT Tracking File Aide Memoire, including the fact that the cases “under review” in the last 12 months have gone from 71 to 36, but only 5 cases were added to the “reviewed” number.<sup>793</sup> In addition, the number of cases “not reviewed” with no reason given has increased by 12. Detective Chief Inspector Laidlaw explained that this may be because erroneous reasons have been removed but no new reason inserted in anticipation of all data being moved to the new database.<sup>794</sup>
- 8.469. Detective Chief Inspector Laidlaw was asked questions by Senior Counsel Assisting about the 96 cases that have been reviewed more than once. A small number of those cases have been reviewed three or four times. He was asked how it was decided what cases would get a second review and said “[w]hat had occurred was the number of secondary reviews, it would have been upon review of the initial review, and with the elapse of time, to identify whether there were new investigative opportunities to further conduct a review and possibly look for an investigative strategy.”
- 8.470. Senior Counsel Assisting asked again how those 96 matters had been selected for a second (or subsequent) review. Detective Chief Inspector Laidlaw said “[i]t would have been—I think it was in—2018, we worked back from 2014 backwards, and then when we ran out of—I would say when we got to a certain scope, we then decided to do the further reviews on matters that had been reviewed.” He was asked by Senior Counsel Assisting to clarify what he meant by “got to a certain scope”, and said that “[w]e got down to about 2010 I think, from memory ... But then we had a look at matters that needed—that had been reviewed to see whether there was any forensic purpose to review those matters.”<sup>795</sup>

<sup>791</sup> Transcript of the Inquiry, 6 July 2023, T5129.28-37 (TRA.00074.00001).

<sup>792</sup> Transcript of the Inquiry, 6 July 2023, T5130.6-14 (TRA.00074.00001).

<sup>793</sup> Transcript of the Inquiry, 6 July 2023, T5130.26-42 (TRA.00074.00001).

<sup>794</sup> Transcript of the Inquiry, 6 July 2023, T5131.33-5132.32 (TRA.00074.00001).

<sup>795</sup> Transcript of the Inquiry, 7 July 2023, T5194.46-5195.4 (TRA.00075.00001).

- 8.471. Detective Chief Inspector Laidlaw was asked a number of further questions by Senior Counsel Assisting about this process. In summary, his evidence was that in 2018 the UHT team focussed on working backwards through cases from 2010 to 2014.<sup>796</sup> He agreed that “quite possibly” during that period the UHT did not look at any cases from the period between 1970 and 2009.<sup>797</sup>
- 8.472. In relation to the 125 suspected homicide matters that have not been triaged, it was put to Detective Chief Inspector Laidlaw by Senior Counsel Assisting that there was “no good reason for them not to have been triaged.” He said, “We just haven’t had the time to do them, yes.”<sup>798</sup>
- 8.473. Senior Counsel Assisting returned to the 96 cases that had been selected for a second review. He clarified with Detective Chief Inspector Laidlaw that, the process of looking at cases from between 2010 and 2014 having been completed, the UHT asked what cases which had already reviewed might be “ripe for a fresh review.” Detective Chief Inspector Laidlaw agreed that this was correct.<sup>799</sup> Senior Counsel Assisting asked how that analysis was conducted and Detective Chief Inspector Laidlaw said:<sup>800</sup>

*Just by going through, seeing where the matter was, to identify first if it was undetected. If it was undetected, they took the priority of matters. So those matters were looked at in relation to whether there was anything from the initial review that we could establish, that there could be a possibility with – as I said, it could be changes in witnesses or the suspects, it could be forensic technology that could have been advanced. They’re the ones that we looked at.*

- 8.474. After a sequence of questions from Senior Counsel Assisting, Detective Chief Inspector Laidlaw clarified that UHT team members were given ten randomly selected screening documents (concerning cases that had been previously screened) and would then look at those documents to see what cases might be a good candidate for a second review.<sup>801</sup> It appeared from Detective Chief Inspector Laidlaw’s evidence that not all of the 400-odd initial screenings from 2004 to 2017 were looked at in this process, nor all those recorded as “undetected”.<sup>802</sup> He said that matters with no exhibits were given a lower priority, and that determining whether or not exhibits were available was done by reference to the UHT Tracking File.<sup>803</sup>

<sup>796</sup> Transcript of the Inquiry, 7 July 2023, T5194.46-5195.4 (TRA.00075.00001).

<sup>797</sup> Transcript of the Inquiry, 7 July 2023, T5194.46-5195.4 (TRA.00075.00001).

<sup>798</sup> Transcript of the Inquiry, 7 July 2023, T5195.38-46 (TRA.00075.00001).

<sup>799</sup> Transcript of the Inquiry, 7 July 2023, T5196.1-5 (TRA.00075.00001).

<sup>800</sup> Transcript of the Inquiry, 7 July 2023, T5196.8-16 (TRA.00075.00001).

<sup>801</sup> Transcript of the Inquiry, 7 July 2023, T5197.5-5198.47 (TRA.00075.00001).

<sup>802</sup> Transcript of the Inquiry, 7 July 2023, T5197.13-41 (TRA.00075.00001).

<sup>803</sup> Transcript of the Inquiry, 7 July 2023, T5197.32-5198.6 (TRA.00075.00001).

- 8.475. Detective Chief Inspector Laidlaw agreed with the proposition, put by Senior Counsel Assisting, that the Review Committee receives 5 to 10 reviews every 3 to 6 months, and that consequently it could take 22 years to review the 442 cases currently noted as being “undetected”. He was asked again whether he thought the balance was right between the speed with which steps are being conducted and the enquiries that are being made and said “[i]n a perfect world, no.”<sup>804</sup> He said that it would be “optimum” for cases to be reviewed every five years, but said that the UHT did not have the resources to review all cases every five years.<sup>805</sup> The frequency of reviews is explored in the evidence of Dr Allsop.
- 8.476. Senior Counsel Assisting put to Detective Chief Inspector Laidlaw that of the 125 matters that have not been triaged since 2018, and the 291 that have not been reviewed, these may include cases from the 1970s and 1980s and that, if there are exhibits in those matters, there is “every reason to think that there is more to be done in relation to them”. Detective Chief Inspector Laidlaw accepted that this was the case.<sup>806</sup> He later agreed that there could be dozens or hundreds of cases in which there are accessible exhibits and forensic opportunities available, but nobody has explored them including because the cases have not been screened, triaged or reviewed.<sup>807</sup>
- 8.477. Detective Chief Inspector Laidlaw then agreed with the proposition, put by Senior Counsel Assisting, that as at 2018 the UHT had been in place for 14 years; nearly three times the cycle of five years. In that time, a little over 400 cases have been reviewed once and 96 had been reviewed more than once out of approximately 700 or 800. Detective Chief Inspector Laidlaw agreed that of those cases that have not been reviewed, he did not know what matters may well “predate DNA and have exhibits ripe for examination for DNA.”<sup>808</sup>

### **UHT review of cases dispensed with by a coroner**

- 8.478. As Counsel Assisting identify, there are seven cases from the 1970s to the 1990s before the Inquiry which were the subject of a coronial dispensation or a finding of a non-suspicious death. These were the cases of Andrew Currie, Paul Rath, Russell Payne, Graham Paynter, Samantha Raye, Peter Sheil and Blair Wark. The submissions made about those cases are primarily dealt with in the context of those individual cases. However, there are some outstanding matters which require comment in the context of the UHT review process.

<sup>804</sup> Transcript of the Inquiry, 6 July 2023, T5138.14-17 (TRA.00074.00001).

<sup>805</sup> Transcript of the Inquiry, 6 July 2023, T5139.10-16 (TRA.00074.00001).

<sup>806</sup> Transcript of the Inquiry, 6 July 2023, T5149.41-44 (TRA.00074.00001).

<sup>807</sup> Transcript of the Inquiry, 7 July 2023, T5206.41-5207.5 (TRA.00075.00001).

<sup>808</sup> Transcript of the Inquiry, 6 July 2023, T5140.45-5141.1 (TRA.00074.00001).

- 8.479. In some of these cases, including that of Mr Rath, the Inquiry has received evidence, including evidence that may have been available at the time of the original investigation, indicating reasons to regard those deaths as suspicious.<sup>809</sup> Senior Counsel Assisting asked whether there was any scope for such a case to come to the attention of the UHT. Detective Chief Inspector Laidlaw said that there was not.<sup>810</sup>
- 8.480. Counsel Assisting submitted that it was regrettable that there is no formal process to bring matters of this kind to the attention of the UHT in the event that the NSWPF acquires information that suggests that they should be revisited. This may mean that solvable matters are not being referred to the UHT because it is not understood that they are homicides. Although it will never be possible to avoid some matters being overlooked because no such information comes to light, Counsel Assisting submitted that consideration should be given to a recommendation that a formal process be available in relation to matters of this kind. The consensus position of Counsel Assisting and the NSWPF, reached in the reply submissions of Counsel Assisting, has been dealt with above.
- 8.481. In addition, in the cases of Mr Currie, Mr Payne, Mr Paynter, Ms Raye, Mr Sheil and Mr Wark, Counsel Assisting made submissions raising suggested deficiencies in the initial police investigations, including the early exclusion of avenues of investigation.
- 8.482. In these matters, Counsel Assisting submitted, there were indicators of LGBTIQ bias that were never explored by the NSWPF. As these indicators were not explored by the NSWPF, they were never brought to the attention of the Coroner. I agree that it is unfortunate that these indicators were not brought to the attention of the Coroner, and were likely to have contributed to the Coroner dispensing with an inquest. Similarly, in the case of Mr Rath, the failure to consider these matters may well have contributed materially to the conclusion that the death was non-suspicious.
- 8.483. The NSWPF submitted that it was not correct to say that there is no scope for deaths previously regarded as non-suspicious to come to the attention of the UHT where new information emerges. Rather, the evidence of Detective Chief Inspector Laidlaw should be understood as meaning that the cases of Mr Currie, Mr Rath, Mr Payne, Ms Raye and Mr Wark would not have come to the attention of the UHT in the absence of the Inquiry. The NSWPF submitted that this evidence was “uncontroversial” given, in the absence of investigative efforts conducted by the Inquiry, it is unlikely that new information in relation to these cases would have emerged.<sup>811</sup>

<sup>809</sup> Transcript of the Inquiry, 7 July 2023, T5210.12-32 (TRA.00075.00001).

<sup>810</sup> Transcript of the Inquiry, 7 July 2023, T5210.12-5211.6 (TRA.00075.00001).

<sup>811</sup> Submissions of NSWPF, 10 October 2023, [283] (SCOI.86127).

- 8.484. Regardless, the NSWPF accepted that it would be appropriate for a process for the communication of new information to the UHT regarding deaths previously regarded as non-suspicious to be formalised in policy.<sup>812</sup> I accept this submission. This is reflected in **Recommendation 15**.

### Duration of screening and review process

- 8.485. As noted above, prior to 2018, cases assigned to the UHT underwent a screening process. As of 2018, this was replaced by a triage and review process.
- 8.486. Counsel Assisting submitted that any process which involves the triage of material seeks to work through a large number of cases as quickly and as efficiently as possible in order to allocate priority. A triage, by its nature, will not involve a comprehensive review of each individual case—that would defeat the purpose of the triage process. If the triage process cannot review all cases on the UHT Tracking File within the five years since 2018, that is a demonstrable failure of the triage process. Counsel Assisting submitted that it must have been obvious within 12 to 18 months of the adoption of the new process that the triage itself was not operating effectively.
- 8.487. Detective Chief Inspector Laidlaw agreed with the proposition, put to him by Senior Counsel Assisting, that there is a balance to be struck between the level of detail necessary for triage and the speed with which it is necessary to get through cases in order to review a high volume of cases. He was asked whether he thought the balance was right at the moment and said “[p]ossibly no, no.”<sup>813</sup> The Inquiry has not received evidence of a person in a position of responsibility asking themselves that question prior to this Inquiry.
- 8.488. The NSWPF submitted that:<sup>814</sup>

*The Commissioner of Police acknowledges that it is a demonstrable failure of the triage process that a triage of all cases on the UHT Tracking File has not yet been completed, within the five years since the triage process was implemented in 2018 (CA [368]). The balance between the level of detail necessary, and the speed with which it is possible to get through a high volume of cases, is not right. The problems with the efficiency of the triage process should have been identified and addressed sooner.*

*At CA [369] Counsel Assisting write that “the Inquiry has not received evidence of a person in a position of responsibility asking themselves that question prior to this Inquiry”. The adoption of a two-stage process in 2018 reflected consideration of the question of how to efficiently triage matters. In terms of the period since 2018, after DCI Laidlaw agreed with Senior Counsel Assisting that the balance in the triage process was not right, he was not asked whether that is a question he had previously asked*

<sup>812</sup> Submissions of NSWPF, 10 October 2023, [285] (SCOI.86127).

<sup>813</sup> Transcript of the Inquiry, 6 July 2023, T5126.14-42 (TRA.00074.00001).

<sup>814</sup> Submissions of NSWPF, 10 October 2023, [89]–[90] (SCOI.86127).



*himself. The evidence indicates an ongoing attempt to systematically deal with a very large number of cases in a setting of limited resources and substantial demands on the time of UHT officers in connection with active investigations.*

8.489. In response to this submission, Counsel Assisting submitted that:<sup>815</sup>

*While we submit that the submission at NSWPF Submissions [90] should not be accepted in terms—because the evidence does not, in our submission, demonstrate an “ongoing attempt to systematically deal with a very large number of cases a setting of limited resources and substantial demands on the time of UHT officers in connection with active investigations”—we submit that it should be accepted that the change to a two-stage process does reflect the fact that, at least at this point in time, consideration was being given to how to review cases more effectively. The submission at [Counsel Assisting’s written submissions in chief] [369] is directed to the present triage process, as in place since 2018, and not to the screening processes adopted since the commencement of the UHT.*

8.490. I accept Counsel Assisting’s submission. It is clear that consideration was given in 2018 to the best way to address the difficulties being encountered by the UHT. I accept that the submission made by Counsel Assisting was directed to the process adopted from 2018,<sup>816</sup> and I agree that there is no evidence before the Inquiry to suggest that consideration was given to the deficiencies in the present process prior to the Inquiry. I accept that this matter is now being given attention.

### **The backlog of reviews in the UHT**

8.491. In response to a summons issued after the first tranche of the Investigative Practices Hearing, the NSWPF produced a document entitled “Triage and Review Backlog SOPs” dated January 2022 (**Backlog SOPs**).<sup>817</sup> It is useful to set out some portions of that document in detail:

#### *1.1 CURRENT PROCESS*

*Since 2018 the dissemination of triages to PAC’s has been coordinated under the control of Crime Operations, SCC. The PAC/PD were then required to complete a review and return the package to Crime Operations, SCC. A Summary of this operating procedure is as follows,*

*1. Unsolved Homicide Team prepare a triage of an unsolved case, which is then forwarded to Crime Operations, SCC.*

<sup>815</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [92] (SCOI.86354).

<sup>816</sup> Submissions of Counsel Assisting, 15 September 2023 [369] (SCOI.85649).

<sup>817</sup> Exhibit 53, Tab 55, Triage and Backlog SOPs, January 2022, 4, (NPL.0205.0001.0917).

2. *Crime Operations, SCC then record and issue a SCC reference number to the triage.*
3. *The triage is then disseminated with a review package incorporating relevant documentation, to external and specialist commands to be assigned to an officer to prepare the review.*
4. *A review package is provided to the reviewing officer containing all the relevant material needed to complete the review.*
5. *All details regarding the dissemination of the triage are maintained by Crime Operations, SCC, including any correspondence with the PAC/PD and Specialist Commands.*
6. *The PAC/PD reviewing officer returns the review package to Crime Operations, SCC, where it is then provided to the Homicide Squad for quality control and assurance, along with prioritisation.*
7. *The review is then placed before a 'Review Committee' involving senior management of the Homicide Squad and Crime Operations, SCC. This process is to ratify and determine any reinvestigation of the reviewed unsolved homicides.*

## 1.2 INHIBITING FACTORS

*In July 2021 UHT Investigation Coordinators identified that the above review process is problematic in the management of unsolved homicide reviews.*

*The Homicide Squad, UHT currently does not have management and control of the dissemination of the original triage. This has impeded UHT's ability to accurately determine the status of a disseminated reviews whether completed or outstanding, or who the allocated officer is, their location, and at what stage the reviewing officer is up to with the review.*

*The Commander of the Homicide Squad has the corporate responsibility of managing and prioritising unsolved homicides efficiently and with accurate information.*

*Since the commencement of this process in 2018, complications in management of the reviews have continued to arise. The review process is meant to enable the Homicide Squad to have consistency prioritising matters for reinvestigation. This is currently not the case with the dissemination of reviews to external and specialist commands.*

*A delay of more than two years to complete or start reviews is impacting the solvability of those cases. With the possibility of additional information being present, ongoing changes being made to investigation techniques, electronic capabilities, and forensic advancements, in particular DNA, cases are not being given the appropriate opportunities to be investigated and possibly solved.*

*As of November 2021, it was identified that 126 reviews remain outstanding. The below table is a breakdown of time frames in years that reviews have remained outstanding at external and specialist commands, awaiting return to the Homicide Squad.*

Time outstanding	Qty	Percentage	
LESS THAN 1 YEAR =	11	8.73015873	AVERAGE YEARS OUTSTANDING 2.17 =
1-2 YEARS =	38	30.15873016	
2 - 3 YEARS =	37	29.36507937	
OVER 3 YEARS =	29	23.01587302	
UNDATED	11	8.73015873	
<b>Total outstanding</b>	<b>126</b>		

*This current process is creating a backlog and considerable uncertainty as to the progress of those reviews. The time that it is taking for the reviews to be completed is a significant corporate risk to the Homicide Squad*

- 8.492. The Backlog SOPs identify the process to be implemented in relation to outstanding reviews and conclude that “[o]nce the backlog of reviews is in a manageable state, this process will need to be further analysed to determine the ongoing management and process of unsolved homicide reviews.” Follow up correspondence to audit the status of outstanding reviews was sent on 7 January 2022.<sup>818</sup> It is not clear what further steps, if any, have been taken about this recognised “significant corporate risk” since January 2022.
- 8.493. I accept the NSWPF submission that these SOPs are reflective of the efforts by the UHT to systematically manage a very large volume of reviews that has exceeded the capacity of investigators to undertake them.<sup>819</sup> I note that, as described in the section below concerning recommendations, the NSWPF is already taking steps in relation to evidence that emerged over the course of the Investigative Practices Hearing.

### Submissions concerning the UHT

- 8.494. There is consensus between the NSWPF and Counsel Assisting that questions concerning the appropriate allocation of resources to the UHT fall outside the ambit of the Inquiry and raise complex social and policy considerations informed by a range of competing and important imperatives. I accept, as has been explained by the NSWPF, that UHT resources are regularly diverted to work on current investigations.

<sup>818</sup> Exhibit 53, Tab 56, NSWPF internal memorandum from DSI Dunstan – “Request for status update on unsolved homicide reviews”, 7 January 2022 (NPL.0205.0002.0003).

<sup>819</sup> Submissions of NSWPF, 10 October 2023, [87] (SCOI.86127).

8.495. Counsel Assisting submitted that it became clear throughout Detective Chief Inspector Laidlaw’s evidence that the UHT has experienced resourcing challenges in seeking to grapple with the large number of unsolved homicides within its ambit.

8.496. I asked Detective Chief Inspector Laidlaw during his evidence whether it was the case that the NSWPF did not “rate unsolved homicide too highly in terms of priorities”. Detective Chief Inspector Laidlaw disagreed, saying “the whole idea of setting up the Unsolved Homicide Team was to look at those matters, therefore giving them the appropriate priority”.<sup>820</sup> That led to the following exchange between Detective Chief Inspector Laidlaw and me:<sup>821</sup>

*Q. But it would seem to me, if I may say so, that one of the primary considerations with old cases or unsolved cases is to take an immediate stocktake or audit of what you've got?*

*A. I agree, sir. I agree, sir.*

*Q. Because if you start off from the proposition that the exhibits have been lost or if important witnesses are dead --*

*A. Yes.*

*Q. -- and there are forensic opportunities which haven't been exploited historically but might now be exploited, isn't it something which a special - some sort of special audit and funding or resource allocation urgently needs to occur, so that you can draw a line in the sand and at least come to your own views as to where best to allocate your resources in relation to the unsolved cases?*

*A. I agree, sir.*

8.497. In the NSWPF’s submissions it was said that:<sup>822</sup>

*In short, the UHT has very regularly been forced to make do with fewer officers in practice than it would appear to have available on paper. Of course, even if the full complement of UHT officers was available to work on unsolved cases at all times, that does not say anything about whether the UHT has sufficient resources to allow it to complete its work as expeditiously as would, in a vacuum, be desirable. There is therefore no basis to conclude that the resources constraints facing the UHT are not significant (cf, CA, [914]).*

*As acknowledged at [89] above, there is reason to think that the UHT has at various times failed to efficiently progress its triage and review of unsolved homicides. However, Counsel Assisting’s submission at CA,*

<sup>820</sup> Transcript of the Inquiry, 7 July 2023, T5204.33-5205.2 (TRA00075.00001).

<sup>821</sup> Transcript of the Inquiry, 7 July 2023, T5205.4-22 (TRA00075.00001).

<sup>822</sup> Submissions of NSWPF, 10 October 2023, [452]–[453] (SCOI.86127).

*[915] that the UHT has been “beset by inactivity” cannot be sustained. Unsolved homicide investigations are typically onerous, and as observed at [78] – [83] above, members of the UHT are regularly diverted to other investigative roles. The officers of the UHT and the Homicide Squad generally undertake challenging, emotionally taxing work, in service of the victims’ families and the broader community. They are subject to extraordinary personal and professional demands and routinely work very long hours. Their efforts should not be unduly denigrated.*

*Subject to the various observations made above and in Part C regarding the extraordinary challenges facing members of the UHT from its inception to the present day, it is accepted that there have been deficiencies in the system employed in the screening, triage and review of cases. In particular, it appears that, at various times, the correct balance has not been struck between speed and depth in the review process.*

- 8.498. I dealt with the question of the nature of the work of the UHT, and the need to ensure that work is not denigrated, at the commencement of this Chapter. However, I also accept the submission in Counsel Assisting’s reply submissions that:<sup>823</sup>

*Similarly, the reference at [Counsel Assisting’s written submissions in chief] [915] that the UHT has been “beset by inactivity” should not be understood as a criticism of any particular UHT member, or a denigration of the UHT as a whole. The submission at [915] obviously invites criticism of aspects of the operation of the UHT, and the matters addressed in that part of [Counsel Assisting’s written submissions] are matters which Counsel Assisting respectfully submit call for significant adverse comment by the Commissioner. Nevertheless, the submissions of the NSWPF concerning the challenges faced by the UHT (see Pt C.3 below) should be accepted, including the submission at NSWPF Submissions [453] concerning the nature of the work undertaken by those working within the UHT. Even where [Counsel Assisting] invite criticism of individuals, that should be in the context of recognising the challenges and difficulties faced by cold case investigations, as is clear when [Counsel Assisting’s written submissions] are read as a whole. The members of the UHT can and should take pride in the work they do for the community. However, in our submission, the hard work of individuals does not mean that it may not be appropriate to criticise important aspects of the current or past operations of the UHT.*

<sup>823</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [28] (SCOI.86354).

- 8.499. In my view, aspects of the UHT's operation warrant criticism. Counsel Assisting submitted that it may be doubted that the real problem is one of resourcing *per se*, and I accept that submission. However, I think it is important to stress that this inactivity and delay attaches to the function of reviewing unsolved homicide cases. I accept unequivocally that UHT officers may, through no fault of their own, be diverted from this function. That does not mean that this characterisation is not apt as an objective appraisal of the discharge by the UHT of this function.
- 8.500. Counsel Assisting submitted that the evidence of Detective Chief Inspector Laidlaw also made it plain that until recently there appears to have been very little method in the selection of cases for screening, triage or review. In circumstances where there may have been resourcing constraints, the question of efficiently (and transparently) allocating resources and prioritising cases is even more significant. I accept this submission.
- 8.501. Counsel Assisting also contended that has also been a failure to assess critically whether the balance between speed and thoroughness is complete in the triage process. Counsel Assisting submitted that it is "extraordinary" that, despite the UHT having been established for nearly 20 years, 20% of cases have never been screened, triaged or reviewed, including a number of cases within the Inquiry's Terms of Reference. It is unknown how many obvious investigative opportunities have never been taken up, and perhaps now cannot be taken up.
- 8.502. I accept this submission, although I acknowledge that the UHT confronts a task of significant scale. I consider that this fact is reflective of the problems with methodology within the UHT. The NSWPF accepts that there are problems with UHT methodology, and has already taken steps to in line with recommendations I have made in this Report.
- 8.503. Counsel Assisting noted Detective Chief Inspector Laidlaw's evidence that there were 19 triage documents on his desk awaiting his review. Counsel Assisting submitted the fact that this matter had not come to the attention of Detective Chief Inspector Laidlaw's superiors may also indicate a failure of supervision of Detective Chief Inspector Laidlaw and the UHT by the Homicide Squad, and by superior officers of the NSWPF more broadly.
- 8.504. In addition, Counsel Assisting submitted that this was not the only matter where Detective Chief Inspector Laidlaw gave evidence that a responsibility rested with him, but that he had not taken steps to pursue a matter, or to notify his superiors that he was not in position to take those steps. Having regard to the position held by Detective Chief Inspector Laidlaw, this is troubling. In Counsel Assisting's submission, the failure by Detective Chief Inspector Laidlaw to review these matters, or to bring his inability to do so to the attention of his superiors, is a substantial failure.

- 8.505. I accept the submission of the NSWPF that Detective Chief Inspector Laidlaw has been subject to a very large workload during the period over which he did not assess those forms.<sup>824</sup> However, the NSWPF has accepted that this does not excuse the failure to move matters promptly through the review process. Further, as is indicated in Counsel Assisting's reply submissions, I make no positive findings about a failure of supervision.<sup>825</sup> Recognising that I did not receive evidence on this matter from Detective Chief Inspector Laidlaw's superiors, I simply record my concern that this backlog was not brought to their attention.
- 8.506. The second matter Counsel Assisting submitted must be considered is that the NSWPF represents itself to the community as having a competent and adequately resourced team to deal with unsolved homicides. It is common for the Coroner to refer matters to the UHT. It is to be assumed that, when doing so, the Coroner and relatives of a deceased person expect that there is a realistic prospect that the matter will be considered by the UHT within a reasonable time (and not a period of time that can be measured in centuries).
- 8.507. It is by no means clear that Coroners appreciate that returning an open finding means a case will be classified as "undetermined" and will be deprioritised. On the current system, such a case may not be considered, even for triage, until all the "undetected" cases have been triaged/reviewed, which may take over 20 years. Counsel Assisting submitted that this is particularly troubling in circumstances where the Coroner might refer a case to the UHT because it appears that avenues of investigation, for example by way of covert policing techniques, might be fruitful if pursued in a timely fashion.
- 8.508. I do consider that, as a matter of courtesy, the present prioritisation of matters referred by the Coroner should be made apparent, and that this matter should similarly be communicated to families. It may be that the Coronial process would ordinarily involve the implementation of all available investigative strategies,<sup>826</sup> but if a matter is referred to the UHT with available investigative strategies identified, I consider it important that either the expectations of family and friends are properly managed, or such a matter is given priority due to those investigative opportunities.

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<sup>824</sup> Submissions of NSWPF, 10 October 2023, [456] (SCOI.86127).

<sup>825</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [127] (SCOI.86354).

<sup>826</sup> Submissions of NSWPF, 10 October 2023, [457] (SCOI.86127).

8.509. The NSWPF submissions stated that:<sup>827</sup>

*The Homicide Squad is presently in the process of developing a database designed to capture and monitor information in respect of all homicides, including those currently regarded as unsolved. It is anticipated that the implementation of that system will improve the monitoring and prioritisation of unsolved homicides and aid in decision-making as concerns which matters ought to be subject to reinvestigation.*

8.510. I accept this submission, but it does not allay all of my concerns.

8.511. Counsel Assisting also submitted, and I accept, that the work of the UHT is constrained by historical exhibit management and record-keeping practices. Some of the cases being considered by the Inquiry are now almost 50 years old. It is unsurprising that practices around exhibit and document management have changed significantly in the intervening period. Similarly, failures to comply with historical protocols are not the fault of the UHT.

8.512. Nevertheless, Counsel Assisting also submitted that there are also many examples before the Inquiry of unsatisfactory practices, including in relation to record-keeping within the UHT itself. Having regard to the stated purpose of the UHT, it is reasonable to expect that matters are progressed in a methodical and systematic way accepting that, at least at the triage stage, a triage is not a complete and comprehensive review, but rather a mechanism for allocating priority.

8.513. It might be expected that a triage document would omit some information or might occasionally contain an error or misstatement. However, Counsel Assisting submitted that the Inquiry has before it documents that are incomplete or unsigned, documents containing significant factual errors, documents containing objectionable language in relation to deceased persons, and occasions where a screening, triage or review is recorded on the UHT Tracking File but there is no evidence that one has actually taken place. In many instances, there were recommendations for investigation or review and no evidence of those steps being implemented, or even considered. Counsel Assisting submitted that these poor practices cannot be dismissed as historical: there are instances of them occurring in the last three years. Nor can they be described as the sort of errors that are inevitable as part of a triage process. I accept these submissions.

8.514. Counsel Assisting submitted that these poor practices are of particular concern given Dr Allsop's evidence, as set out in **Chapter 7**, that document management and record-keeping are important to cold case review, including record management of previous case reviews.

<sup>827</sup> Submissions of NSWPF, 10 October 2023, [458] (SCOI.86127).



8.515. Counsel Assisting submitted that it must be recognised, especially in a triage process, that there is a balance or trade-off between speed or efficiency on the one hand and the care or level of detail on the other. However, the evidence before this Inquiry indicates not only that the UHT does not have the balance right, but that it is achieving neither objective—the triage and screening process appears to have been neither quick and efficient nor careful and thorough. I accept the submission that this is unfortunate and requires attention at the appropriately senior level within the NSWPF. It is commendable that the NSWPF has indicated that investigation of this issue has already commenced.

8.516. I note and accept the submissions of the NSWPF that:<sup>828</sup>

*As acknowledged at CA [924], the work of the UHT is constrained by historical exhibit management and record keeping practices. This is an inherent challenge faced in investigating cold cases across jurisdictions (see [70]). It is unsurprising that police practices were significantly different before developments in DNA technology were known or foreseen. That must be kept firmly in mind in considering whether there have been failures to comply with historical protocols (CA, [924]). Further, as Counsel Assisting note, those failures are not the fault of the UHT.*

*The Commissioner of Police acknowledges that there are examples before the Inquiry of poor record-keeping practices within the UHT itself (CA, [925]). The task of the UHT in dealing with a very large number of unsolved cases is one that necessarily requires a methodical and systematic approach. While the UHT has aimed to operate in such a way, it is accepted that this has not always occurred.*

8.517. Counsel Assisting also noted the submissions canvassed above concerning cultural awareness and the importance of educating officers in relation to the LGBTIQ community. I accept the submission that it is difficult to see how the LGBTIQ community could have confidence in the UHT when there is objectionable language within its internal documents, and where there appears to be no or minimal engagement with the EHCU.

8.518. I also accept that the apparent lack of awareness (particularly historically) concerning the LGBTIQ community means that there is a possibility that some matters might not be identified as hate crimes, despite the fact that this could open investigative opportunities.

<sup>828</sup> Submissions of NSWPF, 10 October 2023, [459]–[460] (SCOI.86127).

## Management of exhibits and documentary records

- 8.519. The Inquiry received a significant body of evidence at the Investigative Practices Hearing concerning the management of exhibits and documentary records. Over the course of the Inquiry, it became apparent that a substantial number of matters being considered by the Inquiry involved exhibits or records that were unable to be located or had been damaged or otherwise destroyed. This topic is also explored extensively in the context of a number of the individual matters considered by this Inquiry.
- 8.520. As Counsel Assisting submitted, the significance of exhibit management and record-keeping to the Inquiry (and to the UHT) is obvious. The work of the Inquiry was substantially reliant upon the NSWPF being in a position to produce all exhibit and investigative material in relation to each of the cases being considered by the Inquiry.
- 8.521. At the outset of the Investigative Practices Hearing, on 4 July 2023, I disclosed that I had resigned from the board of the State Records Authority. I indicated at that time that it would be inappropriate for me to remain on the board in circumstances where I may need to consider issues arising in relation to the *State Records Act*.<sup>829</sup> I will now turn to consider the management of exhibits and documentary records, including the application of the *State Records Act*.

### Application of the *State Records Act*

- 8.522. At the beginning of this section of this Chapter, it is appropriate to deal with a potential issue that arose before me concerning the application of the *State Records Act* to physical exhibits seized by the NSWPF (for example, murder weapons and forensic material). This is relevant to the loss of exhibits in a number of individual cases. NSWPF internal documents make it apparent that the NSWPF does not regard exhibits as potentially being state records.
- 8.523. As I explained at the commencement of this Chapter, I do not consider it necessary to decide whether Counsel Assisting or the NSWPF is correct in relation to the interpretation of the *State Records Act 1998* (***State Records Act***). It is sufficient for me to say that I think there is ambiguity, and that this ambiguity should be addressed as soon as possible by the legislature. However, I record matters of background and the submissions of Counsel Assisting and the NSWPF in order to explain my conclusion in this regard.

### The *State Records Act*

- 8.524. As a “public office” within the meaning of s. 3 of the *State Records Act*, the NSWPF is required to comply with the obligations set out in that Act. This includes the obligation in s. 21(1) not to abandon or dispose of a “state record”.

<sup>829</sup> Transcript of the Inquiry, 4 July 2023, T4794.3-21 (TRA.00072.00001).

- 8.525. Whether a particular physical exhibit is a “state record” will depend upon whether it can be described as a “document or other source of information”. The significance of this question is that if physical exhibits are state records, the loss or destruction of those exhibits may have constituted a breach of the *State Records Act*.

### The introduction of the State Archives Act

- 8.526. The *State Records Act* commenced on 1 January 1999. It replaced the now repealed *Archives Act* and created the State Records Authority of NSW. The State Records Authority of NSW replaced the Archives Authority, which had previously been established under the *Archives Act*.

### THE POSITION UNDER THE ARCHIVES ACT

- 8.527. In many cases, it is not clear whether material was lost or destroyed prior to or after the introduction of the regime under the *State Records Act*. For the reasons set out below, Counsel Assisting submitted that labelled exhibits in the custody of the NSWPF at the time the *State Records Act* came into force are public records. In the event that this material was lost or destroyed prior to the introduction of the *Archives Act*, this may have constituted a breach of the *Archives Act*.
- 8.528. The *Archives Act* was principally concerned with delineating the powers and functions of the Archives Authority. The Archives Authority was responsible for the custody and control of the State Archives and the management of the Archives Office of NSW (s. 13).
- 8.529. The *Archives Act* required a “public office” to notify the Archives Authority prior to the destruction or disposal of “public records” in the custody or under the control of that office pursuant to s. 14. A “public office” was defined to include, relevantly, “any department, office, commission, board, corporation, agency, or instrument of any kind, performing any functions of any branch of the Government of NSW”.
- 8.530. Under the *Archives Act*, a “public record” was defined to mean “papers, documents, records, registers, books, maps, plans, drawings, photographs, cinematograph films and sound recordings, of any kind, made or received in the course of his official duties by any person employed in a public office and includes copies of public records as hereinbefore defined”.
- 8.531. Counsel Assisting submitted that documentary records such as exhibit books and duty books, and exhibits with a documentary character, would fall within the definition of “public record” under the *Archives Act*. Documents created in the course of an investigation are “documents ... made in the course of ... official duties.” Similarly, exhibit material with a documentary character is “received ... in the course of ... official duties.”

- 8.532. As is set out below, Counsel Assisting made submissions about the application of the *State Records Act* to exhibits that would not ordinarily be described as “documents” or “records” (for example, a weapon or bloodstained clothing). Counsel Assisting submitted, and I accept, there is ambiguity as to whether the *Archives Act* would have applied to physical exhibits of this kind (see the analysis concerning the word “document” below). However, tags or labels created and affixed to these objects, or to bags or containers they were placed in, would appear to be public records.
- 8.533. Section 15(1) of the *Archives Act* provided that a person could destroy or dispose of public records if that destruction was authorised by the Archives Authority. There is no evidence before the Inquiry indicating whether, during the period covered by the Inquiry’s Terms of Reference, such an authority was in place and applied to at least some documentary material.

### THE KEY PROVISIONS OF THE *STATE RECORDS ACT*

- 8.534. At present, under the *State Records Act*, the core obligations of a public office in relation to “state records” are contained in ss. 11 and 21 of the Act. Sections 11 and 21 of the *State Records Act* are in the following terms:

#### *11 Obligation to protect records*

1. *Each public office must ensure the safe custody and proper preservation of the State records that it has control of.*
2. *A public office must ensure that arrangements under which a State record that it has control of but that is in the possession or custody of some other person include arrangements for the safe keeping, proper preservation and due return of the record.*
3. *A public office must take all reasonable steps to recover a State record for which the public office is responsible and that the public office does not have control of, unless the record is under the control of the Authority or of some other person with lawful authority.*

#### *21 Protection measures*

1. *A person must not—*
  - a. abandon or dispose of a State record, or*
  - b. transfer or offer to transfer, or be a party to arrangements for the transfer of, the possession or ownership of a State record, or*
  - c. take or send a State record out of New South Wales, or*
  - d. damage or alter a State record, (e) neglect a State record in a way that causes or is likely to cause damage to the State record.*

*Maximum penalty—100 penalty units.*

2. *None of the following is a contravention of this section—*
  - a. *anything done in accordance with normal administrative practice in a public office (as provided by section 22),*
  - b. *anything that is authorised or required to be done by or under this Act, or by or under a provision of any other Act that is prescribed by the regulations as being an exception to this Part,*
  - c. *anything done by or with the permission of the Authority or in accordance with any practice or procedure approved by the Authority either generally or in a particular case or class of cases (including any practice or procedure approved of under any standards and codes of best practice for records management formulated by the Authority),*
  - d. *anything done pursuant to an order or determination of a court or tribunal,*
  - e. *the disposal, in accordance with a resolution of a House of Parliament, of a State record for which the House is the responsible public office,*
  - f. *anything done for the purpose of placing a record under the control of a public office,*
  - g. *the transfer or disposal, in accordance with the Members of Parliament Staff Act 2013, of a record of information created or received by a political office holder (within the meaning of that Act) or the staff of such an office holder.*
3. *The Authority must not do, or give permission or approval for or with respect to the doing of, anything referred to in subsection (1) except with the approval of the Board given either generally or in a particular case or class of cases.*
4. *Anything done by a person (the employee) at the direction of some other person given in the course of the employee's employment is taken for the purposes of this section not to have been done by the employee and instead to have been done by that other person.*
5. *It is a defence to a prosecution for an offence under this section for the defendant to establish that he or she did not know and had no reasonable cause to suspect that the record was a State record.*
6. *This section prevails over a provision of any other Act enacted before the commencement of this section.*

7. *An Act enacted after the commencement of this section is not to be interpreted as prevailing over or otherwise altering the effect or operation of this section except in so far as that Act provides expressly for that Act to have effect despite this section.*
- 8.535. For present purposes, the following obligations under the *State Records Act* are of most relevance:
- a. A public office must ensure the safe custody and proper preservation of the State records that it has control of (s. 11(2) of the *State Records Act*);
  - b. A person must not abandon or dispose of a State record (s. 21(1)(a) of the *State Records Act*); and
  - c. A person must not neglect a State record in a way that causes or is likely to cause damage to the State record (s. 21(1)(e) of the *State Records Act*).
- 8.536. In addition to these specific obligations, relevantly, a public office is required by s. 12(1) to keep full and accurate records of the activities of that Office. Section 12(2) requires the public office to establish and maintain a records management program in conformity with the standards and codes of best practice that may be approved from time to time under s. 13.
- 8.537. Clause 5 of the *State Records Regulations 2015 (Regulations)* provides that anything that is authorised or required to be done by or under a provision of an Act specified in Schedule 1 of the Regulations is prescribed as an exception to Part 3 of the *State Records Act* for the purposes of s. 21(2)(b). In addition, the Inquiry has received evidence that, for example, there are existing arrangements between the State Records Authority and the NSWPF in relation to the retention and disposal of NSWPF documentary records.

### Does the State Records Act apply to physical exhibits?

- 8.538. In order for ss. 11 and 21 to apply to “physical exhibits” under the control of the NSWPF, those exhibits must fall within the meaning of “state records” under the *State Records Act*.
- 8.539. Section 3 of the *State Records Act* defines a “state record” as follows (emphasis added):

***State record** means a record made or received by a person, whether before or after the commencement of this section—*

- (a) in the course of exercising official functions in a public office, or*
- (b) for a purpose of a public office, or*
- (c) for the use of a public office.*

*A record is defined to mean “any **document or other source of information** compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means.”*

- 8.540. Section 21 of the *Interpretation Act* provides that in any act a “document” means “any record of information”, and includes:
- a. Anything on which there is writing, or
  - b. Anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
  - c. Anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
  - d. A map, plan, drawing or photograph.
- 8.541. “Physical exhibits” fall broadly, for the purposes of these submissions, into two categories. First, there are physical exhibits with a documentary character (such as written material, diaries, CDs, DVDs and extracted fingerprints). Secondly, there are physical objects without this character (weapons, clothing, other forensic material).
- 8.542. In *Council of the New South Wales Bar Association v Archer*<sup>830</sup> the Court considered the definition of “document” under s. 21 of the *Interpretation Act*, in the context of contemplating the nature of contemporary electronic documents, such as computer files. Relevantly, Campbell JA stated:

*[54] The etymological origin of ‘document’ is the Latin ‘documentum’, meaning a lesson or an example. Thus, in the origin of the word itself, it is the information conveyed that is the dominant notion, not the physical form in which that information happens to be embodied. The origin is illustrated in the cognate word ‘documentary’ which is these days predominantly an audio visual means of conveying information.*

*[55] Of course, words can sometimes stray from their linguistic roots, but in this case traces of the ancestry remain in the present day usage. The ‘My Documents’ entity that every user of Windows computing systems will be familiar with does not contain a single piece of paper. Further, the original use of the meaning of ‘document’ as something that conveys information has been recognised in the law. Thus there is authority, not dependent upon any extended definition of ‘document’, that a ‘document’ can be a photograph (*Ljell v Kennedy* (No 3) (1884) 27 Ch D 1 at 24, 31, 32), a tape recording (*Grant v Southwestern and Co Properties Ltd* [1975] Ch 185; *Cassidy v Engvirda Construction Company* [1967] QWN 16; *Australian National Airlines Commission v The Commonwealth* (1975) 132 CLR 582 at 594, disapproving *Beneficial Finance Corporation Co Ltd v Conway* [1970] VR 321; *Butera v Director of Public Prosecutions (Vic)* (1987) 164 CLR 180 at 193), a film or video (*Senior v Holdsworth*; *Ex parte Independent Television News Ltd* [1976] QB 23 at 36 and 41) or a computer file or database (*Electrolux Home Products Pty Ltd v Westside Direct Pty Ltd* [2003] FCA 1014).*

<sup>830</sup> (2008) 72 NSWLR 236; [2008] NSWCA 164.

- 8.543. In Counsel Assisting's submission, physical exhibits with a documentary character clearly fall within the meaning of "document". Counsel Assisting noted that this conclusion is consistent with cl. 1.4 of the standard which the State Records Authority has issued pursuant to s. 13(1) of the *State Records Act* in relation to the physical storage of state records that are in a physical format (**the Standard**). Consequently, the loss, destruction or damage of documentary exhibits may comprise a breach of the *State Records Act*.
- 8.544. While the position in relation to non-documentary physical exhibits is more complex, Counsel Assisting submitted that the better view is that a non-documentary physical exhibit is a state record, at least once it has been collected and marked/bagged/boxed by the NSWPF. In some circumstances, such an exhibit may be a "document" by reason of s. 21(a), (b) or (c) of the *Interpretation Act*. However, a physical exhibit may also be an "other source of information" that has been "compiled, recorded or stored ... in any other manner or by any other means".
- 8.545. Counsel Assisting submitted that an ambiguity arises as to whether human agency, or some other active process, is required in order for something to have been "compiled, recorded, or stored" in the relevant sense. If that were the case, then some physical exhibits might not be "records" prior to the intervention of human agency (for example, intervention by "bagging and tagging" the item, or by placing it in a box with other items from the same crime scene).
- 8.546. On one view DNA could be viewed information which is "stored" in a blood sample. If an element of human agency or some other active process is not required, then it would fall within the meaning of a record by being a "source of information ... stored ... in any manner", even if it has not been collected, bagged, tagged or boxed by the NSWPF. However, Counsel Assisting contended this might be regarded as a stretch of the statutory language to hold that information in such a bloodstain has been "compiled, recorded or stored".
- 8.547. Counsel Assisting submitted that the position changes once the exhibit has been taken into possession by the NSWPF and marked (whether by tag, labelled bag or collection in a box). When that occurs, the tagged, bagged or boxed item is, in every ordinary sense of the words, a "source of information" that has been "compiled, recorded or stored" by the NSWPF. Indeed, the specific reason why the item is collected, marked and retained is because it is considered to be a source of information about the crime scene or incident being investigated. It is a "record" as defined.

### The interaction between the *State Records Act* and other legislative schemes

- 8.548. If physical objects held by the NSWPF are "records", a question arises about the interaction between the provisions of the *State Records Act* and other statutory schemes.
- 8.549. For example, Part 17 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (**LEPRA**) regulates the management and disposal of "property" in police custody. Property includes "every description of real and personal property; money, valuable securities, debts etc...".



- 8.550. Section 218 of that Part requires a police officer who seizes a thing to return the thing to the owner or person who had lawful possession of that thing if the officer is satisfied that its retention as evidence is not required. In the case of property connected with an offence, within one month after determination of proceedings for that offence, if the property has not been returned to a person under ss. 218 or 219, the property may be disposed of in accordance with s. 220(2). Section 220(2)(b) authorises the sale of the property on behalf of the Commissioner of Police.
- 8.551. Section 21(2)(b) of the *State Records Act* provides that s. 21(1) will not be contravened by, relevantly, “anything that is authorised or required to be done by or under this Act, or by or under a provision of any other Act that is prescribed by the regulations as being an exception to this Part...”.
- 8.552. Regulation 5 provides that for the purposes of s. 21(2)(b) of the *State Records Act*, anything that is authorised or required to be done by or under a provision of an Act specified in Schedule 1 is prescribed as an exception to Part 3 of the Act. Schedule 1 specifically identifies certain provisions of the *LEPRA*, and of the *Police Act*, but not the provisions of Part 17 of the *LEPRA*.
- 8.553. None of the provisions under Part 17 of the Act are excluded from the operation of s. 21 of the *State Records Act*. Therefore, if the meaning of “public record” encompasses physical property held by the NSWPF, it would be necessary to reconcile the obligations owed by police under Part 17 of the *LEPRA* and s. 21 of the Act.
- 8.554. Section 21(7) of the *State Records Act* provides that “[a]n Act enacted after the commencement of this section is not to be interpreted as prevailing over or otherwise altering the effect or operation of this section except in so far as that Act provides expressly for that Act to have effect despite this section.” On the face of the legislation, the obligations in s. 21 of the *State Records Act* prevail, and the application of Part 17 of the *LEPRA* does not exclude the operation of s. 21 of the *State Records Act*.
- 8.555. Counsel Assisting submitted that it is possible that where items are actually dealt with under Part 17 of the *LEPRA* they are dealt with “in accordance with normal administrative practice in a public office” as contemplated by ss. 21(2)(a) and 22 of the *State Records Act*. It is not necessary for the Inquiry to decide that question, save to observe that many of the documents and exhibits which have been lost, damaged or destroyed in matters before this Inquiry were not dealt with in accordance with proper police procedures at the time.

### **The consequence of the conclusion that exhibits may be State Records**

- 8.556. Based on the analysis above, Counsel Assisting submitted that the evidence before the Inquiry suggests that there has been a failure to comply with the *State Records Act* in respect of at least some exhibits and documentary records. Indeed, in Counsel Assisting’s submission, the evidence indicates a systemic failure on the part of the NSWPF to comply, or even endeavour to comply, with obligations under the *Archives Act* and the *State Records Act*, in relation to both exhibits and many kinds of documentary record which have been lost or destroyed.

- 8.557. Counsel Assisting submitted that, in fairness, the apparent breaches of the *Archives Act* and the *State Records Act* may have proceeded from a view (a view Counsel Assisting submitted is erroneous) that the *State Records Act* does not apply to exhibits, or perhaps that the *State Records Act* is implicitly excluded when Part 17 of the *LEPRA* is engaged. However, despite being invited to provide evidence to the Inquiry about the NSWPF's position as to the status of documents or exhibits under the *State Records Act*, the evidence provided by the NSWPF is silent as to the issue.<sup>831</sup>
- 8.558. I accept the submission of Counsel Assisting that this raises a concern that the responsible persons within the NSWPF have not turned their minds to their obligations under the *State Records Act*—including after being expressly invited by this Inquiry to provide a statement or statements addressing the issue. Even if the widespread failure to comply with the *Archives Act* and *State Records Act* proceeded from an honest misunderstanding as to the operation of the law (a matter about which the evidence is silent), the additional overlay of statutory obligations under the *Archives Act* and later the *State Records Act* makes more serious the loss of documents and exhibits which are described elsewhere in these submissions.
- 8.559. A failure to comply with s. 21(1) is an offence punishable by a maximum penalty of 100 penalty units. Proceedings for an offence against s. 21(1) are to be taken before the Local Court (s. 78(1)). Proceedings for such an offence must be commenced no later than three years from when the offence was alleged to have been committed (s. 78(2)).
- 8.560. In respect of the matters considered by the Inquiry, s. 78(2) has the effect that prosecutions in respect of the loss or destruction of the relevant exhibits would be time-barred. In addition, in the majority of cases considered below it is not clear who was responsible for the loss or destruction of the relevant exhibit. Accordingly, even if there was a failure to comply with the *State Records Act*, it does not engage my duty in s. 10(1) of the *SCOI Act* to report on evidence or sufficient evidence warranting the prosecution of a specified person for a specified offence.
- 8.561. Counsel Assisting submitted that consideration should be given to a recommendation that the *State Records Act* be amended to clarify the application of the Act to exhibits obtained by the NSWPF, or that some other step be taken to ensure all persons involved understand the scope and nature of the obligations of members of the NSWPF under the *State Records Act*. The question of whether such items *should* constitute State Records invokes a number of policy considerations, and would undoubtedly require consideration of obligations under other legislative regimes.

<sup>831</sup> Exhibit 52, Tab 3, Letter from the Inquiry to the NSWPF re further cases in which exhibits had been lost or destroyed, 26 May 2023 (SCOI.84217).

### Submissions of the NSWPF concerning the application of the *State Records Act*

- 8.562. Having regard to the view I have taken in relation to this issue, I do not consider that I need to set out the submissions of the NSWPF, and the submissions of Counsel Assisting in reply, in as much detail as would otherwise be necessary.
- 8.563. The NSWPF accepted that documentary records created in the course of investigating an offence are “state records”.<sup>832</sup> However, the NSWPF submitted that exhibits are not “state records”, regardless of whether they are documentary in character.<sup>833</sup> The NSWPF acknowledged that where “state records” have been lost or destroyed outside of proper procedures, this may have involved a contravention of the *State Records Act*.<sup>834</sup> The NSWPF submitted, in line with Counsel Assisting, that it is not possible to determine whether any particular person has committed an offence under ss. 21(2)(a) or (e) of the *State Records Act*.<sup>835</sup>

#### THE POSITION UNDER THE *ARCHIVES ACT*

- 8.564. The NSWPF submitted that the Inquiry should not “venture into speculation as to whether the NSWPF historically failed to comply with the Archives Act.”<sup>836</sup> In this respect, the NSWPF observed that the Inquiry lacks evidence regarding any disposal authorities issued by the Archives Authority, which may have authorised the destruction of records. Further, there is a dearth of evidence as to whether the NSWPF provided appropriate notification to the Archives Authority pursuant to s. 14 prior to the destruction of records.<sup>837</sup>
- 8.565. The NSWPF submitted that the *Archives Act* did not apply to exhibits for substantially similar reasons to those advanced in relation to the *State Records Act*.

#### THE POSITION UNDER THE *STATE RECORDS ACT*

- 8.566. The NSWPF accepted that documents created by the NSWPF, such as investigative files, are state records.<sup>838</sup>
- 8.567. However, the NSWPF submitted that exhibits, whether documentary or non-documentary, are not records “made or received” by a person in the NSWPF within the meaning of s. 3. Rather, exhibits are “seized” by the NSWPF as reflected in Part 17 of *LEPRA*. The NSWPF submitted that the seizure of objects as exhibits cannot be reconciled with the ordinary meaning of the word “received”, which connotes an acceptance of something that has been “delivered” or “offered” by a third-party.<sup>839</sup>

<sup>832</sup> Submissions of NSWPF, 10 October 2023, [206] (SCOI.86127).

<sup>833</sup> Submissions of NSWPF, 10 October 2023, [206] (SCOI.86127).

<sup>834</sup> Submissions of NSWPF, 10 October 2023, [206] (SCOI.86127).

<sup>835</sup> Submissions of NSWPF, 10 October 2023, [206] (SCOI.86127).

<sup>836</sup> Submissions of NSWPF, 10 October 2023, [214] (SCOI.86127).

<sup>837</sup> Submissions of NSWPF, 10 October 2023, [213] (SCOI.86127).

<sup>838</sup> Submissions of NSWPF, 10 October 2023, [206] (SCOI.86127).

<sup>839</sup> Submissions of NSWPF, 10 October 2023, [239]–[242] (SCOI.86127).

- 8.568. Such an interpretation was also said to accord better with the purpose of the Act which the NSWPF described as to ensure that the “activities of public offices [are] fully and accurately recorded and preserved”.<sup>840</sup> In support of this, the NSWPF outlined several policy considerations which were said to militate against the classification of exhibits as state records, including that to do so would prevent the NSWPF from using/testing exhibits and would require the retention of vast quantities of material, including child pornography, weapons, prohibited drugs or blood-stained clothing.<sup>841</sup>
- 8.569. Regarding Counsel Assisting’s submission that non-documentary physical exhibits become state records once they have been collected and marked/bagged/boxed by the NSWPF, the NSWPF submitted that the act of storing an exhibit is not capable of altering the underlying nature of the object such that it becomes a state record. Instead, whether something is a state record is defined by its “intrinsic informational content” and is ascertained objectively.<sup>842</sup>
- 8.570. The NSWPF also emphasised the difficulties that would flow from construing exhibits as state records, including in relation to the interaction with *LEPRA* and the *Drugs Misuse and Trafficking Act 1995*.<sup>843</sup>

## Submissions in reply of Counsel Assisting

### THE POSITION UNDER THE ARCHIVES ACT

- 8.571. Counsel Assisting submitted that the concern that there may have been non-compliance with the *Archives Act* emerges clearly on the evidence before the Inquiry. Given there have been numerous incidences where documentary material has been lost, with no explanation as to whether destruction of that material was authorised, Counsel Assisting considered it appropriate that the Inquiry identify that there may have been historical non-compliance with the *Archives Act*.<sup>844</sup>
- 8.572. The NSWPF submitted that the Inquiry should have sought to obtain authorities issued by the Archives Authority that were relevant to the NSWPF.<sup>845</sup> Counsel Assisting observed that the NSWPF could have provided this material and, regardless, access to that material is not necessary for the Inquiry to express a concern that there *may* have been historical non-compliance.<sup>846</sup> I agree with this submission.

<sup>840</sup> Submissions of NSWPF, 10 October 2023, [241] (SCOI.86127).

<sup>841</sup> Submissions of NSWPF, 10 October 2023, [241] (SCOI.86127).

<sup>842</sup> Submissions of NSWPF, 10 October 2023, [245]–[252] (SCOI.86127).

<sup>843</sup> Submissions of NSWPF, 10 October 2023, [253]–[255] (SCOI.86127).

<sup>844</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [22] (SCOI.86354).

<sup>845</sup> Submissions of NSWPF, 10 October 2023, [211]–[213] (SCOI.86127).

<sup>846</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [75] (SCOI.86354).

### THE POSITION UNDER THE *STATE RECORDS ACT*

- 8.573. Counsel Assisting noted that since *LEPRA* was introduced after the *State Records Act*, caution should be exercised in juxtaposing the “seizure” of material under *LEPRA* with the making or receipt of a document under the *State Records Act*.
- 8.574. Regarding the NSWPF’s emphasis on the language of “made or received”, Counsel Assisting observed that this submission does not grapple with situations where an exhibit clearly is “received” by a police officer (for example, when material is given to an officer by a witness). Further, in Counsel Assisting’s view, the NSWPF’s submissions also does not grapple with the fact that, when an exhibit is labelled, a record is clearly “made”.
- 8.575. Similarly, Counsel Assisting submitted that the NSWPF’s observations regarding the purpose of the *State Records Act* assume that exhibits are not state records. The NSWPF did not seek to explain why exhibits are not “records of the public offices of the State” which are worthy of preservation and retention. If the purpose of the *State Records Act* is the maintenance of records of public officers, then Counsel Assisting submitted that the logical starting position is that items that are “compiled” for the express purpose of being a source of information are records of public office that should be maintained.
- 8.576. Counsel Assisting further submitted that the definition of “record” within the Act clearly identifies that the nature of an item may change. That is recognised in the language of (emphasis added) “other source of information, **compiled**, recorded or **stored**”.<sup>847</sup>
- 8.577. Finally, Counsel Assisting observed that even if the NSWPF’s interpretation is correct, it would not answer the concern that there has been widespread failure to comply with the *Archives Act* and/or the *State Records Act*, given the loss of labels or tags attached to exhibits, which the NSWPF recognises to be state records.

### Conclusions regarding the *State Records Act*

- 8.578. In large part, I have not needed to resolve the submissions concerning the *State Records Act* given my formulation of **Recommendation 9**. However, I note my gratitude to both Counsel Assisting and the NSWPF for their helpful and detailed submissions on this difficult and technical issue of statutory interpretation.

<sup>847</sup> *State Records Act*, s. 3.

## Historical practices in relation to exhibit management

- 8.579. Assistant Commissioner Conroy explained in her statement that “[t]he exhibit management process within NSWPF can be best described as a lifecycle, comprising of a number of key stages.”<sup>848</sup> Those key stages are identification, collection, recording, testing (if applicable), storage and destruction.<sup>849</sup> Those processes are presently contained in the Exhibit Procedures Manual and the Exhibits chapter of the Police Handbook, which is available on the NSWPF Intranet.<sup>850</sup>
- 8.580. This is another area where there was substantial agreement between Counsel Assisting and the NSWPF in relation to the relevant facts. I deal with some competing submissions in the course of considering the evidence.

### The 1970s to the 1990s

- 8.581. Between 1970 and 1990 the Police Rules and Instructions governed the management of exhibits, including the process for obtaining exhibits. The Police Rules and Instructions amended in 1991 are in evidence before the Inquiry, as are copies of Instruction 33, which pertains to exhibits from 1982 and 1989.<sup>851</sup>
- 8.582. As at 1982, the safe custody of exhibits received at a police station was the responsibility of the Station Sergeant or Constable, if applicable, or the OIC of the Station.<sup>852</sup> The Instruction notes that “full particulars of property used by Police as exhibits should be recorded in an exhibit book”. The entries in regard to each exhibit “should show at a glance the whole of the movements of the exhibit from the time of receipt to its ultimate disposal.”<sup>853</sup>
- 8.583. In 1989, at Police Stations where permanent Station Sergeants or Constables performing the duties of a Station Sergeant were employed, the safe custody of exhibits at that Station was the responsibility of that person. In all other Stations, responsibility rested with the Patrol Commander.<sup>854</sup> The 1989 Instruction records:<sup>855</sup>

#### *EXHIBIT BOOK*

*Full and detailed particulars of the property taken into possession by Police are to be recorded in the Exhibit Book. The entries in regard to each exhibit should show at a glance all the movements of the exhibit from the time of receipt to its ultimate disposal including the manner of disposal, the authorisation for such disposal, the Authorising Officer and where the*

<sup>848</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [25] (NPL.9000.0008.0905).

<sup>849</sup> Transcript of the Inquiry, 4 July 2023, T4800.4-4801.10 (TRA.00072.00001).

<sup>850</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [25] (NPL.9000.0008.0905).

<sup>851</sup> Exhibit 51, Tab 3H, Index to Police Rules and Instructions, Undated (NPL.9000.0002.3021); Exhibit 51, Tab 2J, Instruction No. 33 – Exhibits and Miscellaneous Property, 1982 (NPL.9000.0002.0038); Exhibit 51, Tab 2F, Instruction No. 33 – Exhibits and Miscellaneous Property, 1989 (NPL.9000.0002.0074).

<sup>852</sup> Exhibit 51, Tab 2J, Instruction No. 33 – Exhibits and Miscellaneous Property, 1982, 16(1) (NPL.9000.0002.0038).

<sup>853</sup> Exhibit 51, Tab 2J, Instruction No. 33 – Exhibits and Miscellaneous Property, 1982, 14 (NPL.9000.0002.0038).

<sup>854</sup> Exhibit 51, Tab 2F, Instruction No. 33 – Exhibits and Miscellaneous Property, 1989, 33-54 (NPL.9000.0002.0074).

<sup>855</sup> Exhibit 51, Tab 2F, Instruction No. 33 – Exhibits and Miscellaneous Property, 1989, [33.29] (NPL.9000.0002.0074).

*exhibit is destroyed and signed by the Officer in whose presence the property was so destroyed.*

- 8.584. Superintendent Best described exhibit books as “at the core of the exhibit management process during the 1970s and 1980s.”<sup>856</sup> Assistant Commissioner Conroy’s evidence was that from the 1970s to the 1990s, the exhibit book should have recorded all movements of an exhibit, and that generally exhibits would remain in the custody of the senior arresting officer or an assigned officer (in the case of large investigations). The exhibit book was to record any receipts for the transfer, disposal or destruction of an exhibit.<sup>857</sup>
- 8.585. Assistant Commissioner Conroy agreed in her oral evidence that in the 1970s and 1990s “the important document was the exhibit book”, and that all movements of the exhibit should have been recorded in the exhibit book. She explained that during this period the OIC would enter exhibits into the exhibit book, but that custody of the exhibit book would stay with the Exhibit Officer.<sup>858</sup>
- 8.586. This is consistent with the “Homicide – Part III” document annexed to the statement of Detective Superintendent Doherty, which sets out the duties of the OIC of exhibits. Those duties included, at the completion of an inquiry or when an arrest has been made, the storage of exhibits.<sup>859</sup> In addition, the OIC of exhibits was responsible for the ultimate disposal of all exhibits and miscellaneous property at the conclusion of a trial and when approval had been obtained from both the OIC of the investigation and the Clerk of the Peace.<sup>860</sup> The document identifies that “[i]f no arrest is made, and the murder is not cleared up, the exhibits will be held indefinitely in the care and control of the O.I.C. exhibits until such time as he is otherwise directed by the O.I.C of the investigation.”<sup>861</sup>
- 8.587. Assistant Commissioner Conroy explained, in the First Conroy Statement and in her oral evidence, that generally prior to 1990 exhibits were collected in an unlabelled, brown paper bag (except for specific types of exhibits), and that the process for collecting an exhibit involved recording the exhibit in the exhibit book, adding a cross reference to the COPS event number, tagging the item, and securing the item in the exhibit room. Until the mid to late 1990s, the OIC of a case was responsible for obtaining exhibits. By the late 1990s, exhibit bags were printed with a pre-formatted label.<sup>862</sup>

<sup>856</sup> Exhibit 51, Tab 2, Statement of Superintendent Roger Best, 24 April 2023, [60] (NPL.9000.0003.1533).

<sup>857</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [96]–[97] (NPL.9000.0008.0905).

<sup>858</sup> Transcript of the Inquiry, 4 July 2023, T4815.25-27 (TRA.00072.00001).

<sup>859</sup> Exhibit 51, Tab 1Y, NSWPF Detectives Training Course, Undated, [34] (NPL.0100.0003.0706).

<sup>860</sup> Exhibit 51, Tab 1Y, NSWPF Detectives Training Course, Undated, [34] (NPL.0100.0003.0706).

<sup>861</sup> Exhibit 51, Tab 1Y, NSWPF Detectives Training Course, Undated, [34(f)] (NPL.0100.0003.0706).

<sup>862</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [52]–[54] (NPL.9000.0008.0905); Transcript of the Inquiry, 4 July 2023, T4804.6-45, T4805.29-35 (TRA.00072.00001).



- 8.588. From the 1970s to the 1990s, most exhibits were stored in the exhibit room either at the station that the OIC was attached to, or at the relevant NSWPF “charging” station.<sup>863</sup> At this time, there were “main” police stations, which were the charge stations where the Commander was located, and then stations referred to as “sub-stations” that had no charge facilities.<sup>864</sup> If there was no nearby charge station (e.g., if exhibits were collected in a regional or a remote area), secure transport would be arranged to a charge station. Exhibits were stored in the exhibit room in bags or boxes, grouped by crime scene where practical.<sup>865</sup>
- 8.589. Exhibit management was an entirely manual process, and Assistant Commissioner Conroy observed in her statement that “[w]hen exhibits were moved from their nominated location, this was supposed to be recorded in the exhibit book, but given it was an entirely manual process, this was not always up to date.”<sup>866</sup> In her oral evidence, Assistant Commissioner Conroy acknowledged that applicable police procedures during this period, and proper police practice, required the exhibit book to be kept up to date.<sup>867</sup>
- 8.590. If an OIC moved from one station to another and transferred to another police district, the exhibits would ordinarily be reallocated to another officer.<sup>868</sup> Audits of exhibits were carried out every three months. If an exhibit was not located, the OIC would report that to their supervisor and a report would go to the Commander of the police station.<sup>869</sup> Assistant Commissioner Conroy accepted that there should be an independent record of the fact that particular exhibits had not been located.<sup>870</sup> Assistant Commissioner Conroy was not aware of any disciplinary, performance management or support consequences that might occur as a result of the loss of exhibits.<sup>871</sup>
- 8.591. In the 1990s, “Commissioner’s Instructions” were introduced. A copy of the Commissioner’s Instruction relating to exhibits is also in evidence before the Inquiry.<sup>872</sup>

<sup>863</sup> Transcript of the Inquiry, 4 July 2023, T4811.8-12 (TRA.00072.00001).

<sup>864</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [78]–[79] (NPL.9000.0008.0905).

<sup>865</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [79] (NPL.9000.0008.0905).

<sup>866</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [81] (NPL.9000.0008.0905); Transcript of the Inquiry, 4 July 2023, T4811.27-42 (TRA.00072.00001).

<sup>867</sup> Transcript of the Inquiry, 4 July 2023, T4811.35-42 (TRA.00072.00001).

<sup>868</sup> Transcript of the Inquiry, 4 July 2023, T4811.14–17 (TRA.00072.00001).

<sup>869</sup> Transcript of the Inquiry, 4 July 2023, T4812.1–6 (TRA.00072.00001).

<sup>870</sup> Transcript of the Inquiry, 4 July 2023, T4812.8-10 (TRA.00072.00001).

<sup>871</sup> Transcript of the Inquiry, 4 July 2023, T4812.22–32 (TRA.00072.00001).

<sup>872</sup> Exhibit 51, Tab 2G, NSW Police Service – Commissioner’s Instructions, 1991-1992 (NPL.9000.0003.0255).



8.592. Instruction 33.01 in the 1989–1990 Police Rules and Instructions records the general policy at this time in relation to exhibits:<sup>873</sup>

*While patrol commanders are accountable for the security, retention and disposal of exhibits, police generally have an obligation to assist them to carry out this function.*

*Exhibits are not to be retained longer than absolutely necessary and patrol commanders will keep this firmly in mind. Exhibits will be photographed, fingerprinted or analysed as required, and returned to the owner or disposed of.*

*The prosecution may satisfy its onus of presenting evidence to court by tendering photographs of such property, attested by the photographer and its existence corroborated by sworn testimony.*

*The actual property seized need not be tendered to the court as an exhibit unless there is some feature which makes its production imperative, for example:*

- *Murder weapons.*
- *Implements used in armed hold-ups or serious assaults.*
- *Documents, defective motor vehicle parts, money or other article with unique or distinctive characteristics.*

*On occasions something seized as an exhibit may prove not to have any evidentiary value. In such circumstances there is no need to tender the item in court and it should be returned to the lawful owner.*

*Where doubt exists the patrol commander or officer in charge of the case should consult the local police prosecutor or Commander, Regional Legal Services.*

8.593. Instruction 33 includes detailed rules for the recording, management, return and disposal of different types of exhibits. The previous iterations contain similar instructions. Instruction 33 also guided the disposal of exhibits, often referable to the type of exhibit. There are broad similarities to the procedures for the disposal of exhibits during this period and current procedures.<sup>874</sup> However, Assistant Commissioner Conroy explained:<sup>875</sup>

*[T]he considerations relating to the assessment of forensic value at the time were different. When making the decision to dispose of exhibits, I understand that the process at the time was generally to consider future evidentiary or forensic value, but, because DNA testing was not available,*

<sup>873</sup> Exhibit 51, Tab 5C, Police Rules and Instructions, [33.01] (NPL.9000.0018.0061).

<sup>874</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [112] (NPL.9000.0008.0905).

<sup>875</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [113] (NPL.9000.0008.0905).

*this did not generally factor into decision making. As a result, it is possible the exhibits which would be retained now (taking into account forensic potential) would not have been retained in the past. Similarly, there is now a much greater understanding that crimes that may not presently be able to be solved using current forensic and technological capabilities may be able to be progressed in the future due to subsequent advances in these areas. Decisions regarding the retention and disposal of exhibits are now therefore made bearing such factors in mind.*

8.594. The NSWPF submitted as follows in relation to this Instruction:<sup>876</sup>

*This instruction reflects that the need to retain exhibits was considered to be comparatively limited. That fact is unsurprising given fact that, in the absence of bloodstains or fingerprints many (or even most) exhibits would have been regarded as having no real forensic utility. Once such exhibits had been photographed and tested for blood or fingerprints, there would – in the eyes of police operating in the late 1980s or early 1990s – have been no need for the exhibit to be further retained unless there was some particular feature of the exhibit that meant that the physical characteristics of an item (for example, a knife used in a murder) might itself have some forensic purpose.*

8.595. I accept that this is true of the 1980s and early 1990s. The question of the mid to late 1990s is one which I consider elsewhere.

8.596. In her oral evidence, in response to questions from Senior Counsel Assisting about paragraph 104 of the First Conroy Statement where Assistant Commissioner Conroy stated that it was normally desirable to retain exhibits when dealing with serious offences,<sup>877</sup> Assistant Commissioner Conroy explained that while this wasn't explicitly in the instructions in the 1970s and following, "certainly it would be preferable to keep exhibits for serious indictable offences for production at court".<sup>878</sup> She agreed that proper police practice requires exhibits to be retained in relation to serious offences, depending on the evidentiary value of the exhibits.<sup>879</sup>

8.597. I accept, as the NSWPF submitted, that Assistant Commissioner Conroy's evidence must be understood in light of the qualification that the need for exhibits to be retained depended on the "evidentiary value" of an exhibit, and that this in turn must be assessed from the perspective of officers operating at the relevant time.<sup>880</sup>

<sup>876</sup> Submissions of NSWPF, 10 October 2023, [122] (SCOI.86127).

<sup>877</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [104] (NPL.9000.0008.0905).

<sup>878</sup> Transcript of the Inquiry, 4 July 2023, T4818.12-16 (TRA.00072.00001).

<sup>879</sup> Transcript of the Inquiry, 4 July 2023, T4818.18-20 (TRA.00072.00001).

<sup>880</sup> Submissions of NSWPF, 10 October 2023, [123]–[125] (SCOI.86127).

- 8.598. In addition, Assistant Commissioner Conroy agreed that in the 1970s and the period following, proper police practice required consideration of the future evidentiary or forensic value of an exhibit before it was destroyed.<sup>881</sup> She agreed that she would expect to see a record of the destruction of an exhibit, and that proper police practice required a record of a decision to destroy or dispose of an exhibit.<sup>882</sup>
- 8.599. In relation to records management, Detective Inspector Warren explained that his experience was that in the 1980s and 1990s the OIC was required, once a matter was finalised, to compile the material and place it in some sort of container that would then be stored at the police station until the OIC of the police station (effectively the Commander of the police station) determined what would happen to that material.<sup>883</sup> Detective Inspector Warren was not aware of any policy prior to the early 2000s that indicated to OICs at what point documents in their investigative files should be put into the storage room of a police station or sent to Corporate Records or to the Government Records Repository (**GRR**), but accepted that if there was such a policy it appeared that it had not always been adhered to.<sup>884</sup>
- 8.600. The NSWPF submitted that they were operating in a dramatically different landscape in relation to forensic testing and information technology in the 1970s to the 1990s.<sup>885</sup> I accept this submission, but I do not accept that this is the answer to the question of whether exhibits and records should have been retained in individual matters.
- 8.601. The NSWPF noted that the “entirely manual process” of exhibit management during this time period introduced a “substantially greater... risk of human error or laxity than exists today.”<sup>886</sup> Efforts were made to address these risks, for example, via the conduct of regular audits:<sup>887</sup>

*...that audit process required the officer in charge of the relevant police station to go through each page of the exhibit book and cross-reference the exhibits listed there to the items held in the relevant exhibit office. Such a process was significantly more onerous and more susceptible to human error than the current process, which involves the use of barcodes and scanners.*

<sup>881</sup> Transcript of the Inquiry, 4 July 2023, T4819.29-34 (TRA.00072.00001).

<sup>882</sup> Transcript of the Inquiry, 4 July 2023, T4819.47-4520.7 (TRA.00072.00001).

<sup>883</sup> Transcript of the Inquiry, 5 July 2023, T4956.1-20 (TRA.00073.00001).

<sup>884</sup> Transcript of the Inquiry, 5 July 2023, T4965.18-35 (TRA.00073.00001).

<sup>885</sup> Submissions of NSWPF, 10 October 2023, [117]–[118] (SCOI.86127).

<sup>886</sup> Submissions of NSWPF, 10 October 2023, [119] (SCOI.86127).

<sup>887</sup> Submissions of NSWPF, 10 October 2023, [120] (SCOI.86127).

- 8.602. The NSWPF accepted that the disposal or destruction of an exhibit should have been recorded in the relevant exhibit book, according to proper police practice.<sup>888</sup> The NSWPF also accepted that the approach to sending documents to storage or to the GRR “may not have been the subject of uniformly adhered to policy” in the 1980s and 1990s.<sup>889</sup> However, the NSWPF submitted that “great care needs to be taken not to unfairly judge decisions around the disposal of exhibits by reference to modern understandings”.<sup>890</sup> I accept these submissions. However, a need to locate decisions in their historical context does not mean a critical eye cannot be turned on those decisions.

### The 2000s and the introduction of the Command Management Framework

- 8.603. In 2000, the NSWPF implemented the Command Management Framework (CMF), which is still used today. The CMF is:<sup>891</sup>

*... a risk-based accountability structure that was originally in place in a paper-based form and it identifies an area of risk within the police station or the police district command and it mandates that certain inspections are done, dip samples are done and reporting is done to the commander in relation to a range of systems within that police station.*

- 8.604. The responsibilities and accountabilities in relation to exhibit management are outlined in the Exhibit Procedures Manual.<sup>892</sup> As noted by Assistant Commissioner Conroy in her statement, and by the NSWPF in its submissions, the CMF requires certain tests and audits to be conducted on a regular basis in relation to exhibits, including an annual “100 per cent audit” of exhibits.<sup>893</sup> In addition, monthly “dip samples” have been available from 2011 on the CMF.<sup>894</sup>
- 8.605. Prior to the introduction of EFIMS, exhibit audits were conducted manually by officers checking each page of the exhibit books and sighting exhibits within the police station exhibit office.<sup>895</sup> Assistant Commissioner Conroy’s oral evidence was that the requirement of an annual “100 per cent audit” meant that “every single exhibit has been inspected and ratified against the exhibit book within that police station.”<sup>896</sup>

<sup>888</sup> Submissions of NSWPF, 10 October 2023, [127] (SCOI.86127).

<sup>889</sup> Submissions of NSWPF, 10 October 2023, [128] (SCOI.86127).

<sup>890</sup> Submissions of NSWPF, 10 October 2023, [127] (SCOI.86127).

<sup>891</sup> Transcript of the Inquiry, 4 July 2023, T4812.40-46 (TRA.00072.00001).

<sup>892</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [85] (NPL.9000.0008.0905).

<sup>893</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [86] (NPL.9000.0008.0905); Submissions of NSWPF, 10 October 2023, [131] (SCOI.86127).

<sup>894</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [86]–[87] (NPL.9000.0008.0905).

<sup>895</sup> Transcript of the Inquiry, 4 July 2023, T4805.45-4806.2 (TRA.00072.00001).

<sup>896</sup> Transcript of the Inquiry, 4 July 2023, T4813.8-10 (TRA.00072.00001).

- 8.606. In January 2002, the Commissioner of the NSWPF directed a moratorium on the disposal of exhibits which might be the subject of DNA testing.<sup>897</sup> Assistant Commissioner Conroy explained in her oral evidence that in order to decide whether an exhibit had biological or forensic value officers would look at why it was collected, and then consider the ability to recover trace DNA, blood, semen or saliva from that exhibit.<sup>898</sup>
- 8.607. In 2003, the Exhibits Guideline in the Police Handbook was reviewed, with the result that all exhibits associated with the prosecution of serious indictable matters and all sexual assaults were to be retained by LACs and under no circumstances were these exhibits to be destroyed or disposed of during the period of the moratorium.<sup>899</sup> In 2007, the moratorium was amended to mirror the scope of the *CFP Act*, which had the effect that a more limited set of exhibits were to be retained.<sup>900</sup> There were some further amendments in 2012.<sup>901</sup>
- 8.608. In 2005, the Commissioner's Instructions were replaced by the Police Handbook. Instruction 33 was incorporated into the Handbook as "Exhibits", with minor changes. A copy of the sections of the Police Handbook concerning exhibits as at 2005 are in evidence.<sup>902</sup> Assistant Commissioner Conroy explains that prior to 2012, the OIC was in charge of the handling of exhibits, and that the movement of exhibits remained a manual process.<sup>903</sup>
- 8.609. Assistant Commissioner Conroy said in her statement that the key changes to the process for obtaining exhibits implemented in 2005 centred on significant developments in forensic testing.<sup>904</sup> The job of collecting exhibits containing biological material fell to CSSB staff (now known as Forensic Investigators), and the OIC would be responsible for the collection of physical items not requiring forensic testing. The exhibits would be taken to the OIC's police station.<sup>905</sup> The changes implemented in this time concerning storage of exhibits related to the separation of exhibit management from miscellaneous property, and the development of appropriate storage facilities for biological samples.<sup>906</sup>

<sup>897</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [114] (NPL.9000.0008.0905).

<sup>898</sup> Transcript of the Inquiry, 4 July 2023, T4816.13-17 (TRA.00072.00001).

<sup>899</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [115] (NPL.9000.0008.0905); Exhibit 51, Tab 3S, Police Notice – Retention and Disposal of Exhibits, 22 September 2003 (NPL.9000.0002.4086).

<sup>900</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [116] (NPL.9000.0008.0905); Exhibit 51, Tab 3T, Police Notice – Change to Existing Exhibit Moratorium, 21 August 2007 (NPL.9000.0002.4085).

<sup>901</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [117] (NPL.9000.0008.0905); Exhibit 51, Tab 3U, Commissioner's Policy Notice, Maintenance of Exhibits by NSWPF, Undated (NPL.9000.0002.4084).

<sup>902</sup> Exhibit 51, Tab 3M, NSWPF Handbook Extracts, February 2005 (NPL.9000.0002.4655).

<sup>903</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [99]–[100] (NPL.9000.0008.0905).

<sup>904</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [57] (NPL.9000.0008.0905).

<sup>905</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [59]–[62] (NPL.9000.0008.0905).

<sup>906</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [90] (NPL.9000.0008.0905).

## Current policies and procedures

8.610. The current processes for storing exhibits are set out in the Exhibits chapter of the Police Handbook and in the Exhibit Procedures Manual. The Exhibits chapter of the Police Handbook provides general guidance in relation to the effective management of exhibits and is read by officers in conjunction with specific instructions related to the use of EFIMS and the Exhibit Procedures Manual.<sup>907</sup>

8.611. In relation to accountability for exhibits, Assistant Commissioner Conroy said in her oral evidence that:<sup>908</sup>

*Well, when an exhibit is collected, it's entered into EFIMS. Once it is entered into EFIMS it's stored in an exhibit room. Once it's under the exhibit room, in the exhibit room, the exhibit officer is responsible for that exhibit, however the OIC remains responsible for the lifecycle of that exhibit. And then the officer – the commander of that police station is – then takes whole responsibility for ensuring that auditing and storage, retention or disposal of that exhibit is in accordance with the Police Handbook or with the legislation around that exhibit.*

8.612. Assistant Commissioner Conroy gave evidence that all exhibits, including historical exhibits, should be entered in EFIMS at this point in time.<sup>909</sup>

8.613. The Exhibit Procedures Manual was first released in December 2012, and the version introduced at that time is in evidence before the Inquiry.<sup>910</sup> The Exhibit Procedures Manual was introduced following an audit by the NSW Auditor General in 2011-2012, referred to as the “Strategic Drug Exhibit Project”, and Assistant Commissioner Conroy understands that it also incorporated relevant coronial recommendations or significant trial outcomes.<sup>911</sup>

8.614. The current version of the Exhibit Procedures Manual is also in evidence before the Inquiry, as is the Exhibits chapter of the Police Handbook.<sup>912</sup> At present, Police Area/District Commanders and equivalent Specialist Commanders are accountable for the overall effective management of exhibits, including transportation, retention, security, safe handling and disposal of exhibits, although all officers have a duty to assist in this regard. The responsibility for the decision to retain or dispose of an exhibit rests with the Commander or the OIC.<sup>913</sup> The Commander or equivalent is responsible for ensuring compliance with the CMF, including by ensuring that audits of exhibits are conducted.<sup>914</sup>

<sup>907</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [26]–[27] (NPL.9000.0008.0905).

<sup>908</sup> Transcript of the Inquiry, 4 July 2023, T4801.14-24 (TRA.00072.00001).

<sup>909</sup> Transcript of the Inquiry, 4 July 2023, T4801.28-29 (TRA.00072.00001).

<sup>910</sup> Exhibit 51, Tab 3B, Exhibits Procedures Manual (Version 1), December 2012 (NPL.9000.0002.1706).

<sup>911</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [30]–[31].

<sup>912</sup> Exhibit 51, Tab 3E, Exhibits Procedures Manual, August 2022 (NPL.9000.0002.0137); Exhibit 51, Tab 3F, NSWPF Handbook, Chapter (NPL.9000.0002.0128).

<sup>913</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [34] (NPL.9000.0008.0905).

<sup>914</sup> Transcript of the Inquiry, 4 July 2023, T4801.41-4802.8 (TRA.00072.00001).

- 8.615. If an OIC ceases employment with the NSWPF, or is absent for more than three months, all pending investigations, including exhibit responsibilities, are allocated to another officer. If the OIC is absent for fewer than three months, the second OIC retains responsibility for exhibits for the duration of the OIC's absence.<sup>915</sup>

### Identifying and obtaining exhibits at a crime scene

- 8.616. Power to obtain exhibits is conferred on the NSWPF by a range of legislative instruments. An officer will consider a number of factors before determining whether an item should become an exhibit.<sup>916</sup> In her oral evidence, Assistant Commissioner Conroy agreed with the proposition that in identifying an exhibit the OIC of an investigation will consider both the evidentiary purpose of the exhibit and the available powers of seizure.<sup>917</sup>
- 8.617. Obtaining physical exhibits is not required in every case (for example, in the absence of a need for analysis or testing, or unique characteristics such as a label or marking, photographs may well be sufficient).<sup>918</sup> At the time of collection, an officer should photograph the exhibit and make a record, including a description, in their police notebook. The exhibit will remain in the custody of the officer until it is entered into EFIMS. The OIC is to enter an exhibit into EFIMS at the first available opportunity.<sup>919</sup>

### Storing exhibits

- 8.618. The location and process for storage of exhibits varies depending on the type of exhibit. Police Area/District Commanders and equivalent Specialist Commanders are accountable for the safe handling and storage of exhibits.<sup>920</sup> Exhibits are stored for “as long as they are needed for investigative purposes or as evidence in a prosecution in accordance with the *LEPRA* or other legislation, and the NSWPF policies and procedures set out in the Police Handbook and Exhibits Procedure Manual.”<sup>921</sup> It is the OIC of an investigation who will determine how long an exhibit needs to be retained.<sup>922</sup>

<sup>915</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [35] (NPL.9000.0008.0905); Transcript of the Inquiry, 4 July 2023, T4802.17-29 (TRA.00072.00001).

<sup>916</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [37]–[38] (NPL.9000.0008.0905).

<sup>917</sup> Transcript of the Inquiry, 4 July 2023, T4802.45-4803.4 (TRA.00072.00001).

<sup>918</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [39] (NPL.9000.0008.0905).

<sup>919</sup> Transcript of the Inquiry, 4 July 2023, T4801.41-46 (TRA.00072.00001).

<sup>920</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [65] (NPL.9000.0008.0905).

<sup>921</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [66]–[67] (NPL.9000.0008.0905).

<sup>922</sup> Transcript of the Inquiry, 4 July 2023, T4806.28-33 (TRA.00072.00001).

- 8.619. Seized exhibits are ordinarily stored in either the police station closest to the location the exhibit was seized from, or the police station the OIC is attached to. An Exhibit Officer attached to the police station will manage the custody of the exhibit once it is in the exhibit room. The Exhibit Officer will liaise with the OIC until such time as the exhibit is either disposed of, returned to the owner, or destroyed.<sup>923</sup>
- 8.620. In 2014, an Exhibit Managers course was developed and is provided to officers undertaking Exhibit Officer functions.<sup>924</sup> The course takes four days, and is optional. Assistant Commissioner Conroy was asked by Senior Counsel Assisting why the course was not mandatory for Exhibit Officers, but she was not able to assist the Inquiry in relation to that matter.<sup>925</sup> Assistant Commissioner Conroy was not aware of anyone monitoring whether or not Exhibit Officers had completed the course.<sup>926</sup>
- 8.621. Exhibits are stored in a range of different places. The MEPC warehouse has been available since 2011 for the storage of long term and bulky exhibits.<sup>927</sup> Some exhibits, including biological evidence and drug exhibits, require specialised storage.<sup>928</sup> While an exhibit remains in the custody of an Exhibit Officer, it will be subject to regular EFIMS audits, which will generate alerts if there is an anomaly or disruption in an exhibit's chain of custody.<sup>929</sup> Holding exhibits at the police station to which an OIC is attached is preferred because it allows the OIC to access the exhibit. Exhibits stored in police stations are subject to regular auditing and inspection for safe storage, and are held securely in exhibit storage rooms.<sup>930</sup>
- 8.622. However, some centralised storage facilities are available for exhibit storage.<sup>931</sup> Exhibits may be stored at the MEPC, but only if the exhibit is associated with a serious indictable offence with a potential sentence of more than 15 years. Assistant Commissioner Conroy said in her oral evidence that exhibits associated with unsolved homicides could be kept at the MEPC for long term storage.<sup>932</sup> An exhibit must be entered into EFIMS in order to be accepted at the MEPC.<sup>933</sup>

<sup>923</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [52]–[54] (NPL.9000.0008.0905).

<sup>924</sup> Exhibit 51, Tab 3N, Exhibit Managers Course Outline, September 2014 (NPL.9000.0008.0893); Exhibit 51, Tab 3O, Role Description, Team Leader – Exhibits, 18 October 2020 (NPL.9000.0008.0880).

<sup>925</sup> Transcript of the Inquiry, 4 July 2023, T4807.1-47 (TRA.00072.00001).

<sup>926</sup> Transcript of the Inquiry, 4 July 2023, T4807.7–9 (TRA.00072.00001).

<sup>927</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [135] (NPL.9000.0008.0905).

<sup>928</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [73] (NPL.9000.0008.0905).

<sup>929</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [76] (NPL.9000.0008.0905).

<sup>930</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [147] (NPL.9000.0008.0905); Transcript of the Inquiry, 4 July 2023, T4809.9 (TRA.00072.00001).

<sup>931</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [149]–[153] (NPL.9000.0008.0905).

<sup>932</sup> Transcript of the Inquiry, 4 July 2023, T4809.14-31 (TRA.00072.00001).

<sup>933</sup> Transcript of the Inquiry, 4 July 2023, T4828.36-46 (TRA.00072.00001).



## Exhibit books

- 8.623. Physical exhibit books have now been replaced by the record keeping of exhibits via EFIMS, but physical books may be used in limited cases. Exhibit books from prior to the introduction of EFIMS need to be stored.<sup>934</sup> Exhibit books are stored locally at PACs and Business Units for a minimum of two years or until they are no longer frequently accessed, in accordance with the Records and Information Policy Statement, “Policy Principle 2 – Storage and Transfer”.<sup>935</sup> After this, they may be transferred for central storage to the GRR where they are retained for a period of at least 20 years in accordance with Functional Retention and Disposal Authority DA 220.<sup>936</sup>
- 8.624. Assistant Commissioner Conroy gave oral evidence that there was no process by which physical exhibit books were recorded electronically.<sup>937</sup> She said the Corporate Owner of Records Management would be responsible for the destruction of any physical exhibit books after 20 years, in conjunction with the “destruction advice of the schedule that they have provided for those exhibit books or for those particular accountable books or documents.”<sup>938</sup> She was not aware of a policy concerning the recording of when exhibit books or other documents were destroyed, but indicated that this would fall to the Corporate Owner of Records Management.<sup>939</sup>
- 8.625. The NSWPF emphasised in its submissions that:<sup>940</sup>

*It is appropriate to emphasise that the requirement to retain exhibit books is not unlimited; it extends to 20 years. The exhibit books pertaining to almost all of the cases considered by the Inquiry are more than 20 years old. It should also be remembered that exhibit books were not specific to a particular investigation, but recorded the exhibits retained by a given police station.*

- 8.626. It is true that the present requirement is to retain books for a minimum of 20 years. However, Disposal Authority DA 220 provides that records of this kind are retained for a *minimum* of 20 years. Disposal Authority DA 220 provides:<sup>941</sup>

*Records that have been identified as being approved for destruction may only be destroyed once a public office has ensured that all other requirements for retaining the records are met. Retention periods set down in this*

<sup>934</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [74] (NPL.9000.0008.0905).

<sup>935</sup> Exhibit 51, Tab 3P, Policy Principle 2 – Storage and Transfer, August 2022, 4 (NPL.9000.0008.0869); Transcript of the Inquiry, 4 July 2023, T4510.1–8 (TRA.00072.00001).

<sup>936</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [75] (NPL.9000.0008.0905); Exhibit 51, Tab 3Q, Functional Retention and Disposal Authority DA220, 15 July 2021 (NPL.9000.0008.0837); Transcript of the Inquiry, 4 July 2023, T4810.1–8 (TRA.00072.00001).

<sup>937</sup> Transcript of the Inquiry, 4 July 2023, T4810.10-12 (TRA.00072.00001).

<sup>938</sup> Transcript of the Inquiry, 4 July 2023, T4810.14-19 (TRA.00072.00001).

<sup>939</sup> Transcript of the Inquiry, 4 July 2023, 4810.25-31 (TRA.00072.00001).

<sup>940</sup> Submissions of NSWPF, 10 October 2023, [144] (SCOI.86127).

<sup>941</sup> Exhibit 51, Tab 3Q, Functional Retention and Disposal Authority DA220, 15 July 2021 (NPL.9000.0008.0837).

*authority are minimum periods only and a public office should keep records for a longer period if necessary. Reasons for longer retention can include legal requirements, administrative need, government directives and changing social or community expectations. A public office must not dispose of any records where the public office is aware of possible legal action (including legal discovery, court cases, formal applications for access) where the records may be required as evidence.*

*Once all requirements for retention have been met, destruction of records should be carried out in a secure and environmentally sound way. Relevant details of the destruction should be recorded. See Destruction of records: a practical guide.*

- 8.627. Consequently, I do not consider that the minimum retention period can generally assist the NSWPF in relation to the absence of exhibit books, particularly when, based on Disposal Authority DA 220, there was also a requirement to record the details of the destruction.

### **The handling of exhibits**

- 8.628. Since 2012, the Exhibit Procedures Manual has governed general procedures concerning the handling of exhibits.<sup>942</sup> Assistant Commissioner Conroy said in her statement that the process of exhibit handling is complex because of the various circumstances that require handling of exhibits (e.g., transporting for forensic examination, producing during a suspect interview, producing at court). The process is therefore often case specific. However, in all cases where an exhibit has been accessed or removed from an exhibit room, a record of the movement is made on EFIMS, including the details of the officer removing the exhibit and the reason for the movement or access to the exhibit.<sup>943</sup>

### **The destruction of exhibits**

- 8.629. Exhibit destruction at present is governed by relevant legislation, the Exhibit Procedures Manual, and the Exhibits chapter of the NSWPF Police Handbook. Whether and when an exhibit can be destroyed is dependent on the need for its retention for evidentiary purposes during an investigation or prosecution.

<sup>942</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [92] (NPL.9000.0008.0905).

<sup>943</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [93]–[95] (NPL.9000.0008.0905).

- 8.630. When dealing with serious offences, it is normally desirable to retain exhibits. Generally, exhibit retention is considered on a case-by-case basis by the OIC.<sup>944</sup> If the OIC is of the opinion that an exhibit should be disposed of, the OIC will write to the PAC Commander or the Police District Commander to authorise the disposal of the exhibit.<sup>945</sup> As the NSWPF observed in its submissions, the critical factor in whether an exhibit should be retained is its evidentiary value.<sup>946</sup>

### The introduction of EFIMS

- 8.631. As noted above, exhibits are now managed through EFIMS. EFIMS was implemented in March 2011 in order to “manage all aspects of the exhibit life cycle.”<sup>947</sup> It was introduced, in part, out of the increasing demand for DNA services, and following a review by the Ombudsman in relation to DNA sampling and forensic procedure.<sup>948</sup>
- 8.632. It was put to Assistant Commissioner Conroy by Senior Counsel Assisting that the extension of EFIMS from forensic exhibits to all exhibits was because it had been identified by the project team that “the paper-based exhibit management system was dysfunctional, inaccurate, labour intensive, constrained by red tape and embodied significant and substantial operational problems and risks”.<sup>949</sup> Assistant Commissioner Conroy agreed.<sup>950</sup>
- 8.633. Reports, including chain of custody reports and audit reports, can be generated through EFIMS.<sup>951</sup> On implementation, all NSWPF officers were given information about EFIMS, and training was implemented for new recruits.<sup>952</sup> In 2013, the NSW Auditor General observed that EFIMS represented a “significant improvement” to the system for recording and tracking drug exhibits.<sup>953</sup> Assistant Commissioner Conroy said EFIMS has been improved since its introduction in 2012.<sup>954</sup>
- 8.634. Recording an exhibit in EFIMS involves an officer logging onto a computer connected to the NSWPF system, opening the EFIMS application, recording an exhibit entry (including mandatory fields) and saving the entry. A similar process applies for recording exhibit movements.<sup>955</sup>

<sup>944</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [103]–[105] (NPL.9000.0008.0905).

<sup>945</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [106] (NPL.9000.0008.0905).

<sup>946</sup> Submissions of NSWPF, 10 October 2023, [147] (SCOI.86127).

<sup>947</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [127]–[129] (NPL.9000.0008.0905).

<sup>948</sup> Transcript of the Inquiry, 4 July 2023, T4822.2–9 (TRA.00072.00001).

<sup>949</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [125] (NPL.9000.0008.0905); Exhibit 51, Tab 3X, Executive Summary and NSWPF Endorsement re FIMS, 11 June 2009, 3 (NPL.9000.0008.0063).

<sup>950</sup> Transcript of the Inquiry, 4 July 2023, T4822.42–47 (TRA.00072.00001).

<sup>951</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [129] (NPL.9000.0008.0905).

<sup>952</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [130] (NPL.9000.0008.0905).

<sup>953</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [134] (NPL.9000.0008.0905).

<sup>954</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [133] (NPL.9000.0008.0905).

<sup>955</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [137]–[141] (NPL.9000.0008.0905).

- 8.635. Assistant Commissioner Conroy gave evidence that when EFIMS was created, any exhibit that was a “live exhibit”, in the sense of being within a police station, was entered onto EFIMS, but that historical exhibits were not entered onto EFIMS at that time.<sup>956</sup> Her evidence was that over a “significant period of time” every exhibit, including historical exhibits, was then entered onto EFIMS. Each police station was responsible for its exhibits and for transferring those exhibits from an exhibit book into EFIMS.<sup>957</sup> Assistant Commissioner Conroy did not think that this process had included the digitisation of exhibit books.<sup>958</sup> The exhibit reconciliation process referred to by Assistant Commissioner Conroy may be the process undertaken following the Lehmann Report, discussed below.
- 8.636. The entry of exhibits into EFIMS is not supervised, but when an exhibit is moved there is a process where the movement of the exhibit needs to be “accepted” by another officer. Although EFIMS has a number of fixed forms and cells, there is no mechanism to detect other types of errors (e.g., a misdescription) in the way in which an exhibit has been recorded. However, this type of error may well be detected by the exhibit officer when they are handed the exhibit and compare the exhibit entry in EFIMS to the item description on the exhibit bag.<sup>959</sup>
- 8.637. Assistant Commissioner Conroy noted in her statement that the Commissioner of the NSWPF has approved deployment of a new system that will allow for the decommissioning of EFIMS. This is part of a wider rollout of a cloud-based Integrated Policing Operations System (**iPOS**) to replace COPS and similar systems.<sup>960</sup>
- 8.638. In her statement, Assistant Commissioner Conroy makes the following observations about the changes to exhibit management practices:<sup>961</sup>

*In my view, these extensive developments mean it is far less likely that exhibits will be lost, misplaced or stored inappropriately. While there have been many incremental changes to the procedures to manage exhibits over the last fifty years, of particular significance was the rollout of EFIMS in 2011, and the Exhibit Procedures Manual in 2012. I have already explained the development and nature of these initiatives at paragraphs [26] to [32] of my statement respectively. However, by way of brief summary, I consider that the procedures now in place by virtue of this combination of initiatives have significantly improved the tracking and preservation of exhibits, both for present and future use, for the following reasons: mandatory, centralised, electronic recording of every time an exhibit is accessed or transported from obtaining through to disposal means it is much more difficult for an exhibit to be lost through a failure to record a*

<sup>956</sup> Transcript of the Inquiry, 4 July 2023, T4823 (TRA.00072.00001).

<sup>957</sup> Transcript of the Inquiry, 4 July 2023, T4823.25-42 (TRA.00072.00001).

<sup>958</sup> Transcript of the Inquiry, 4 July 2023, T4824.4-9 (TRA.00072.00001).

<sup>959</sup> Transcript of the Inquiry, 4 July 2023, T4824.37-4525.37 (TRA.00072.00001).

<sup>960</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [142]–[144] (NPL.9000.0008.0905).

<sup>961</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [157]–[158] (NPL.9000.0008.0905).

*movement, a failure to record a movement in the correct place or a loss of the relevant physical documentation;*

- a. electronic recording also streamlines and improves the accuracy and efficacy of audits in identifying any discrepancies in the location of the exhibit, by pinpointing its last known location and the officer responsible;*
- b. the development of clear guidance regarding the collection and preservation of exhibits in a way which not only maintains their integrity for present forensic testing, but also for future development of new technologies and testing capabilities;*
- c. the development of clear guidance, including the authorisation required, for the disposal of exhibits, to ensure key evidence is not lost prematurely; and*
- d. the implementation of the CMF system described above at paragraphs and [83] – [89] introduced additional audit requirements and accountability measures.*

*As demonstrated by the continued updating of the exhibit management procedures and the software that supports them (including the rollout of a new system to replace EFIMS in 2024), review of the exhibits management process to ensure it is fit for purpose, up to date and takes advantage of all available technological and forensic advancements remains a key focus of NSWPF.*

8.639. The NSWPF submitted that, as a consequence of the roll-out of the new exhibit management system as part of iPOS, “the potential for issues in relation to the loss or premature disposal of exhibits will be further reduced”.<sup>962</sup> This submission is also addressed in the context of record-keeping practices in relation to cold cases in **Chapter 7**. I accept that submission.

### **Treatment of exhibits at FASS**

8.640. Ms Neville described the process in place at FASS for the storage and use of exhibits. Upon receipt of the exhibits, FBDNA will label exhibit bags or boxes and store them in secure locations (which includes cold storage if required), which Ms Neville described as “historical practice”, which has now evolved to include barcode identifiers for exhibit bags.<sup>963</sup> Prior to the introduction of electronic casefiles to record stored locations, Ms Neville notes that individual biologists who conducted an examination of exhibits recorded the locations of stored samples.<sup>964</sup>

<sup>962</sup> Submissions of NSWPF, 10 October 2023, [150] (SCOI.86127).

<sup>963</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [90], [94]–[95] (SCOI.83528).

<sup>964</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [100] (SCOI.83528).

- 8.641. Currently, all movements of the “exhibit from the Forensic Receipt Unit through to Evidence Recovery” is recorded in the Forensic Register Evidence Database (**FRED**).<sup>965</sup> Ms Neville believes that the FRED system has been operational since about 2012.<sup>966</sup>
- 8.642. Once received, exhibits “are examined in the FBDNA Evidence Recovery Unit (ERU), and appropriate samples are taken for testing either within the ERU and/or in the DNA laboratory.”<sup>967</sup>
- 8.643. Ms Neville told the Inquiry that the FBDNA laboratory is subject to quality checks, proficiency testing programmes, compliance standards, training and competency assessments, and operating procedures to “ensure uniform and reliable testing and reporting and to detect and prevent errors.”<sup>968</sup> The “FBDNA laboratory has been accredited by NATA (National Association of Testing Authorities, Australia) against ISO/IEC 17025 since 1999.”<sup>969</sup>
- 8.644. Ms Neville also explained the ways in which the DNA testing methods used by FBDNA “undergo verification or validation prior to implementation,”<sup>970</sup> and the “significant training” that the forensic biologists at FBDNA undergo to carry out DNA testing.<sup>971</sup>
- 8.645. Once examination of exhibits by FBDNA is complete, exhibits not “consumed in analysis” are returned to the NSWPF by the FASS Forensic Receipt Unit (**FRU**), and the movement is recorded in EFIMS.<sup>972</sup> Prior to EFIMS, these movements were registered in an exhibit book.<sup>973</sup>
- 8.646. In addition, “processed substrates used to collect DNA from exhibits (e.g., swabs and tape lifts) and other [substrates] such as swatches of material removed from an exhibit are discarded following extraction and DNA testing.”<sup>974</sup>

<sup>965</sup> Transcript of the Inquiry, 15 August 2023, T5523.10-31 (TRA.00082.00001).

<sup>966</sup> Transcript of the Inquiry, 15 August 2023, T5523.38-41 (TRA.00082.00001).

<sup>967</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [96] (SCOI.83528).

<sup>968</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [120] (SCOI.83528). See also Transcript of the Inquiry, 15 August 2023, T5510.8-47 (TRA.00082.00001).

<sup>969</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [124] (SCOI.83528); affirmed in oral evidence at Transcript of the Inquiry, 15 August 2023, T5530.1-3 (TRA.00082.00001).

<sup>970</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [108] (SCOI.83528); affirmed in oral evidence at Transcript of the Inquiry, 15 August 2023, T5529.15-31 (TRA.00082.00001).

<sup>971</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [111] (SCOI.83528).

<sup>972</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [88], [103], [104] (SCOI.83528); affirmed in oral evidence at Transcript of the Inquiry, 15 August 2023, T5524.21-25 (TRA.00082.00001).

<sup>973</sup> Transcript of the Inquiry, 15 August 2023, T5522.45-5524.6 (TRA.00082.00001).

<sup>974</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [93] (SCOI.83528).

- 8.647. However, all DNA extracts or samples are retained by FBDNA indefinitely,<sup>975</sup> as with blood samples,<sup>976</sup> and, since 1986, samples removed from exhibits or DNA swabs have been retained by FASS in a storage freezer.<sup>977</sup> Unless a destruction order is received, “person reference samples are stored in a secure location at room temperature indefinitely” in line with the CFP Act requirements.<sup>978</sup> Since the introduction of EFIMS, the FBDNA team will provide information on EFIMS relating to stored untested swabs or exhibits, which were previously recorded only in FBDNA case files.<sup>979</sup>
- 8.648. Ms Neville told the Inquiry that she has experienced the loss of exhibits or misplaced samples in a “very, very small number of instances”.<sup>980</sup> When this has occurred, Ms Neville said that a full investigation is carried out, which includes notifying the NSWPF and identifying “preventative maintenance controls to minimise any risk of a similar incident occurring”.<sup>981</sup> However, Ms Neville stated that it is often not possible to find out what has happened or recoup the lost exhibit sample.<sup>982</sup>
- 8.649. The NSWPF noted that “in any system where very substantial quantities of material are processed scientifically, there is a potential for human error of that type to emerge.”<sup>983</sup> I accept that is the case, and likewise accept the submission made by the NSWPF that FASS has taken appropriate steps to reduce that risk as much as is reasonably possible having regard to the nature of the task being undertaken by FASS and the resources available to it.<sup>984</sup>

<sup>975</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [92] (SCOI.83528); affirmed in oral evidence at Transcript of the Inquiry, 15 August 2023, T5522.27 and T5524.11-19 (TRA.00082.00001) as a practice which has continued from the start of DNA testing, unless NSWPF specifically request that the sample be returned.

<sup>976</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [101] (SCOI.83528).

<sup>977</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [91] (SCOI.83528); affirmed in oral evidence at Transcript of the Inquiry, 15 August 2023, T5522.34-43 (TRA.00082.00001).

<sup>978</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [102] (SCOI.83528).

<sup>979</sup> Exhibit 51, Tab 14, Statement of Sharon Neville, 1 June 2023, [99] (SCOI.83528).

<sup>980</sup> Transcript of the Inquiry, 15 August 2023, T5525.33–5526.4 (TRA.00082.00001).

<sup>981</sup> Transcript of the Inquiry, 15 August 2023, T5525.42–5526.4 (TRA.00082.00001).

<sup>982</sup> Transcript of the Inquiry, 15 August 2023, T5526.5–17 (TRA.00082.00001).

<sup>983</sup> Submissions of NSWPF, 10 October 2023, [152] (SCOI.86127).

<sup>984</sup> Submissions of NSWPF, 10 October 2023, [153] (SCOI.86127).

## NSWPF processes to identify and locate records and exhibits

- 8.650. Assistant Commissioner Conroy was asked a number of questions by Senior Counsel Assisting concerning the process for identifying and locating exhibits in cold case investigations. She said that “EFIMS would be the first point but an officer could also look at exhibit books and other archives [sic] records.”<sup>985</sup> EFIMS, according to Assistant Commissioner Conroy, allows the NSWPF to “electronically manage all aspects of the exhibit life cycle”.<sup>986</sup> In addition, EFIMS can generate reports such as chain of custody and audit reports.<sup>987</sup>
- 8.651. Assistant Commissioner Conroy identified that in the event an officer had a concern that an EFIMS record may not be complete, they may need to take the following steps:
- a. Look on COPS (the NSWPF’s Computerised Operational Policing System) or the e@gle.i system;
  - b. Physically search the PAC where the original investigation was conducted;
  - c. Ask whether any exhibits were held by the FETS;
  - d. Ask whether any exhibits were being held at the MEPC;
  - e. Consult officers involved in the original investigation;<sup>988</sup> and
  - f. Consider whether any documentary exhibits may have been placed in the government repository at Kingswood.
- 8.652. In an affidavit dated 26 June 2023, Natalie Marsic, General Counsel of the NSWPF, set out the eight steps that were taken by the UHT in order to complete what she described as “comprehensive searches”.<sup>989</sup> Although that evidence was given in the context of responding to summonses from the Inquiry, those steps appear equally relevant to the process of records being located for the NSWPF’s internal purposes, and clearly should be undertaken when the UHT is searching for records concerning a matter.
- 8.653. The NSWPF noted that the introduction of EFIMS represented a “fundamental shift” in the NSWPF’s exhibit management capabilities, and that it is now “very substantially less likely” that exhibits will be lost, destroyed, or otherwise disposed of without a record being made and retained.<sup>990</sup>

<sup>985</sup> Transcript of the Inquiry, 4 July 2023, T4828.10-14 (TRA.00072.00001).

<sup>986</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [128] (NPL.9000.0008.0905).

<sup>987</sup> Exhibit 51, Tab 3, Statement of Assistant Commissioner Rashelle Conroy, 2 May 2023, [129] (NPL.9000.0008.0905).

<sup>988</sup> Transcript of the Inquiry, 4 July 2023, T4528.5-34-4529.16 (TRA.00072.00001).

<sup>989</sup> Exhibit 58, Affidavit of Natalie Marsic, 26 June 2023, [46] (SCOI.84212).

<sup>990</sup> Submissions of NSWPF, 10 October 2023, [100] (SCOI.86127).



## NSWPF Corporate Records, Record and Information Management Unit

- 8.654. The NSWPF Corporate Records, Records and Information Management Unit (**Corporate Records**) is central to the process of the management of records within the NSWPF. Detective Inspector Warren explained that Corporate Records fits in the NSWPF under Corporate Services and that officers in Corporate Records are responsible for the storage, retention and retrieval of archive material and other records or files within the NSWPF.<sup>991</sup>
- 8.655. Detective Inspector Warren gave evidence that Corporate Records is controlled by the NSWPF whereas the GRR maintains all government records across New South Wales and access to those records are on request from the government department.<sup>992</sup>
- 8.656. Detective Inspector Warren was asked by Senior Counsel Assisting about the process the UHT uses to find all the documents in relation to a particular matter. He identified that the UHT would place a request with Corporate Records to search for records in relation to the matter being reviewed, and that Corporate Records would return a result identifying whether those records existed or where those records were. Ultimately, those records would be sent to the UHT.<sup>993</sup>
- 8.657. Detective Inspector Warren explained that his understanding of the reliability of Corporate Records had evolved over the course of the Inquiry. His initial understanding, at the beginning of the Inquiry, was that Corporate Records could conduct a search using a victim's name which would identify all relevant records. However, he explained that over the course of the Inquiry it has been discovered that some records archived by officers had not been stored under the victim's name; rather, they might be under a particular number, location, or "in a box with multiple other matters that don't relate to that particular file."<sup>994</sup>
- 8.658. In response to questions from Senior Counsel for the NSWPF, Detective Inspector Warren explained that unreliability in the results delivered by Corporate Records comes about because individual officers may not have archived material through Corporate Records, as opposed to because of any unreliability in the internal records or processes of Corporate Records.<sup>995</sup>

<sup>991</sup> Transcript of the Inquiry, 5 July 2023, T4957.39-4598.20 (TRA.00073.00001).

<sup>992</sup> Transcript of the Inquiry, 5 July 2023, T4958.32-4959.4 (TRA.00073.00001).

<sup>993</sup> Transcript of the Inquiry, 5 July 2023, T4957.33-4958.6 (TRA.00073.00001).

<sup>994</sup> Transcript of the Inquiry, 5 July 2023, T4959.34-45 (TRA.00073.00001).

<sup>995</sup> Transcript of the Inquiry, 5 July 2023, T5009.21-47 (TRA.00073.00001).

- 8.659. I put to Detective Inspector Warren the proposition that the records held by Corporate Records are not a complete record, and Detective Inspector Warren agreed.<sup>996</sup> He also agreed that Corporate Records cannot be comprehensive because hardcopy records may exist elsewhere that have not been archived.<sup>997</sup> Detective Inspector Warren said that from his experience there was no supervision of how an OIC compiled or archived material, and that he was not aware of any supervision in the 1970s.<sup>998</sup>
- 8.660. Detective Inspector Warren agreed, in response to a question from Senior Counsel Assisting, that in order for the UHT to be confident now that it had all the records in relation to a particular matter they would need to access the multiple sources of documents that have been searched in order to provide material to the Inquiry.<sup>999</sup>
- 8.661. I asked Detective Inspector Warren whether his evidence meant that “in every case ... before you can even start to review an unsolved homicide, you’d have to be sure, at least so far, all of those repositories that you have identified – you’d have to go through each and every one of those to make sure you haven’t missed something, wouldn’t you”.<sup>1000</sup> Detective Inspector Warren said “[y]es” but later said that the Inquiry was the first time that he had identified that multiple sources might need to be accessed for the purpose of putting together a file.<sup>1001</sup>
- 8.662. Detective Inspector Warren said that he had heard of officers occasionally retaining records themselves after leaving the NSWPF, and that this was, to his knowledge, inconsistent with police procedures. In addition, he agreed that if one wished to obtain all the relevant evidence in relation to a particular case, it may be necessary to consider what material had been taken home.<sup>1002</sup> He went on to give the following evidence:<sup>1003</sup>

*Q. [I]f one wished to obtain all the evidence relevant to a particular case, you may need to ask yourself whether such records have been taken home?*

*A. Yeah. Unsolved Homicide Team, when they receive the archived material, it becomes apparent that if there is something missing – so with unsolved matters there is normally a sequence or a category system, and if you find that there is particular number or something that’s missing, then – or not in the archived material, then you have to start searching elsewhere.*

<sup>996</sup> Transcript of the Inquiry, 5 July 2023, T5010.4 (TRA.00073.00001).

<sup>997</sup> Transcript of the Inquiry, 5 July 2023, T5010.6-33 (TRA.00073.00001).

<sup>998</sup> Transcript of the Inquiry, 5 July 2023, T4961.12-29 (TRA.00073.00001).

<sup>999</sup> Transcript of the Inquiry, 5 July 2023, T5013.26-31 (TRA.00073.00001).

<sup>1000</sup> Transcript of the Inquiry, 5 July 2023, T5012.29-35 (TRA.00073.00001).

<sup>1001</sup> Transcript of the Inquiry, 5 July 2023, T5012.28-39 (TRA.00073.00001).

<sup>1002</sup> Transcript of the Inquiry, 5 July 2023, T4962.29-4963.13 (TRA.00073.00001).

<sup>1003</sup> Transcript of the Inquiry, 5 July 2023, T4963.4-27 (TRA.00073.00001).

*Or same with if a document speaks to another document or a set of photos or something like that, and they are not contained within the archived material, then you have to go searching to see if you can locate them. So there might be cases where you do have the whole brief of evidence or the case files, and other times there might not be.*

*Q. But if you don't have the whole record, there will often be indicators that you are missing something like numbered documents won't be sequential or there will be a reference to a document though ought to be in the file but is not there?*

*A. That's right.*

- 8.663. Detective Inspector Warren said that notebooks or duty books seemed to have been stored independently to case files because duty books were used for many jobs rather than for one particular case file.<sup>1004</sup> He said that you would ordinarily need to identify the officers and then “try and track down notebooks” by identifying the police station the officer was at and then identifying the process adopted for the archiving of notebooks or duty books by that police station.<sup>1005</sup>
- 8.664. Detective Inspector Warren said that, once again, the location of these records is something that would be searched through Corporate Records, but that locating them in this way depends on a record having made it to Corporate Records in the first place.<sup>1006</sup> He said he was aware of instances where certain notebooks or duty books had not been able to be located, though he was unsure whether that may have been because they had been destroyed. He agreed that there would be a record if there were a discussion about destroying a particular document such as a notebook, though he was not sure where such a record should be kept.<sup>1007</sup>
- 8.665. The NSWPF conceded that there is “unfortunately, the potential for human error in the archiving process” of case records and referred to cases in which individual officers had failed to correctively archive case records.<sup>1008</sup>
- 8.666. The NSWPF also accepted that:<sup>1009</sup>

*...there appear to have been deficiencies in the system applied to the archiving of files in the 1980s and 1990s and that it is likely that such deficiencies existed in the 1970s.*

<sup>1004</sup> Transcript of the Inquiry, 5 July 2023, T4963.35-39 (TRA.00073.00001).

<sup>1005</sup> Transcript of the Inquiry, 5 July 2023, T4963.43-4964.1 (TRA.00073.00001).

<sup>1006</sup> Transcript of the Inquiry, 5 July 2023, T4964.12 (TRA.00073.00001).

<sup>1007</sup> Transcript of the Inquiry, 5 July 2023, T4964.25-44 (TRA.00073.00001).

<sup>1008</sup> Submissions of NSWPF, 10 October 2023, [103] (SCOI.86127).

<sup>1009</sup> Submissions of NSWPF, 10 October 2023, [104] (SCOI.86127), citing Transcript of the Inquiry, 5 July 2023, T4961.12-9 (TRA.00073.00001).

8.667. However, the NSWPF submitted that the issue with records management “lies in the process by which historical cases were archived, rather than in some deficiency in the systems of Corporate Records itself.”<sup>1010</sup> I accept that submission, which is congruent with the submissions of Counsel Assisting on this topic.

### Standard operating procedures and protocols of Corporate Records

8.668. The Inquiry has before it a number of SOPs concerning the processes used by Corporate Records. The historical versions of these documents are primarily from the late 1990s and the early 2000s. An internal NSWPF memorandum dated 7 July 1998 records that there were standards in place for hardcopy records at that time.<sup>1011</sup>

8.669. A summons was issued to the NSWPF seeking relevant policies or standards, but no material was produced (Summons NSWPF166). It should be noted that the *State Records Act* was introduced in 1998 and largely commenced in 1999. The impact of the *State Records Act* is considered above.

8.670. There is a document before the Inquiry from 2008 entitled “Records Disposal Procedures Manual”.<sup>1012</sup> The introduction to that document explains that “[t]he records of the NSW Police Force belong to the State of New South Wales. They contain the corporate memory of the organisation, explain how and why decisions are made, and provide accountability and evidence.”<sup>1013</sup> It continues “[e]ffective disposal of NSW Police Force records is the key to successful records management in the NSW Police Force...”.<sup>1014</sup> This document identifies that “Investigation files are created by Police Force Commands ... Investigation Case Files and related records are disposed of in accordance with *Functional Retention and Disposal Authority (DA 221)*.”<sup>1015</sup>

8.671. Part 3 of this document identifies the division of roles and responsibilities between various entities. The State Records Authority was responsible for, relevantly, approving Records Retention and Disposal Authorities. Corporate Archives (now Corporate Records) was responsible for:

- a. “Records disposal and archival policies and procedures”;
- b. “Overall management of disposal activity within the NSW Police Force”;
- c. “Preparing Disposal Authorities for submissions to State Records”;

<sup>1010</sup> Submissions of NSWPF, 10 October 2023, [103] (SCOI.86127), citing Transcript of the Inquiry, 5 July 2023, T5009.46–5010.33 (TRA.00073.00001).

<sup>1011</sup> Exhibit 53, Tab 40, NSWPF internal memorandum to Executive Director, Management Services re: “*Premier’s Memorandum No. 98-16 Records Management Standards and Policies*”, 7 July 1998, 2 (NPL.0204.0002.0010).

<sup>1012</sup> Exhibit 53, Tab 41, NSWPF Records Disposal Procedures Manual, November 2008 (NPL.0204.0002.0103\_E).

<sup>1013</sup> Exhibit 53, Tab 41, NSWPF Records Disposal Procedures Manual, November 2008, 1 (NPL.0204.0002.0103\_E).

<sup>1014</sup> Exhibit 53, Tab 41, NSWPF Records Disposal Procedures Manual, November 2008, 1 (NPL.0204.0002.0103\_E).

<sup>1015</sup> Exhibit 53, Tab 41, NSWPF Records Disposal Procedures Manual, November 2008, 3 (NPL.0204.0002.0103\_E).

- d. “Providing disposal reports to State Records and to NSW Police Force management”;<sup>1016</sup> and
- e. Administrative units, LACs and specialist units were identified as being responsible for:<sup>1017</sup>
- i. “Regular sentencing of records”;
  - ii. “Ensuring records are sentenced, boxed and listed in accordance with this procedures manual”;
  - iii. “Overseeing the confidential destruction of records authorised for destruction”; and
  - iv. “Storage of physical evidence and non-record items”.
- 8.672. “Sentencing”, in this context, means “the process of identifying and classifying records according to a Disposal Authority, recording those disposal decisions and actions, and assigning appropriate disposal actions to records (as identified in an approved Disposal Authority).”<sup>1018</sup>
- 8.673. This document notes that “Exhibits and other physical evidence are not regarded as records and should be managed separately”, referring to the Police Handbook.<sup>1019</sup> It identifies that NSW Police Functional Records Disposal Authorities cover operational records created during and after 1960.<sup>1020</sup> As noted above, the relevant Disposal Authority concerning criminal investigation case records is DA 221.<sup>1021</sup> A “Records Destruction Checklist” is included as part of this document, and notes that certificates of destruction must be received, relevant inventory forms completed and forwarded to the Records Centre, and the destruction documented and recorded on “TRIM”.<sup>1022</sup>
- 8.674. The Inquiry also has before it a “Records Management Policies & Guidelines” document dated June 2009. This document notes that “[a]ll records created by NSW Police Force personnel in the course of their duties are considered public records of the NSW Government. The NSW Police Force therefore has an obligation to the people of New South Wales to ensure that the principles of records management are adopted.”<sup>1023</sup>

<sup>1016</sup> Exhibit 53, Tab 41, NSWPF Records Disposal Procedures Manual, November 2008, 6 (NPL.0204.0002.0103\_E).

<sup>1017</sup> Exhibit 53, Tab 41, NSWPF Records Disposal Procedures Manual, November 2008, 6 (NPL.0204.0002.0103\_E).

<sup>1018</sup> Exhibit 53, Tab 41, NSWPF Records Disposal Procedures Manual, November 2008, 10 (NPL.0204.0002.0103\_E).

<sup>1019</sup> Exhibit 53, Tab 41, NSWPF Records Disposal Procedures Manual, November 2008, 10 (NPL.0204.0002.0103\_E).

<sup>1020</sup> Exhibit 53, Tab 41, NSWPF Records Disposal Procedures Manual, November 2008, 11 (NPL.0204.0002.0103\_E).

<sup>1021</sup> Exhibit 51, Tab 5E, NSWPF Records Retention Policy, 20 June 2017, 3 (NPL.9000.0018.0469).

<sup>1022</sup> Exhibit 53, Tab 41, NSWPF Records Disposal Procedures Manual, November 2008, 62 (NPL.0204.0002.0103\_E).

<sup>1023</sup> Exhibit 53, Tab 43, NSWPF Records Management Policies & Guidelines, June 2009, 5 (NPL.0204.0002.0221).

- 8.675. The Inquiry has before it a “Records Disposal Procedures Manual” dated November 2009. This document identifies that “state archives” are:<sup>1024</sup>

*... those records that have been selected for permanent preservation because of their legal, evidential or informational value. They are required to be transferred to the control of the NSW State Records Authority when they are no longer required by the NSW Police Force, and can then be made available to the public for historical research purposes.*

- 8.676. This document again identifies that Disposal Authority DA 221 governs the disposal of criminal investigation case records.<sup>1025</sup> It also contains a Records Destruction Checklist which requires the documentation of records destruction.<sup>1026</sup> TRIM Disposal Procedures dated November 2008 are also in evidence before the Inquiry.<sup>1027</sup> They set out detailed requirements for the use of the TRIM system in records disposal.<sup>1028</sup>

- 8.677. The present version of DA221 (approved 20 June 2017) contains the following explanation concerning records required as State archives:<sup>1029</sup>

*Records which are to be retained as State archives are ‘Required as State archives’. Records that are identified as being required as State archives should be stored in controlled environmental conditions and control of these records should be transferred to State Archives NSW when they are no longer in use for official purposes.*

*The transfer of control of records as State archives may, or may not, involve a change in custodial arrangements. Records can continue to be managed by the public office under a distributed management agreement. Public offices are encouraged to make arrangements with State Archives NSW regarding the management of State archives.*

*Transferring records identified as State archives when no longer in use for official purposes to State Archives NSW control should be a routine and systematic part of a public office’s records management program. If the records are more than 25 years old and are still in use for official purposes, then a ‘still in use determination’ should be made.*

- 8.678. Records relating to the investigation of “unlawful killing” and records relating to missing persons cases where the person is not located are required as State archives.<sup>1030</sup>

<sup>1024</sup> Exhibit 53, Tab 41, NSWPF Records Disposal Procedures Manual, November 2008, 13 (NPL.0204.0002.0103\_E).

<sup>1025</sup> Exhibit 53, Tab 41, NSWPF Records Disposal Procedures Manual, November 2008, 11 (NPL.0204.0002.0103\_E).

<sup>1026</sup> Exhibit 53, Tab 41, NSWPF Records Disposal Procedures Manual, November 2008, 62 (NPL.0204.0002.0103\_E).

<sup>1027</sup> Exhibit 53, Tab 42, NSWPF Accessing records held at NSW State Archives and Records Authority, October 2021, 2 (NPL.0204.0003.0185).

<sup>1028</sup> Exhibit 51, Tab 5E, NSWPF Records Retention Policy, 20 June 2017, 3 (NPL.9000.0018.0469).

<sup>1029</sup> Exhibit 51, Tab 5E, NSWPF Records Retention Policy, 20 June 2017, 5 (NPL.9000.0018.0469).

<sup>1030</sup> Exhibit 51, Tab 5E, NSWPF Records Retention Policy, 20 June 2017, 9 (NPL.9000.0018.0469).

8.679. The Inquiry has before it a “Records Information Management and Policy Statement” dated from 2021. This document identifies that:<sup>1031</sup>

*Records generated by NSWPF document and [sic] organisation’s past activities and may be required for internal and external investigations, litigation, and public access reasons. It is therefore essential that records are properly created and can be retrieved when needed.*

8.680. This document is a general statement of policy, and identifies the responsibilities of NSWPF officers in relation to records.<sup>1032</sup> The Inquiry also has before it protocols relating to recalling documents from the GRR, accessing records held at the State Archives and Records Authority, and the process for transferring hardcopy records to storage.<sup>1033</sup>

8.681. The NSWPF made the following submissions to supplement the submissions of Counsel Assisting concerning record retention and destruction:

*A retention and disposal authority is an instrument approved by the State Archives and Records Authority of New South Wales under s 21(2)(c) of the State Records Act specifying the period after which categories of records may be disposed of, and which records are required as State archives.*

*There are currently two functional authorities for the NSWPF. Functional Retention and Disposal Authority DA 221 governs the disposal of investigation case records. It provides that records relating to the investigation of unlawful killing are required as State archives.*

*Functional Retention and Disposal Authority DA 220 covers operational policing. Relevantly for present purposes, it provides:*

- a. Occurrence Pads (in paper format which were created up until around 1994) are required as State archives;*
- b. Duty books and notebooks are to be retained for a minimum of 30 years, then destroyed;*
- c. Records relating to the registration of all exhibits are to be retained for a minimum of 20 years after action completed, then destroyed;*
- d. Records relating to the disposal of exhibits are to be retained for a minimum of 10 years after action completed, then destroyed.*

<sup>1031</sup> Exhibit 53, Tab 44, NSWPF Records and Information Management Policy Statement, 27 August 2021, 3 (NPL.0204.0001.0012).

<sup>1032</sup> Exhibit 53, Tab 44, NSWPF Records and Information Management Policy Statement, 27 August 2021, 9-10 (NPL.0204.0001.0012).

<sup>1033</sup> Exhibit 53, Tab 45, NSWPF Permanently recalling boxes from Government Records Repository, September 2021, 2 (NPL.0204.0003.0062); Exhibit 53, Tab 46, NSWPF Accessing records held at NSW State Archives and Records Authority, October 2021 (NPL.0204.0003.0185); Exhibit 53, Tab 47, NSWPF Recalling boxes from Government Records Repository, July 2022, 2 (NPL.0204.0003.0040); Exhibit 53, Tab 48, NSWPF Hardcopy records for transfer to storage received at NSW Police Headquarters, April 2023, 2 (NPL.0204.0003.0156).

*As explained in more detail at section C.8 below, there is no information before the Inquiry about any authorities given under the Archives Act 1960 (NSW) (**Archives Act**) prior to the commencement of the State Records Act in 1999.*

*The lengthy period covered by the Inquiry accordingly presents difficulties in ascertaining whether certain records, including records of disposal of exhibits, that do not now exist, were required by procedure to be retained.*

## Difficulties in locating exhibits/records

8.682. The NSWPF submitted that:<sup>1034</sup>

*There is no dispute that there have been significant difficulties in relation to the NSWPF's management of exhibits and documents relating to unsolved historical homicides. It is similarly acknowledged that this is an issue the UHT has been grappling with for some time.*

8.683. As is set out below, there was awareness within the NSWPF since at least December 2016 of ongoing difficulties with exhibits and other material in unsolved homicide cases having been lost, destroyed or contaminated.

8.684. In addition to its relevance to the individual deaths considered by the Inquiry, this evidence is significant to the consideration by the Inquiry of the work of the UHT. The difficulties experienced by the Inquiry raised the closely related question of how the UHT was and is able to properly triage, review and investigate cases if it did and does experience the same problems in relation to lost or destroyed material.

8.685. As is developed further below, I accept the submissions of Counsel Assisting that if the UHT had been thorough and systematic in its initial review of the 300 to 400 unsolved homicides in 2004–2008 then it should have been apparent at that time that these difficulties existed.

8.686. I also accept that the failure to identify these issues and conduct a thorough audit in 2004–2008 (or in 2016) represents a significant oversight and a lost opportunity to ensure that future unsolved homicide reviews would be efficient and effective. It also has flow on effects: for example, if exhibit material is located and can be retested, then the passage of time increases the probability that persons of interest or witnesses may be deceased or unable to be located (as in the cases, for example, of Crispin Dye and Samantha Rose). Forensic opportunities that existed in 2004 may now have been lost.

<sup>1034</sup> Submissions of NSWPF, 10 October 2023, [94] (SCOI.86127).



8.687. The NSWPF submitted that:<sup>1035</sup>

*The Inquiry has not called any of the officers involved in the initial review of unsolved homicides conducted in the early years of the unsolved homicide capability within the NSWPF to give evidence. In those circumstances, the Inquiry has little insight into the extraordinary challenges those officers were called upon to address. Prior to the formation of the UHT, there was no comprehensive accounting of unsolved homicides and long-term missing persons in NSW. The officers involved in that process were, in essence, confronted with a blank slate. Their task was not simply to review neatly compiled bundles of material regarding a ready-made subset of cases. They had to create the subset, compile the bundles, and begin the unquestionably challenging review process.*

*There is no evidence as to the resources available to those officers nor as to the constraints and pressures they no doubt confronted in undertaking that exercise.*

*It is also important to recall that a dedicated unsolved homicide capability was, as at 2004, a relatively novel concept. Before the extraordinary developments in forensic science in the 1990s and 2000s, there was comparatively very little prospect of resolving unsolved homicide cases. It is unsurprising that relatively little attention had, to that point, been directed to developing a dedicated unsolved homicide unit within the NSWPF (or in other police forces internationally).*

8.688. As I emphasised at the beginning of this Chapter, my criticisms of the UHT should not be understood to be directed at any individual officer. I accept that the UHT was confronted by a task of significant magnitude, and that dedicated unsolved homicide capability was relatively novel at the time. While the NSWPF's decision to develop this capability is commendable, that does not insulate the UHT from criticism about the systems in place and the review that was conducted.

### Submissions concerning exhibit management

8.689. Counsel Assisting made a number of submissions concerning exhibit management. As a “global proposition”, the NSWPF also accepted that “in a number of cases there have been failures in exhibit management”.<sup>1036</sup>

<sup>1035</sup> Submissions of NSWPF, 10 October 2023, [95]–[97] (SCOI.86127).

<sup>1036</sup> Submissions of NSWPF, 10 October 2023, [154] (SCOI.86127).

## The utility of criticism

- 8.690. A submission repeated in a number of individual documentary cases by the NSWPF was that there was limited utility in criticising conduct from many years ago. However, the NSWPF accepted in its submissions following the Investigative Practices Hearing that there is utility in making such criticisms even if, as a practical matter, such conduct is unlikely to recur.
- 8.691. In relation to this issue, Counsel Assisting sought to draw a distinction between a failure of foresight, which might explain policies or procedures which, with the benefit of hindsight, were insufficient, and the unexplained loss or destruction of documents and exhibits. In my view, some adverse comment may be called for if the NSWPF policies suggested a failure to anticipate future developments that should have been foreseen, for example, the possibility of advances in forensic science or, once DNA testing emerged, improvements in DNA technology.
- 8.692. However, one or more of the NSWPF witnesses accepted that there was no explanation for why material had been lost or destroyed, or why there was no record of an authorised destruction. This could not be excused as a mere failure of foresight. In large part, I deal with those matters in the individual cases.
- 8.693. The NSWPF sought to clarify that its previous submissions, in relation to the limited utility in criticising the NSWPF for its historical exhibit management failures, were “not to say that the criticism should not be recorded.”<sup>1037</sup> The NSWPF acknowledged that:<sup>1038</sup>

*the simple fact of taking stock, and recording a past failure can give significant comfort to members of the community (in particular, family members of the deceased, and members of the LGBTIQ community).*

- 8.694. However, the NSWPF submitted that “little in practical terms is likely to be gained” by criticising a long defunct practice or an officer who has been retired for 20 years or more.<sup>1039</sup> The NSWPF also described Counsel Assisting’s assessment of exhibit management practices as resting “heavily on speculation”, and that:<sup>1040</sup>

*...it is typically not known why an exhibit is no longer retained; in particular, there is ordinarily no evidence of when, how or why an exhibit ceased to be in the possession of the NSWPF. Of course, in cases where an exhibit was disposed of or returned to its owner, a record of that event should have been made. However, the fact that such a record is no longer available does not necessarily indicate that there has been some failure in the exhibit management process; given the lapse of time, the destruction of the relevant record may well have accorded with proper procedure.*

<sup>1037</sup> Submissions of NSWPF, 10 October 2023, [158] (SCOI.86127).

<sup>1038</sup> Submissions of NSWPF, 10 October 2023, [158] (SCOI.86127).

<sup>1039</sup> Submissions of NSWPF, 10 October 2023, [158] (SCOI.86127).

<sup>1040</sup> Submissions of NSWPF, 10 October 2023, [160] (SCOI.86127).

*A further factor is that the disposal of exhibits may be authorised by the Coroner. In cases where a determination was made that a death was not suspicious, it would be more likely that there would be an approval to dispose of the exhibits.*

- 8.695. I emphasise that in commenting on police practices I should not be understood as criticising any individual officer personally. However, the objectives of this Inquiry, and the accepted comfort that these observations may bring to members of the community, mean that, where I have formed the view that exhibit or record-keeping practices fell short of the standard the community had a right to expect, I consider it appropriate to record my view in this Report.

### **The evidentiary difficulties**

- 8.696. In many cases, it is not clear from the evidence before the Inquiry whether a conscious decision was made to destroy exhibits that have been unable to be produced to the Inquiry. I agree with Counsel Assisting's submission that this is extremely troubling.
- 8.697. If records of the destruction of particular exhibits had been made and retained, Counsel Assisting suggested that the Inquiry would be in a position to understand whether there was a rational basis for disposing of the exhibits (subject to what is said above). For example, exhibits may have been disposed of in accordance with police procedures in place at a time when the significance of that material could not have been appreciated.
- 8.698. However, in many instances the material from the NSWPF has not allowed the Inquiry to understand what occurred in relation to particular exhibits. This means either that exhibits were either simply lost, or that they were destroyed but no proper records were kept. Counsel Assisting submitted that neither of these alternatives is acceptable. The destruction or loss of exhibit material, and the failure by the NSWPF to produce records explaining what occurred in relation to this material, has affected the ability of the Inquiry to carry out its work.
- 8.699. The NSWPF embraced Counsel Assisting's submission that the period from 2000 onwards has been characterised by very significant changes in the procedures followed by the NSWPF in relation to the testing of exhibits, and the technology used to conduct those tests.<sup>1041</sup> The NSWPF also emphasised Counsel Assisting's submission that it is reasonable that some officers may not have turned their minds to the potential evolution of DNA capabilities at the time of the deaths considered as part of the Investigative Practices Hearing.<sup>1042</sup>

<sup>1041</sup> Submissions of NSWPF, 10 October 2023, [52] (SCOI.86127).

<sup>1042</sup> Submissions of NSWPF, 10 October 2023, [54] (SCOI.86127).

8.700. Despite this, the NSWPF acknowledged that there had been “significant failures” in the retention of exhibits and records concerning the management of those exhibits. However, the NSWPF submitted that whether the disposal of exhibits or the absence of records relating to the management of those exhibits involved a breach of police procedure is something that cannot be determined at a general level. Given police procedure varied from time to time, such an assessment must be made in light of the circumstances of the individual cases.<sup>1043</sup>

### The nature of the problem

8.701. Counsel Assisting submitted that it is not possible for the Inquiry to know whether or not the problems with exhibit and record management are more prevalent in cases where victims were or may have been perceived to be members of the LGBTIQ community.

8.702. However, Counsel Assisting submitted that it is important that the public appreciate the extent to which these issues create obstacles to the investigation of these presently unsolved homicides. Counsel Assisting submitted that the level of deviation from what might reasonably have been expected in relation to exhibits and records is not something that can be explained by isolated instances of human error, or an understandable failure to appreciate how technology might develop. Indeed, the extent of the problem is something that is described in internal NSWPF documents such as the Lehmann Report (described in further detail below).

8.703. As Counsel Assisting submits, the state of the exhibits and records held by the NSWPF had a substantial impact on the ability of the Inquiry to perform its work in relation to some cases. It is not possible to conduct further forensic testing on exhibits that have been lost, or to explore avenues of investigation when entire investigative files cannot be located. Counsel Assisting suggested that this is a matter which should be acknowledged and recorded, particularly as in some cases it likely means that no perpetrator will ever be located.

8.704. The NSWPF accepted that in a number of cases there have been exhibit management failures.<sup>1044</sup> However, the NSWPF also submitted that “the cases subject to consideration by the Inquiry cannot sensibly be regarded as a representative sample.”<sup>1045</sup> The NSWPF also noted that:<sup>1046</sup>

*In some instances, a case was not solved because of a failure in investigative process. And cases that are initially unsolved may remain that way, at least in part, because of a failure in exhibit management. That being so, a failure in investigative practice or exhibit management is, by definition, more likely to be observed in unsolved cases than in cases that are solved.*

<sup>1043</sup> Submissions of NSWPF, 10 October 2023 [55]–[56] (SCOI.86127).

<sup>1044</sup> Submissions of NSWPF, 10 October 2023, [154] (SCOI.86127).

<sup>1045</sup> Submissions of NSWPF, 10 October 2023, [156] (SCOI.86127).

<sup>1046</sup> Submissions of NSWPF, 10 October 2023, [156] (SCOI.86127).

- 8.705. According to the NSWPF, the key factor explaining the premature disposal or loss of exhibits was human error. This human error could be characterised either as a “simple failure of diligence” or “a failure of foresight in relation to potential advances in technology”, although the NSWPF noted that such a conclusion should not be clouded by “hindsight bias”.<sup>1047</sup>
- 8.706. The NSWPF acknowledged that the failures in exhibit management considered by the Inquiry suggest “deficiencies in the system or training provided to officers at the relevant time”.<sup>1048</sup> However, the NSWPF resisted the drawing of any implication that systemic bias may have played a part describing it as a “grave” one which is “unsupported by evidence”.<sup>1049</sup>
- 8.707. The NSWPF acknowledged that the absence of exhibits in cases considered by the Inquiry has had a significant impact upon its work and may reduce the likelihood that the relevant case will be solved.<sup>1050</sup> The NSWPF also conceded that a more systemic approach to the management of exhibits in “historical” cases could have been implemented prior to the formation of the UHT.<sup>1051</sup>
- 8.708. Counsel Assisting submitted in reply that:<sup>1052</sup>

*In relation to the point made at [156] of the NSWPF Submissions, it is common ground that the “unsolved” status of unsolved homicides should be taken into account, and that any finding should be qualified accordingly (see NSWPF Submissions [447]). However, the material before the Inquiry, including evidence such as the Lehmann Report, does suggest the deficiencies were systemic or widespread. Such a conclusion is consistent with the proposition that there has been appropriate exhibit management and record keeping in many – indeed one hopes the large majority – of cases. The deficiencies may nevertheless be regarded as systemic or widespread given that the evidence indicates they occurred on many occasions in many different area commands, and the problems appear to have persisted across many years.*

*The submission in the first sentence of NSWPF Submissions [160] [i.e., that the assessment of the exhibit management practices engaged in at CA [492] – [493] rests heavily on speculation, in circumstances where it is typically not known why an exhibit is no longer retained; in particular, there is ordinarily no evidence of when, how or why an exhibit ceased to be in the possession of the NSWPF] should be rejected. Even if the submission made in the latter half of [160] is accepted—that is, that the destruction of the relevant record may have accorded with proper procedure—it is still correct to say that the loss or destruction of many*

<sup>1047</sup> Submissions of NSWPF, 10 October 2023, [164] (SCOI.86127).

<sup>1048</sup> Submissions of NSWPF, 10 October 2023, [164] (SCOI.86127).

<sup>1049</sup> Submissions of NSWPF, 10 October 2023, [163] (SCOI.86127).

<sup>1050</sup> Submissions of NSWPF, 10 October 2023, [165] (SCOI.86127).

<sup>1051</sup> Submissions of NSWPF, 10 October 2023, [167] (SCOI.86127).

<sup>1052</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [93]-[95] (SCOI.86354).

*documents and exhibits is unexplained. The NSWPF is the only entity that could be expected to explain what occurred. While it may be that destruction of exhibits or records occurred in an orthodox way, that is a matter which the NSWPF have been continually invited to explain and demonstrate. They have not done so.*

*Although the NSWPF Submissions at [163] cavil with the submission made at [Counsel Assisting's written submissions in chief] [493], it appears that in fact the NSWPF accept, as set out at NSWPF Submissions [164], that the number of instances of error suggest deficiencies in the system or training provided to officers.*

- 8.709. I accept the submissions of Counsel Assisting. I do not consider that the assessment outlined at [492]–[493] of Counsel Assisting's submissions “rests heavily on speculation”.<sup>1053</sup> The loss or destruction of many exhibits and documents remains unexplained. The NSWPF has been given every opportunity to provide that explanation, and has not done so. It is the only entity that could be expected to give this explanation.
- 8.710. The problems with exhibit management and record-keeping are clearly widespread amongst *unsolved* homicides. In circumstances where I am satisfied that the present procedures mean that these problems are substantially less likely to recur, I do not consider it necessary to make a finding in relation to whether the problems the Inquiry has observed in relation to unsolved homicides are systemic across exhibits in other types of matters. I do observe that, having regard to the scale of the problem in unsolved homicides (and the fact that they have occurred many times over a significant time period in many different area commands), it would be surprising if similar difficulties were not encountered across other historical cases.
- 8.711. I accept the submission made by the NSWPF that the instances of human error across a number of cases (even accepting the nature of the sample may be unrepresentative) suggest deficiencies in the systems or trainings in place.<sup>1054</sup> I also accept the NSWPF's submission that a suggestion of systemic bias would be a grave one.<sup>1055</sup> I do not understand Counsel Assisting to have suggested a systemic bias. However, as I explained at the commencement of this Chapter, I consider that it is likely that at least some record-keeping and exhibit management deficiencies were affected by conscious or unconscious bias.

<sup>1053</sup> Submissions of NSWPF, 10 October 2023, [160] (SCOI86127).

<sup>1054</sup> Submissions of NSWPF, 10 October 2023, [164] (SCOI86127).

<sup>1055</sup> Submissions of NSWPF, 10 October 2023, [163] (SCOI86127).

## Submissions concerning record management

- 8.712. Counsel Assisting observe that the majority of the cases being considered by the Inquiry pre-date the SOPs and other protocols produced to the Inquiry by the NSWPF. In the majority of cases where records appear to have been lost, there is no evidence that would allow the Inquiry to identify with any specificity when this occurred.
- 8.713. Counsel Assisting submitted that the difficulties experienced by the Inquiry are consistent with the evidence of the NSWPF witnesses that the question of whether material can easily be retrieved and located (prior to the introduction of electronic records management) was primarily reliant on the approach taken by the OIC or any other officer who took charge of records.
- 8.714. Although these failures in record-keeping, or losses of records, may precede the introduction of SOPs, Counsel Assisting submitted that it is extremely regrettable that they are so prevalent. It should have been obvious as a matter of common sense to police officers during the whole period being considered by the Inquiry that it was important to preserve police records of investigations and to ensure they could be readily located.
- 8.715. In Counsel Assisting's submission, the prevalence of these problems suggests a serious systemic failure in NSWPF record-keeping practices throughout the period examined by the Inquiry. As set out above, Assistant Commissioner Conroy gave evidence that record-keeping practices (and exhibit management practices) have improved, particularly following digitisation. Counsel Assisting submitted that the Inquiry can proceed on the basis that these problems are less likely to occur in the future although there is still some reliance on individual officers.
- 8.716. The NSWPF accepted that there have been "significant difficulties" in relation to its management of exhibits and documents relating to unsolved historical homicides.<sup>1056</sup> The NSWPF also accepted that prior to the introduction of electronic records management, "there was a greatly increased scope for human error or failures of diligence".<sup>1057</sup> The NSWPF described the "apparent frequency of such human error and/or failures to diligently archive material correctly" as "regrettable".<sup>1058</sup>
- 8.717. However, the NSWPF submitted that:<sup>1059</sup>

*The available evidence generally does not allow the Inquiry to reach a conclusion as to when or how particular records were lost or disposed of (or, indeed, whether they were disposed of or lost).*

<sup>1056</sup> Submissions of NSWPF, 10 October 2023, [94] (SCOI.86127).

<sup>1057</sup> Submissions of NSWPF, 10 October 2023, [113] (SCOI.86127).

<sup>1058</sup> Submissions of NSWPF, 10 October 2023, [113] (SCOI.86127).

<sup>1059</sup> Submissions of NSWPF, 10 October 2023, [112] (SCOI.86127).



- 8.718. The NSWPF conceded that the UHT had been “grappling” with these difficulties “for some time”.<sup>1060</sup>
- 8.719. The NSWPF, in line with the submissions of Counsel Assisting, submitted that these problems relating to the retention and location of documents and exhibits encountered during the Inquiry are “very substantially less likely to reoccur in the future”.<sup>1061</sup> The NSWPF pointed to “[v]ery substantial efforts... made by the NSWPF to refine its exhibit and record management procedures”, and the impact of these improvements, described by Assistant Commissioner Conroy in evidence:<sup>1062</sup>
- ...of 514,000 items stored, only 11 miscellaneous items of property and seven exhibits had been lost, equating to approximately 1 in 28,555 (or a rate of approximately 0.0035%).*
- 8.720. I accept that the problems with historical exhibit management and record-keeping are substantially less likely to reoccur in the future. However, vigilance in this respect remains critical.

### Knowledge within the NSWPF concerning the difficulties locating and retrieving exhibits and documentary material

- 8.721. A topic on which there are some conflicting submissions from Counsel Assisting and the NSWPF is the extent of the knowledge within the NSWPF concerning the difficulties locating and retrieving exhibits and documentary material.
- 8.722. As is set out above, the UHT was established and an initial review of unsolved homicide cases commenced in 2004. As Counsel Assisting observed, two questions arise: first, when the NSWPF could reasonably have been expected to take action such as an audit of exhibits and documentary material to seek to, as far as possible, remedy the problems being encountered in some matters considered by the UHT; and, secondly, what, if anything, the NSWPF should have communicated to the Inquiry about this matter. The latter of these questions is dealt with in the Chapter concerning the NSWPF response to the Inquiry.
- 8.723. I accept the submission that given that the NSWPF dedicated resources to reviewing 300 to 400 cases in the period between 2004 and 2008, these widespread problems with records and exhibits in unsolved homicides should have been identified. That would also have presented an opportunity to conduct an audit and endeavour to establish what records and exhibits were available in relation to all unsolved homicides.

<sup>1060</sup> Submissions of NSWPF, 10 October 2023, [94] (SCOI.86127).

<sup>1061</sup> Submissions of NSWPF, 10 October 2023, [114] (SCOI.86127).

<sup>1062</sup> Submissions of NSWPF, 10 October 2023, [115] (SCOI.86127), citing Transcript of the Inquiry, 4 July 2023, T4867.19–4868.4 (TRA.00072.00001).



- 8.724. I emphasise that these observations are not to be understood as critical of any individual UHT member. Rather, it is a criticism of the system implemented by the UHT. To that end, I note that the NSWPF accepts that opportunities have been missed in respect of the conduct of a thorough audit of records and exhibits relating to cases falling within the purview of the UHT.<sup>1063</sup> I accept that those opportunities were missed in circumstances where the UHT was confronted with an “extraordinary caseload”.<sup>1064</sup>
- 8.725. This initial review conducted by the UHT was commenced almost 20 years ago. Counsel Assisting submits that had efforts been made to conduct a thorough audit of records and exhibits at that time, material may have been located that has been lost or degraded in the period between 2004 and the present, or between 2004 and 2017 when the efforts described at below were undertaken. I accept that submission.

### The Lehmann Report

- 8.726. As noted above, the Inquiry has before it the Lehmann Report.<sup>1065</sup> The Lehmann Report, defined above, was prepared on 5 August 2016 and addressed an issue described as “[p]roposal for a project plan concerning the locating, identification and reconciliation of exhibits relating to unsolved homicide cases.”<sup>1066</sup> It was prepared in response to issues that had arisen in the ability of the UHT to undertake its case reviews. It was forwarded to Detective Superintendent Willing (then the Commander of the Homicide Squad), Detective Chief Superintendent Kertalec (the Director and the State Crime Command), and the Commander of the State Crime Command. Detective Chief Inspector Laidlaw, who gave evidence about the Lehmann Report, was not certain who filled the latter role at the relevant time.<sup>1067</sup>
- 8.727. The Lehmann Report identified five problems faced by the UHT in relation to exhibits. Problem 1 was that a significant component of the assessment and review process is searching for exhibits relating to a case. The Lehmann Report stated that “[t]he experience of the UHT is that [the assessment and review process] has been a frustrating and difficult task in many cases” because exhibits had been destroyed, lost or misplaced, and because exhibit records were destroyed, lost, inaccurate or incomplete.<sup>1068</sup>

<sup>1063</sup> Submissions of NSWPF, 10 October 2023, [176] (SCOI.86127).

<sup>1064</sup> Submissions of NSWPF, 10 October 2023, [177] (SCOI.86127).

<sup>1065</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector Lehmann, 5 August 2016 (NPL.0100.0018.0001).

<sup>1066</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector Lehmann, 5 August 2016 (NPL.0100.0018.0001).

<sup>1067</sup> Transcript of the Inquiry, 6 July 2023, T5145.45–5146.24 (TRA.00074.00001).

<sup>1068</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector John Lehmann, 5 August 2016 (NPL.0100.0018.0001).

- 8.728. Problem 2 in the Lehmann Report was that exhibits which were located (“often through luck and at locations that are unexpected and not indicated through records”) were unlabelled or improperly labelled, improperly secured, mixed with exhibits from other cases, or not readily identifiable as pertaining to a particular case.<sup>1069</sup>
- 8.729. Problem 3 was that many of the “poorly secured exhibits” include the homicide victim’s clothing and post-mortem and crime scene specimen swabs, raising a biohazard risk.<sup>1070</sup>

- 8.730. Problem 4 was that:<sup>1071</sup>

*[a]t the conclusion of original investigations that remain unsolved, the UHT experience has found that many briefs of evidence, case file documents and physical evidence exhibits were not archived and stored in a proper manner. Many exhibits are improperly packaged and archived within case file boxes and in other cases, case file boxes including exhibits were not even recorded and archived, but left on shelves at various locations in police premises or in some cases, left in non police premises with no records to indicate their movement or whereabouts.*

- 8.731. The Lehmann Report noted that when the NSWPF Records Repository at Stanmore closed, numerous exhibits were located amongst case file boxes having been improperly stored. The report recorded that eight pallets of items were transferred to the MEPC and were, at the time of the Lehmann Report, awaiting identification and recording. The Lehmann Report stated that “[m]any of these items may relate to unsolved homicide cases and they will have to be examined by UHT investigators to determine this.”<sup>1072</sup>

- 8.732. Problem 5 was that changes in organisational structure, police regions, districts and divisions, and the realignment of boundaries and formation of LACs had all had a “detrimental effect” in relation to locating historical exhibits. The report recorded that historical exhibits may have been moved without the records reflecting those changes. The Lehmann Report stated:<sup>1073</sup>

*When the UHT reviewed 400 cases between 2004 and 2008, the reviewing officers relied on known exhibit records that existed indicating the last known location of the exhibit searched for. On occasions when making enquiries with the relevant staff in charge of exhibit management, UHT reviewing officers were informed that the exhibit was not at the location or could not be found. This essentially ended the search for that*

<sup>1069</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector John Lehmann, 5 August 2016 (NPL.0100.0018.0001); Exhibit 51, Tab 5E, NSWPF Records Retention Policy (DA0221), 20 June 2017, 38 (NPL.9000.0018.0469).

<sup>1070</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector John Lehmann, 5 August 2016 (NPL.0100.0018.0001).

<sup>1071</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector John Lehmann, 5 August 2016 (NPL.0100.0018.0001).

<sup>1072</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector John Lehmann, 5 August 2016, 3 (NPL.0100.0018.0001).

<sup>1073</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector John Lehmann, 5 August 2016 (NPL.0100.0018.0001).

*exhibit and was significant for the outcome of the case review and its determination for future re-investigation.*

*Through experience gained since that time we now know that the exhibit may have existed but:*

- a. The exhibit officer did not know that the item was at the location because there was no updated record that indicated so*
- b. The exhibit had been moved to a new location however there was no updated exhibit movement record to indicate this.*

8.733. The Lehmann Report went on to comment:<sup>1074</sup>

*The problems outlined stemming from yesteryear have been alleviated by improvements in exhibit handling and record management, particularly through the advent of the EFIMS system. In addition a Commissioners Instruction now exists that all exhibits relating to homicide cases are to be retained indefinitely. It is the legacies of the poor exhibit and record management practices of the past, compounded by the passage of time that causes significant problems for the UHT today.*

8.734. In addition, the Lehmann Report described previous searches conducted by the UHT, and proposed a reconciliation plan in relation to exhibits.<sup>1075</sup> The first page of the version of the Lehmann Report produced to the Inquiry has an annotation from Michael Willing, then a Detective Superintendent and Commander of the Homicide Squad, dated 31 August 2016, reading “[f]or discussion asap with myself re moving forward.”<sup>1076</sup>

8.735. There is also an annotation at the end of the Lehmann Report from Mr Willing dated 22 June 2016 recording that the Lehmann Report had been forwarded for the information of the Director of the SCD and the Commander of the SCC. Both the Director of the SCD, Detective Chief Superintendent John Kerlatec, and the Commander of the SCC, have signed the Lehmann Report. Detective Chief Superintendent Kerlatec supported the proposed review of exhibits, and the Commander of the SCC (unnamed in the Report) recorded “Review Approved” and dated this note 1 December 2016.

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<sup>1074</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector John Lehmann, 5 August 2016 (NPL.0100.0018.0001).

<sup>1075</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector John Lehmann, 5 August 2016 (NPL.0100.0018.0001).

<sup>1076</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector John Lehmann, 5 August 2016, 1 (NPL.0100.0018.0001).

- 8.736. The Lehmann Report identified that in 2013 the UHT took a (limited) general search for exhibits at some locations and that “UHT officers were directed to a basement of a police centre storeroom and located a number of exhibit items relating to 22 unsolved homicide cases dating back to the 1970’s that had been undiscovered.”<sup>1077</sup> Amongst those exhibits was physical evidence that became the “lynch pin” in charging Leonard John Warwick with the Jehovah’s Witness Hall bombing in Casula in 1985 and associated crimes.<sup>1078</sup>
- 8.737. As Counsel Assisting observed the Warwick matter is outside the Inquiry’s Terms of Reference. However, it is powerfully illustrative of a very serious sequence of crimes of major public concern, where the investigation was hindered for many years by the inability to locate crucial exhibits. There are a large number of matters considered by the Inquiry where exhibits cannot be accounted for. One of those exhibits may likewise have been a lynch pin in charging an offender.

#### EVIDENCE OF THE NSWPF WITNESSES CONCERNING THE LEHMANN REPORT

- 8.738. Assistant Commissioner Conroy was taken to the Lehmann Report during her oral evidence. She said that she had seen the Lehmann Report while preparing for her evidence before the Inquiry, but not before that.<sup>1079</sup>
- 8.739. Assistant Commissioner Conroy agreed that the difficulties identified as Problem 2 in the Lehmann Report were consistent with her knowledge and experience as at 2016, and that, based on her review of the records in relation to unsolved homicides reviewed recently, this problem continues.<sup>1080</sup> She likewise agreed that Problems 3 and 4 were, and continue to be, problems with historical exhibits.<sup>1081</sup>
- 8.740. Assistant Commissioner Conroy’s evidence was that the situation described as Problem 5 was one that only came to her attention as a consequence of preparation for giving evidence before the Inquiry.<sup>1082</sup> Her evidence was that she did not know whether the reconciliation plan described in the Lehmann Report had ever been implemented, but said it would not be fair to infer from her lack of knowledge that no plan of this kind had been carried out.<sup>1083</sup>
- 8.741. Detective Superintendent Doherty was also taken to the Lehmann Report by Senior Counsel Assisting. He said he did not recall seeing the document before.<sup>1084</sup> Counsel Assisting noted that the Lehmann Report was created before Detective Superintendent Doherty assumed his role as Commander of the Homicide Squad.

<sup>1077</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector John Lehmann, 5 August 2016, 2-3 (NPL.0100.0018.0001).

<sup>1078</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector John Lehmann, 5 August 2016, 2-3 (NPL.0100.0018.0001).

<sup>1079</sup> Transcript of the Inquiry, 4 July 2023, T4858.8–17 (TRA.00072.00001).

<sup>1080</sup> Transcript of the Inquiry, 4 July 2023, T4859.7–41 (TRA.00072.00001).

<sup>1081</sup> Transcript of the Inquiry, 4 July 2023, T4859.43–4850.27 (TRA.00072.00001).

<sup>1082</sup> Transcript of the Inquiry, 4 July 2023, T4860.29–47 (TRA.00072.00001).

<sup>1083</sup> Transcript of the Inquiry, 4 July 2023, T4861.2–28 (TRA.00072.00001).

<sup>1084</sup> Transcript of the Inquiry, 6 July 2023, T5055.22–34 (TRA.00074.00001).

- 8.742. Detective Superintendent Doherty was asked by Senior Counsel Assisting whether, when he became Commander of the Homicide Squad, he was made aware of issues concerning the location, identification and reconciliation and identification of exhibits, and he said he had been made aware of those issues. He also agreed that each of the problems identified in the Lehmann Report were matters he was aware of in December 2019.<sup>1085</sup>
- 8.743. Detective Superintendent Doherty said that these problems were raised in an *ad hoc* way by the UHT while cases were being reviewed. He was asked by Senior Counsel Assisting whether the problems existed in relation to a large number of unsolved homicides and said that he “wouldn’t say a large number”, although it “does come up in discussions”. He said, “the issue’s come up, it hasn’t been an incredibly large number.”<sup>1086</sup>
- 8.744. Detective Superintendent Doherty was asked whether he was aware of the exhibit reconciliation plan proposed in the Lehmann Report, and he said that he was aware of a project by members of the UHT to centralise exhibits to the MEPC.<sup>1087</sup> He said his understanding when he became Commander of the Homicide Squad was that this project was “getting to the end” but that “there were still issues around trying to locate exhibit items, documents.”<sup>1088</sup>
- 8.745. He was asked by the Commissioner whether “in some cases, notwithstanding the efforts that had been undertaken, you were or someone in the Unsolved Homicide Team was satisfied that you didn’t have all the relevant holdings, paper and exhibits included?”, and he agreed that this was the case.<sup>1089</sup> He was not aware of any written document setting out that this project had come to an end, and accepted that such a report was likely to come to his attention if the project had been completed.<sup>1090</sup>
- 8.746. It was put to Detective Superintendent Doherty by Senior Counsel Assisting that the centralisation of exhibits would not address all, or even most, of the problems identified in the Lehmann Report. He agreed that this was the case. He also agreed that Problems 1–5 were well known within the UHT and were brought to his attention when he assumed his position as Commander. He accepted the proposition that these are still problems within the UHT, and the contention that I put to him that there is “a significant...degree of uncertainty across the board in relation to the holdings of unsolved homicide cases.”<sup>1091</sup>

<sup>1085</sup> Transcript of the Inquiry, 6 July 2023, T5056.34–5057.16 (TRA.00074.00001).

<sup>1086</sup> Transcript of the Inquiry, 6 July 2023, T5058.42–5060.22 (TRA.00074.00001).

<sup>1087</sup> Transcript of the Inquiry, 6 July 2023, T5062.21–5063.18 (TRA.00074.00001).

<sup>1088</sup> Transcript of the Inquiry, 6 July 2023, T5063.1–6 (TRA.00074.00001).

<sup>1089</sup> Transcript of the Inquiry, 6 July 2023, T5064.13–22 (TRA.00074.00001).

<sup>1090</sup> Transcript of the Inquiry, 6 July 2023, T5066.27–42 (TRA.00074.00001).

<sup>1091</sup> Transcript of the Inquiry, 6 July 2023, T5067.31–35 (TRA.00074.00001).

- 8.747. Detective Chief Inspector Laidlaw was also taken to the Lehmann Report by Senior Counsel Assisting. Detective Chief Inspector Laidlaw gave evidence that he was made aware of the Lehmann Report when he took over the Review Team.<sup>1092</sup> He accepted that, as a result, he was aware from commencing in the Review Team that the five problems had been identified in that report in relation to exhibits and documentary records including investigative files.<sup>1093</sup> He said he was unable to assist the Inquiry with whether or not the reconciliation plan had been completed.<sup>1094</sup>
- 8.748. Detective Chief Inspector Laidlaw gave evidence that he had not received written updates about the progress of the reconciliation project, and that there were outstanding requests to LACs in relation to exhibits. He said that he had not invoked his authority to require a response to these outstanding requests.<sup>1095</sup> He said that the requests made in October 2016 had been followed up in 2017 and that they had received replies to around 80% of those requests.<sup>1096</sup>
- 8.749. Senior Counsel Assisting asked whether someone was responsible for collating and reviewing the replies. Detective Chief Inspector Laidlaw said that he supposed that responsibility now rested with him, but agreed that he had not conducted that exercise or taken any steps towards reviewing the responses received. He had not sought any additional resources for the purposes of conducting that exercise.<sup>1097</sup> Detective Chief Inspector Laidlaw was not aware of any similar project to reconcile documentary records.<sup>1098</sup>
- 8.750. Detective Chief Inspector Laidlaw was asked whether he was able to say whether a large number of unsolved homicides had exhibits missing. He said he could not give a number, but agreed that he could not exclude the possibility that it was a large number, and that he had “absolutely no idea as to the dimension of the likely problem or possible problem.”<sup>1099</sup> In relation to whether it was a “common issue”, Detective Chief Inspector Laidlaw repeated that he could not provide a number. He said that they did not find this problem with every case that was triaged, but that it affected some.<sup>1100</sup>

<sup>1092</sup> Transcript of the Inquiry, 6 July 2023, T5141.45–5142.8 (TRA.00074.00001).

<sup>1093</sup> Transcript of the Inquiry, 6 July 2023, T5142.29–5143.10 (TRA.00074.00001).

<sup>1094</sup> Transcript of the Inquiry, 6 July 2023, T5144.2 (TRA.00074.00001).

<sup>1095</sup> Transcript of the Inquiry, 6 July 2023, T5145.9 (TRA.00074.00001).

<sup>1096</sup> Transcript of the Inquiry, 6 July 2023, T5147.47–5148.1 (TRA.00074.00001).

<sup>1097</sup> Transcript of the Inquiry, 6 July 2023, T5148.10–45 (TRA.00074.00001).

<sup>1098</sup> Transcript of the Inquiry, 6 July 2023, T5145.40 (TRA.00074.00001).

<sup>1099</sup> Transcript of the Inquiry, 7 July 2023, T5188.39–5189.11 (TRA.00075.00001).

<sup>1100</sup> Transcript of the Inquiry, 7 July 2023, T5189.15–38 (TRA.00075.00001).

8.751. Detective Chief Inspector Laidlaw said in his statement that since the time of the Lehmann Report exhibits pertaining to unsolved homicides are now stored at the MEPC.<sup>1101</sup> The Command responsible for the initial investigation arranges for the transfer of exhibits to the MEPC for any cases listed in the UHT Tracking File, in accordance with a direction given to all Commands in 2016. During the triage process, the officer in the Review Team will check to ensure exhibits are stored at the MEPC and, if they are not, will make a request to the relevant Command to have them transferred.<sup>1102</sup>

8.752. In addition, Counsel Assisting submitted that:<sup>1103</sup>

*It was remarkable how little some of the NSWPF witnesses appeared to know about the Lehmann Report and the widespread problems with historical exhibits. AC Conroy had not seen the report. DI Warren said that he did not know about these problems until they were encountered in the course of responding to the Inquiry.*

8.753. The NSWPF submitted that this criticism was unfair. Regarding Detective Inspector Warren, the NSWPF noted that he did not return to the Homicide Squad until 2020 and there is no evidence that he had any knowledge of the Lehmann Report, which was prepared some four years earlier. Similarly, Assistant Commissioner Conroy did not commence in her position until April 2022. The scope of her responsibilities meant that, in the NSWPF's submission, she could not reasonably be expected to have become familiar with difficulties confronting the UHT, outlined in an issue paper produced almost six years before her tenure commenced.

8.754. In reply submissions, Counsel Assisting observed that:<sup>1104</sup>

*It should be observed, in relation to NSWPF Submissions [171]-[172], that the submission at CA Submissions [496] is not personally critical of AC Conroy or DI Warren. Rather, it points out that it is remarkable that AC Conroy had not seen the report, and that DI Warren was not aware of the problems set out in the report. Given the magnitude of the issue, and the effect on the work of the UHT (which comprises a significant part of the Homicide Squad), we submit that it is surprising that they were not aware of these matters.*

8.755. I accept this submission. It is indeed surprising that they were not aware of the Lehmann Report and the problems set out in that report. It is also unfortunate. This knowledge may have assisted in both the management of the UHT caseload, and the NSWPF's response to this Inquiry.

<sup>1101</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector David Laidlaw, 13 June 2023, [108] (NPL.9000.0019.0001).

<sup>1102</sup> Exhibit 51, Tab 6, Statement of Detective Chief Inspector David Laidlaw, 13 June 2023, [109]–[110] (NPL.9000.0019.0001).

<sup>1103</sup> Submissions of Counsel Assisting, 15 September 2023, [496] (SCOI.85649).

<sup>1104</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [96] (SCOI.86354).

## ADDITIONAL DOCUMENTARY MATERIAL CONCERNING THE LEHMANN REPORT

- 8.756. The Inquiry issued a summons following the first tranche of the Investigative Practices Hearing seeking, relevantly, documents concerning the implementation of the recommendations of the Lehmann Report (Summons NSWPF146).
- 8.757. It is clear that towards the end of 2016 and during 2017 memoranda were circulated to LACs requesting that they conduct an inventory of all unsolved homicide exhibits. Those memoranda, which are substantially in the same form, said:<sup>1105</sup>

### *BACKGROUND:*

*The Unsolved Homicide Team (UHT), State Crime Command is embarking on a project to recover and centralise historical unsolved homicide case exhibits throughout New South Wales. There are approximately 650 unsolved homicide cases in NSW. Due to some poor exhibit management practices from years ago, the existence of many exhibits relating to those cases is not readily identifiable.*

*A limited search for exhibits by the UHT in recent years has located exhibits at a number of locations, the existence and whereabouts of which were previously unknown. Many of the exhibits have since been subjected to new forensic analysis and yielded important evidence such as DNA, proving significant in the solvability potential of the cases they belong to. The exhibits in questions are those taken into police possession prior to the advent of EFIMS and have not been converted onto this system.*

### *CURRENT POSITION:*

*The UHT are now requesting that an inventory be conducted of all exhibits on hand relating to all homicide cases (not converted to EFIMS). Searching should include all sub stations within the LAC and premises used for exhibit storage. Details are to be provided and the file returned to the UHT for information. This should include copies of exhibit book entries pertaining to exhibits on hand, including entries that indicate the transfer or destruction of items. 'Nil Return' files are to be returned to the UHT.*

*If exhibits are located, the UHT should be contacted on eaglenet 28991 in order for arrangements to be made for the exhibits to be collected and transferred to the Metropolitan Exhibit and Property Centre, [REDACTED] by UHT personnel.*

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<sup>1105</sup> Exhibit 53, Tab 49, NSWPF internal memorandum – 'Request inventory of all unsolved homicide exhibits on hand at Ashfield Local Area Command', 18 October 2016 (NPL.0205.0001.0184).



*The inventory should include scrutiny of exhibit books to ascertain the current or last location of exhibits in the event they have been transferred to other locations (eg. to FASS for scientific analysis). Once transferred to the MEPC, UHT personnel will maintain responsibility for each exhibit item to be entered onto EFIMS and kept for long term storage.*

- 8.758. The Inquiry has before it a number of responses from LACs. In cases where LACs had not responded, it appears that follow-up memoranda, signed by Detective Chief Inspector Christopher Olen of the UHT, were sent in July 2017.<sup>1106</sup>
- 8.759. The documentary material before the Inquiry suggests that on occasion LACs had contacted the UHT to advise them that there were no relevant exhibits, but no records of this were made by the UHT.<sup>1107</sup> No document compiling the responses of each LAC has been produced to the Inquiry, although such a document would have been within the terms of the summonses issued by the Inquiry. It is apparent that the task was not straightforward—for example, a response from the St George LAC records:<sup>1108</sup>

*The Unsolved Homicide Exhibit report was allocated to me last year to address for St George LAC. As mentioned by Paul Simpkins, we have been in the process of addressing a room at Riverwood Police Station that basically was a dumping ground for a lot of the Commands old, old exhibits for a very long time. Until 12 months ago the exhibits were still being managed via the old Exhibit Books and basically forgotten about. To give you an idea we recently disposed of exhibits from an extortion in 1994 where the OIC was a Det Sen Con. No names but he recently became our Commissioner. Just an example of what we have been coming to terms with.*

*As part of a greater exhibits project for the Command, I have had a part time officer at the location that has been back capturing and re-bagging the exhibits into the modern bags and placing as many details as she possibly can onto those bags - information she has to draw from COPS and in some instances she has to do iAsk's for the old CIR's. As of two weeks ago, all exhibits and that officer have been moved from Riverwood back up to Hurstville, however, it is a rather arduous process which the officer is doing a commendable job with. As it stood Sir, [REDACTED] would not accept the exhibits as they are as they are not on EFIMS and the bags have deteriorated over time, some you would pick up and the contents would spill onto the floor.*

<sup>1106</sup> Exhibit 53, Tab 52, NSWPF internal memorandum – ‘Request inventory of all unsolved homicide exhibits on hand at Inverell Crime Scene Section’, 10 July 2017 (NPL.0205.0001.0096).

<sup>1107</sup> Exhibit 53, Tab 53, NSWPF internal memorandum – ‘Request for inventory of all unsolved homicide exhibits on hand at Penrith LAC, 19 July 2017, 2 (NPL.0205.0001.0293); Exhibit 53, Tab 50, Email from Brett McFadden to Michael Willing re “Unsolved Homicide Exhibits”, 7 April 2017 (NPL.0205.0005.0068).

<sup>1108</sup> Exhibit 53, Tab 51, Email from Matthew Francis to Michael Willing re “St George Exhibits”, 13 April 2017 (NPL.0205.0005.0056).

*Importantly to your Unsolved Homicide officers, there is definitely going to be items that relate to the file generated by D/C/Insp Lehmann.*

*I do apologise Sir, I have always taken this request seriously, I was just holding off as long as I could so my response back to Detective Lehmann and his staff was as complete as it possibly could be. I did e-mail Detective Lehmann back in December (see below), committing to have something to him soon after that, but after meeting with the officer at Riverwood I realised it would be incomplete as her back capture was still underway and the spread sheet I referred to, although helpful, wouldn't assist Det Lehmann very much.*

### Media coverage of difficulties with exhibits

- 8.760. Senior Counsel Assisting took Detective Chief Inspector Laidlaw to a *Daily Telegraph* article published on 8 October 2017 which referred to 50 unsolved homicides where evidence was missing or had been discarded.<sup>1109</sup> Detective Chief Inspector Laidlaw said he had not seen the article before, and was not sure if he was at the UHT at the time of its publication.<sup>1110</sup> Detective Chief Inspector Laidlaw accepted that the UHT was alive to the loss of exhibits described in the article as at October 2017, and that “it was known...that some of the exhibits were in the bowels of the police stations, attics of retired investigators, or hiding in plain sight, just incorrectly marked”.<sup>1111</sup> In written submissions, the NSWPF accepted that the UHT was aware of issues in relation to the loss of exhibits as at the time the article was published.<sup>1112</sup>
- 8.761. Detective Chief Inspector Laidlaw also accepted that it was known as at October 2017 that there were some unsolved homicides where it was discovered that exhibits had been destroyed 30 years ago and matters where exhibits were not returned from trials and inquests or after being sent to other agencies for testing. He said that he was aware when he joined the UHT that these matters were not only well known within the UHT but had been the subject of public comment. He said “that was the whole idea” behind the project to locate exhibits.<sup>1113</sup>
- 8.762. I asked Detective Chief Inspector Laidlaw whether it had ever occurred to anyone in the NSWPF that a specially funded project urgently needed to take place to audit all unsolved matters to locate records and exhibits. Detective Chief Inspector Laidlaw said he was unaware.<sup>1114</sup>

<sup>1109</sup> Transcript of the Inquiry, 6 July 2023, T5149.2–10 (TRA.00074.00001).

<sup>1110</sup> Transcript of the Inquiry, 6 July 2023, T5149.12–19 (TRA.00074.00001).

<sup>1111</sup> Transcript of the Inquiry, 6 July 2023, T5149.42–5150.18 (TRA.00074.00001).

<sup>1112</sup> Submissions of NSWPF, 10 October 2023, [189] (SCOI.86127).

<sup>1113</sup> Transcript of the Inquiry, 6 July 2023, T5150.20–44 (TRA.00074.00001).

<sup>1114</sup> Transcript of the Inquiry, 6 July 2023, T5150.46–5151.12 (TRA.00074.00001).

## The final report of Strike Force Parrabell

- 8.763. The Final Report of Strike Force Parrabell dated June 2018 contained a recommendation in the following terms (**Recommendation One**):<sup>1115</sup>

*Details of all cases required significant investigative effort by Strike Force Parrabell operatives. The system of archiving across NSW Government departments including the NSW Police Force has been historically deficient given the existence of paper-based files consistent with general use during the period of review. The NSW Police Force must ensure that the system of electronic recording and storage of evidence consistent with use of the e@gle.i system remains in use with policy imperatives requiring storage of all investigative material in the same location, so that permanent records of investigations from commencement to judicial conclusion are maintained.*

- 8.764. Assistant Commissioner Conroy was asked by Senior Counsel Assisting whether she was familiar with the Final Report of Strike Force Parrabell, and said she was not.<sup>1116</sup> She was asked whether steps had been taken with the result that all investigative material is stored in the same location, and said that she was not an e@gle.i user. She observed that exhibits are now on EFIMS, and that as of January 2017 all case records are digitised on the “RMS system”.<sup>1117</sup> Assistant Commissioner Conroy was not in her present role at the time that the Final Report of Strike Force Parrabell was handed down.<sup>1118</sup>
- 8.765. The NSWPF submitted that Counsel Assisting had “misapprehended” the terms of the above recommendation. In the NSWPF’s submission that recommendation simply sought to emphasise the importance of centralised electronic recording systems (such as e@gle.i), and to ensure that such a system remained in place in the future. Given the use of e@gle.i ensures that investigative records are stored in a centralised location, the NSWPF submitted that the functions available through e@gle.i accord with the recommendation made by Strike Force Parrabell.<sup>1119</sup>
- 8.766. In response, Counsel Assisting submitted that:<sup>1120</sup>

*The submission at [193] of the NSWPF Submissions calls for comment. The interpretation of Recommendation One of Strike Force Parrabell’s Final Report put forward by the NSWPF is less natural on the plain language and, if it was correct, would be ill-suited to address the problems identified in the first two sentences of the recommendation. There is no reason to read “storage of evidence” and “storage of all investigative material in the same location” as confined to electronic records in e@gle.i. The work of the Inquiry has demonstrated that maintenance of e@gle.i*

<sup>1115</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report*, (Report, June 2018) 39 (SCOI.02632).

<sup>1116</sup> Transcript of the Inquiry, 4 July 2023, T4862.42–4863.7 (TRA.00072.00001).

<sup>1117</sup> Transcript of the Inquiry, 4 July 2023, T4863.17–30 (TRA.00072.00001).

<sup>1118</sup> Transcript of the Inquiry, 4 July 2023, T4863.40–47 (TRA.00072.00001).

<sup>1119</sup> Submissions of NSWPF, 10 October 2023, [193]–[194] (SCOI.86127).

<sup>1120</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [97] (SCOI.86354).

*could not sensibly be regarded as an adequate way to address the problems clearly encountered due to the legacy of poor exhibit and record-keeping practices that had been identified nearly two years earlier in the Lehmann Report. The first two sentences of the recommendation reflect the fact that the Strike Force Parrabell operatives encountered the problems described in the Lehmann Report. If the recommendation was not intended to address those problems, or if that is not how it was interpreted by the NSWPF, then that is itself regrettable.*

- 8.767. I read the recommendation consistently with Counsel Assisting's submissions. Plainly, the Strike Force Parrabell operatives encountered the problems described in the Lehmann Report, problems that were known within the UHT at the time. If the Recommendation One was not intended to address those problems, or was interpreted by the NSWPF other than in the way Counsel Assisting has suggested, that in itself is regrettable.

### **Submissions concerning the knowledge of the NSWPF as to the significant problems with lost documentary and exhibit material**

- 8.768. Some of the matters dealt with in the submissions of both the NSWPF and Counsel Assisting in relation to the response to the Lehmann Report, and knowledge within the NSWPF in relation to the Lehmann Report, are considered elsewhere in this Report. I do not, therefore, deal with those matters here.
- 8.769. Counsel Assisting submitted that it is clear that, while there must have been knowledge already in the UHT during 2004–2008 that there were significant problems with locating documentary and exhibit material because material had been lost, destroyed, or improperly archived, this matter was highlighted and affirmed at the highest level by 2016. Counsel Assisting submitted that it is likely that the majority of this loss and damage occurred prior to the introduction of EFIMS in 2012 and the present protocols for document management. I accept this submission.
- 8.770. Counsel Assisting submitted that in relation to a number of the cases before the Inquiry the NSWPF witnesses accepted that the loss or destruction of records and exhibits was, in their opinion, inconsistent with proper police practice both at the time and at present. In Counsel Assisting's submission, this evidence should be accepted, and that such failures in the management of records and exhibits falls far short of the standard the public would expect of a competent police force. I accept this submission.
- 8.771. The material produced following the Lehmann Report makes it clear, in Counsel Assisting's submission, that steps were taken to implement the recommendations of the Lehmann Report in relation to auditing exhibits. Only a small number of those responses have been tendered. However, I accept that this material shows that some efforts were made to conduct an audit of exhibits following the Lehmann Report, and that the initial requests made of LACs were followed up, although not promptly. The correspondence also raises a concern that the UHT was seriously dilatory in recording information and responses, and following up non-responses, from LACs.

8.772. The NSWPF acknowledged that the project to reconcile historical exhibits in response to the Lehmann Report could have been implemented in a “more systematic way”. The NSWPF considered that the departure of Detective Chief Inspector Lehmann from the NSWPF in the months after this project commenced no doubt had an impact in this respect.<sup>1121</sup> I have dealt with this matter in the context of the section dealing with recommendations, and I do not consider I need to say anything further about it.

## Recommendations

8.773. I set out below the nine Recommendations which I consider appropriate arising from the content of this Chapter.

8.774. There is, in large part, consensus between the NSWPF and Counsel Assisting as to what recommendations I should make arising from the Investigative Practices Hearing. I consider that the NSWPF engaged constructively with the submissions of Counsel Assisting in relation to these recommendations, and I am optimistic that they will be carried into effect.

### Proposed recommendation concerning matters where inquest dispensed with

8.775. In respect of the review of cases dispensed with by a coroner, Counsel Assisting suggested a recommendation in these terms:<sup>1122</sup>

*First, that an audit be undertaken to ensure that matters where an inquest was dispensed with, but where later information suggests they may have been a homicide, are drawn to the attention of the UHT (and, if appropriate, become the subject of an inquest).*

8.776. However, in their reply submissions, Counsel Assisting invited me to accept the NSWPF submissions concerning the practical impossibility of undertaking such an audit.<sup>1123</sup> Counsel Assisting embraced the alternative “practical solution” proposed by the NSWPF in its submissions:<sup>1124</sup>

*As a practical solution, it may be possible to disseminate an express request to all PACs asking that officers convey information they are aware of that may be relevant to an assessment of whether a given case was, contrary to the determination to dispense with an Inquest, potentially a homicide. Such a process would likely go hand in hand with steps taken in the implementation of Recommendation 4 which, as set out below, is supported in principle.*

<sup>1121</sup> Submissions of NSWPF, 10 October 2023, [197] (SCOI.86127).

<sup>1122</sup> Submissions of Counsel Assisting, 15 September 2023, [933] (SCOI.85649).

<sup>1123</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [33] (SCOI.86354).

<sup>1124</sup> Submissions of NSWPF, 10 October 2023, [471] (SCOI.86127).

- 8.777. I do not regard this suggested recommendation as a satisfactory response to the problem raised by Counsel Assisting, so I will not make a recommendation in those terms. However, this “practical solution” proffered by the NSWPF comprises an aspect of **Recommendation 15** below.

## Recommendation 8

- 8.778. In relation to the continuing education of NSWPF homicide officers, Counsel Assisting submitted that I should consider a recommendation in these terms:

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

- 8.779. The NSWPF stressed that any recommendation in relation to mandatory training concerning the LGBTIQ community should have due regard to the evidence from Assistant Commissioner Cooke, summarised below. The NSWPF agreed in principle that it is appropriate for additional mandatory LGBTIQ training to be provided to NSWPF personnel and expressed “firm agreement” that any such program should be developed with input from LGBTIQ representatives and organisations. The NSWPF stressed that the mode of delivery and identity of presenters would need to be the subject of careful consideration, having regard to various practical considerations. The NSWPF added:

*The involvement of LGBTIQ community organisations in relation to the delivery of training is appropriate and warmly welcomed (as it has been in the past). There may, of course, be significant practical hurdles to having such organisations themselves provide training to all members of the NSWPF. Those challenges may be heightened if the training is to be delivered in a face-to-face format, having regard to the number of NSWPF personnel and their distribution throughout NSW. Those practical matters would need to be explored in due course, with a view to ensuring the best outcomes from the training.*

- 8.780. I accept these submissions. The practical considerations identified by the NSWPF are appropriate matters to take into account. However, addressing these practical considerations should not be permitted to delay prompt improvement of the mandatory training. As I indicate below, the evidence before me provides grounds for concern that there are ongoing instances of insensitive language (although they might only be rare or isolated), so that additional mandatory training is warranted.

## Recommendation 8

I recommend that additional mandatory and ongoing training be provided to NSWPF officers concerning the LGBTIQ community, including but not limited to training on the following topics:



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

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

- 8.781. I would add that I consider it to be particularly important that all officers who come into contact with members of the LGBTIQ community receive comprehensive and ongoing training, in addition to those in senior and leadership roles.

### Recommendation 9

- 8.782. As I explained above, I do not need to determine the present application of the *State Records Act* to physical exhibits. As Counsel Assisting emphasise, there are difficulties with both competing interpretations. I consider that there is ambiguity in the *State Records Act*, and I should make a recommendation addressing that topic.

#### Recommendation 9

I recommend that the NSW Government give consideration to amending the *State Records Act 1998* to clarify the application of that Act to exhibits held by the NSWPF.

- 8.783. I note the NSWPF submits that any such clarification should exclude exhibits from the operation of the *State Records Act*. I consider that this question is one for the legislature, who are best positioned to consider the different policy imperatives.

## Recommendations 10-15

- 8.784. The NSWPF has expressed support, in principle, for three additional recommendations proposed by Counsel Assisting in respect of the operation and resourcing of the UHT. I have considered the submissions of Counsel Assisting, and of the NSWPF, and I have concluded that I should formulate the recommendations in a different way to ensure clarity and specificity. In particular, **Recommendation 15** now contains a list of the matters which I consider should be addressed by the NSWPF, drawn from the submissions of Counsel Assisting (and also having regard to the submissions of the NSWPF).
- 8.785. I observe that the NSWPF has already taken steps to address the issues underlying proposed Recommendations 5 and 6 (as identified in the submissions), and I commend the NSWPF for their action in this regard.

### Recommendation 10

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

### Recommendation 11

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

### Recommendation 12

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



### Recommendation 13

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

### Recommendation 14

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

### Recommendation 15

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

- a. Continuing education of officers in the UHT, including in relation to advances in forensic technology and related science, recognising that training or education conducted years earlier may become stale or may lead to lack of appreciation of the potential significance of scientific or technological advances;
- b. The interaction between the EHCU and the UHT, including ongoing education as to bias crimes and ensuring that UHT officers are aware that the EHCU should be contacted in appropriate cases;
- c. Inclusion in the UHT tracking file, or equivalent document or database, of information relevant to whether there is reason to suspect that a death may be a hate or bias crime;
- d. Regular review of unsolved homicides, including forensic testing of exhibits, in line with Recommendations 10 and 11;
- e. Accurate and thorough recording of information in the UHT tracking file, or equivalent document or database, together with careful and comprehensive document management and record-keeping in respect of unsolved homicides, including in relation to reviews of cases and the location of exhibits. In this recommendation, but “review” I mean to include any procedure in the nature of screening, triage or review of cases;

- f. The appropriateness of the UHT having categories of case (such as “undetected” or “undetermined”) which receive a different priority for review or investigation and, if such categories are used, the rational basis on which the cases are categorised;
- g. Ensuring that Coroners and families or next of kind are fully informed as to the prioritisation of cases within the UHT, including any categories of case which receive a different priority for review or investigation, and whether particular kinds of finding following an inquest (such as an open finding) will affect the priority with which cases are reviewed or investigated by the UHT;
- h. Ensuring that the actual practices of the UHT reflect the policies and procedures (and vice versa), including in relation to whether witnesses should be contacted at particular stages of any review or investigation;
- i. Periodic assessment of all review procedures within the UHT to ensure that they are achieving an appropriate balance between the time taken for each step in a review procedure and the level of depth or detail involved in such steps;
- j. Clear time frames for relevant stages of review or investigation, and appropriate supervision, to ensure that delays are not caused by particular officers not having capacity to undertake certain tasks but failing to report this to their superiors;
- k. The timely implementation of any recommendations made following reviews as to investigative steps that should be taken in particular cases, and maintenance of reliable records as to when such recommendations are implemented or, if they are not implemented, the reasons for not implementing any such recommendations;
- l. Instructions to all Police Area Commands to inform the UHT if they are aware or become aware of any information that provides grounds to suspect that a death or missing person may be a homicide, including in circumstances where there has been a different finding by a Coroner or a decision by a Coroner to dispense with an inquest;
- m. Contact with families and next of kin, including frequency of contact and appropriate provision of information about the progress of cases within the UHT; and
- n. Allocation of adequate resources to the UHT and effective use of those resources within the UHT.

## Recommendation 16

8.786. In respect of the matters dealt with at [8.307]–[8.320], which emerged subsequent to the exchange of written submissions, I consider that a recommendation in the following terms is appropriate.

### Recommendation 16

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

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



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# **Chapter 9: Overview of NSWPF investigations into LGBTIQ hate crimes and Public Hearing 2**

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## OVERVIEW OF NSWPF INVESTIGATIONS INTO LGBTIQ HATE CRIMES AND PUBLIC HEARING 2

- 9.1. The Terms of Reference direct me, in conducting the Inquiry, to have regard to the report and findings of Strike Force Parrabell, which commenced in August 2015 and concluded in June 2018. Strike Force Parrabell was a NSWPF review of 88 deaths or suspected deaths in NSW between 1976 and 2000 to consider whether “sexuality or gender bias” was involved in those deaths.<sup>1125</sup>
- 9.2. The Inquiry convened its second public hearing (**Public Hearing 2**) in December 2022 to inquire into various aspects of Strike Force Parrabell and the way in which the NSWPF has approached issues relating to “bias crime” or “hate crime” over the years from 1970 to the present. That included the ways in which the NSWPF has approached the identification, investigation and recording of such crimes. The NSWPF response to hate or bias crimes generally is discussed in **Chapter 10** of this Report, and Strike Force Parrabell is considered in **Chapter 13** of this Report.
- 9.3. The Inquiry also identified Strike Force Neiwand as relevant to the question of the manner in which the NSWPF has responded to suspected bias or hate crimes during the relevant period. Strike Force Neiwand was operative between October 2015 and January 2018. It was described at the time as a reinvestigation into the deaths of Mr Russell, Mr Warren and Mr Mattaini, whose deaths near Bondi in the 1980s had been the subject of Operation Taradale between 2000 and 2002 and a subsequent inquest between 2003 and 2005. Strike Force Neiwand is considered in **Chapter 12** of this Report; and the Inquiry’s investigations into the deaths of Mr Russell, Mr Warren and Mr Mattaini are outlined in **Chapter 5**.
- 9.4. The Inquiry also identified Strike Force Macnamir as relevant, which commenced in February 2013 as a reinvestigation into the death of Scott Johnson in December 1988. Strike Force Macnamir is considered in **Chapter 11** of this Report.
- 9.5. The Inquiry’s conclusions and observations in relation to the NSWPF’s approach to hate or bias crime investigations generally, and Strike Force Macnamir, Strike Force Neiwand, and Strike Force Parrabell in particular, are addressed in **Chapter 14** of this Report.

### Timeline of Public Hearing 2

- 9.6. Public Hearing 2 occurred in three tranches:
  - a. 5–13 December 2022 (**December 2022 hearings**);
  - b. 15 February–6 March 2023, with further hearings on 20 April, 5 and 15 May 2023 (**February–May 2023 hearings**); and
  - c. 21 September–6 October 2023 (**September/October 2023 hearings**).

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<sup>1125</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 55 (SCOI.02632).

- 9.7. A 20-volume tender bundle of documents relevant to Public Hearing 2, including witness statements (identified below), was Exhibit 6 before the Inquiry. This tender bundle consisted of the following volumes:
- a. Volumes 1 to 10 which were tendered in the December 2022 hearings;
  - b. Volumes 11 to 16 which were tendered in the February–May 2023 hearings;
  - c. Volumes 17 to 19 which were tendered in the September/October 2023 hearings; and
  - d. Volume 20 which was tendered on 16 October 2023.
- 9.8. The Inquiry also received into evidence a written statement or report from the following witnesses or experts:
1. Joint Statement of Dr Willem de Lint and Dr Derek Dalton dated 28 October 2022 (**Dalton/de Lint Statement**);<sup>1126</sup>
  2. Statement of Shoba Sharma dated 28 October 2022 (**Sharma Statement**);<sup>1127</sup>
  3. Statement of Assistant Commissioner Anthony Crandell dated 31 October 2022 (**Crandell Statement**);<sup>1128</sup>
  4. Statement of Detective Sergeant Steve Morgan dated 31 October 2022 (**Morgan Statement**);<sup>1129</sup>
  5. Statement of Sergeant Ismail Kirgiz dated 28 November 2022 (**Kirgiz Statement**);<sup>1130</sup>
  6. Statement of Sergeant Geoffrey Steer dated 18 November 2022 (**First Steer Statement**);<sup>1131</sup>
  7. Supplementary Statement of Sergeant Steer dated 18 November 2022 (**Second Steer Statement**);<sup>1132</sup>
  8. Third statement of Statement of Sergeant Steer dated 19 September 2023 (**Third Steer Statement**);<sup>1133</sup>
  9. Expert Report of Martha Coakley dated 20 December 2022 (**Coakley Report**);<sup>1134</sup>

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<sup>1126</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022 (SCOI.76959).

<sup>1127</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022 (SCOI.76960).

<sup>1128</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022 (SCOI.76961).

<sup>1129</sup> Exhibit 6, Tab 5, Statement of Detective Sergeant Steven Morgan, 31 October 2022 (SCOI.76962).

<sup>1130</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022 (SCOI.82035).

<sup>1131</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022 (SCOI.82080).

<sup>1132</sup> Exhibit 6, Tab 6A, Supplementary Statement of Sergeant Geoffrey Steer, 18 November 2022 (SCOI.82081).

<sup>1133</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023 (SCOI.85731).

<sup>1134</sup> Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022 (SCOI.82367.00001).

10. Expert Report of Professor Nicole Asquith dated 25 January 2023 (**Asquith Report**);<sup>1135</sup>
11. Expert Report of Associate Professor Austin Lovegrove dated 27 January 2023 (**Lovegrove Report**);<sup>1136</sup>
12. Response to Expert Reports by Dr de Lint (endorsed by Dr Dalton), Undated (emailed 30 January 2023) (**Dalton/de Lint Response**);<sup>1137</sup>
13. Statement of former Deputy Commissioner Michael Willing dated 30 January 2023 (**Willing Statement**) (hereafter referred to as Mr Willing);<sup>1138</sup>
14. Statement of former Detective Sergeant Stephen Page dated 16 February 2023 (**Page Statement**) (hereafter referred to as Mr Page);<sup>1139</sup>
15. Statement of former Detective Sergeant Jo Kenworthy dated 16 February 2023 (**Kenworthy Statement**);<sup>1140</sup>
16. Statement of Superintendent Craig Middleton dated 8 September 2023 (**Middleton Statement**);<sup>1141</sup>
17. Statement of Detective Inspector Paul Grace dated 8 September 2023 (**Grace Statement**);<sup>1142</sup>
18. Statement of Detective Acting Sergeant Cameron Bignell dated 8 September 2023 (**Bignell Statement**);<sup>1143</sup>
19. Statement of Superintendent Andrew Hurst dated 19 September 2023 (**Hurst Statement**);<sup>1144</sup>
20. Statement of Detective Senior Constable Paul Rullo dated 22 September 2023;<sup>1145</sup>
21. Second statement of Detective Senior Constable Rullo dated 25 September 2023;<sup>1146</sup>
22. Statement of Detective Sergeant Alicia Taylor dated 20 September 2023 (**Taylor Statement**);<sup>1147</sup>

<sup>1135</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023 (SCOI.82368.00001).

<sup>1136</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023 (SCOI.82366.00001).

<sup>1137</sup> Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint (endorsed by Associate Professor Derek Dalton, Undated (emailed 30 January 2023) (SCOI.82365).

<sup>1138</sup> Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023 (SCOI.82369.00001).

<sup>1139</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023 (SCOI.82472).

<sup>1140</sup> Exhibit 6, Tab 254, Statement of Jo Kenworthy, 16 February 2023 (SCOI.82497).

<sup>1141</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023 (NPL.9000.0029.0001).

<sup>1142</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023 (NPL.9000.0024.0012).

<sup>1143</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023 (NPL.9000.0026.0007).

<sup>1144</sup> Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst, 19 September 2023 (NPL.9000.0030.0015).

<sup>1145</sup> Exhibit 6, Tab 520, Statement of Detective Senior Constable Paul Rullo, 22 September 2023 (SCOI.85772).

<sup>1146</sup> Exhibit 6, Tab 520A, Second statement of Detective Senior Constable Paul Rullo, 25 September 2023 (SCOI.85780).

<sup>1147</sup> Exhibit 6, Tab 517, Statement of Detective Sergeant Alicia Taylor, 20 September 2023 (NPL.9000.0033.0001).

23. Statement of former Detective Chief Inspector Stewart Leggat dated 15 September 2023 (**Leggat Statement**) (hereafter referred to as Mr Leggat);<sup>1148</sup>
24. Statement of former Detective Chief Inspector John Lehmann dated 29 August 2023 (**Lehmann Statement**) (hereafter referred to as Mr Lehmann);<sup>1149</sup>
25. Statement of Siobhan McMahon dated 1 September 2023 (**McMahon Statement**);<sup>1150</sup>
26. Statement of Georgina Wells dated 4 September 2023 (**Wells Statement**);<sup>1151</sup>
27. Statement of Strath Gordon dated 5 September 2023 (**Gordon Statement**);<sup>1152</sup>
28. Second statement of Mr Gordon dated 6 October 2023 (**Second Gordon Statement**);<sup>1153</sup>
29. Statement of Emma Alberici dated 25 September 2023 (**Alberici Statement**);<sup>1154</sup>
30. Statement of Detective Sergeant Penelope Brown dated 20 September 2023 (**Brown Statement**);<sup>1155</sup>
31. Second statement of Detective Sergeant Brown dated 29 September 2023 (**Second Brown Statement**);<sup>1156</sup>
32. Statement of I446 (a pseudonym) (hereafter referred to as Officer A) dated 15 September 2023 (**Officer A Statement**);<sup>1157</sup>
33. Statement of former Detective Chief Inspector Pamela Young dated 17 April 2023 (**April 2023 Young Statement**) (hereafter referred to as Ms Young);<sup>1158</sup> and
34. Second statement of Ms Young dated 22 September 2023 (**September 2023 Young Statement**).<sup>1159</sup>

<sup>1148</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023 (SCOI.85707).

<sup>1149</sup> Exhibit 6, Tab 513, Statement of John Lehmann, 29 August 2023 (SCOI.85495).

<sup>1150</sup> Exhibit 6, Tab 510, Statement of Siobhan McMahon, 1 September 2023 (NPL.9000.0025.0009).

<sup>1151</sup> Exhibit 6, Tab 511, Statement of Georgina Wells, 4 September 2023 (NPL.9000.0027.0001).

<sup>1152</sup> Exhibit 6, Tab 512, Statement of Strath Gordon, 5 September 2023 (NPL.9000.0028.0001).

<sup>1153</sup> Exhibit 6, Tab 512A, Second statement of Strath Gordon, 6 October 2023 (NPL.9000.0038.0001).

<sup>1154</sup> Exhibit 6, Tab 524, Statement of Emma Alberici, 25 September 2023 (SCOI.85817).

<sup>1155</sup> Exhibit 6, Tab 519, Statement of Detective Sergeant Penelope Brown, 20 September 2023 (SCOI.85747).

<sup>1156</sup> Exhibit 6, Tab 519A, Second statement of Detective Sergeant Penelope Brown, 29 September 2023 (SCOI.85950).

<sup>1157</sup> Exhibit 6, Tab 516, Statement of I446, 15 September 2023 (NPL.9000.0031.0001).

<sup>1158</sup> Exhibit 6, Tab 520, First statement of Pamela Young, 17 April 2023 (SCOI.85815).

<sup>1159</sup> Exhibit 6, Tab 521, Second statement of Pamela Young, 22 September 2023 (SCOI.85816).



## December 2022 hearings

- 9.9. On 2 December 2022, one working day before Public Hearing 2 was to commence, the NSWPF raised an objection to the proposed tender of documents relating to the creation of the Bias Crime Unit (**BCU**), and the creation and methodology of Strike Force Parrabell. That objection was made on the basis that those matters were not sufficiently connected to the Inquiry's Terms of Reference. Counsel for the NSWPF filed written submissions in support of that application on 2 December 2022 and made oral submissions on 5 December 2022.<sup>1160</sup> For the reasons I gave in my judgment of 6 December 2022, I dismissed that application.<sup>1161</sup>
- 9.10. There followed six days of hearings, during which the following witnesses gave evidence:
- a. Assistant Commissioner Crandell, Commander of Strike Force Parrabell and the former NSWPF Corporate Sponsor for Sexuality, Gender Diversity and Intersex (**SGDI**);
  - b. Ms Sharma, Manager, Policy and Programs Team, Crime Prevention Command;
  - c. Sergeant Steer, former Bias/Hate Crimes Co-ordinator, BCU; and
  - d. Sergeant Kirgiz, Hate Crimes Co-ordinator, EHCUC.
- 9.11. Sergeant Steer was granted authorisation to appear and be represented separately as an interested party in Public Hearing 2. The remaining three witnesses were represented by the NSWPF.
- 9.12. All of the above witnesses were questioned by Senior Counsel Assisting and then by Senior Counsel for the NSWPF.

## February-May 2023 hearings

- 9.13. In the February/March 2023 hearings, which took place over 15 hearing days, the following witnesses gave oral evidence:
- a. Detective Sergeant Morgan, Investigation Supervisor, Strike Force Neiwand;
  - b. Mr Willing, former Commander of the Homicide Squad (**Homicide Commander**) and Deputy Commissioner of the NSWPF;
  - c. Mr Page, former Detective Sergeant and OIC, Operation Taradale;
  - d. Dr Dalton, former Associate Professor at Flinders University and member of the Flinders University academic review team (**the academic team**);

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<sup>1160</sup> See Transcript of the Inquiry, 5 December 2022 (TRA.00010.00001).

<sup>1161</sup> See Judgment of the Inquiry, 6 December 2023 (ORD.00001).

- e. Dr de Lint, former Professor at Flinders University and member of the academic team;
  - f. Professor Asquith, University of Tasmania;
  - g. Associate Professor Lovegrove, University of Melbourne; and
  - h. Ms Coakley, former Attorney General of Massachusetts, USA.
- 9.14. In January 2023, Dr Dalton made an application to give his evidence by way of audio-visual link. The hearing of that application occurred on 15 February 2023. For the reasons set out in my judgment of 17 February 2023, I dismissed that application.<sup>1162</sup>
- 9.15. Mr Willing was granted authorisation to appear and be represented separately as an interested party in Public Hearing 2. Detective Sergeant Morgan was represented by the NSWPF.
- 9.16. With the exception of Mr Willing, all of these witnesses were also questioned by both Senior Counsel Assisting and Senior or Junior Counsel for the NSWPF.
- 9.17. Mr Willing was questioned by Senior Counsel Assisting, but his questioning by Counsel for the NSWPF was deferred until a later date.
- 9.18. On 20 April 2023, Senior Counsel for the NSWPF questioned Mr Willing in relation to all topics about which he had given evidence other than two, one of which was what was described as the *Lateline* topic (relating to the interview given by Ms Young, then lead investigator of Strike Force Macnamir, on the ABC's *Lateline* program on 13 April 2015).<sup>1163</sup> Questioning of Mr Willing on those topics, by both Senior Counsel Assisting and Senior Counsel for the NSWPF, was stood over until 5 May 2023.
- 9.19. However, on 4 May 2023, Mr Willing's legal representatives advised the Inquiry that Mr Willing sought the tender of five documents over which the NSWPF had originally claimed legal professional privilege when it produced them to the Inquiry under compulsion. Those documents included records of interviews between four NSWPF employees (including Mr Willing) and external lawyers retained by the NSWPF, concerning each employee's knowledge of Ms Young's involvement in the *Lateline* interview on 13 April 2015.<sup>1164</sup>
- 9.20. On the same afternoon, 4 May 2023, the NSWPF's legal representatives advised that the NSWPF waived privilege over those documents.
- 9.21. In those circumstances, I adjourned the hearing on 5 May 2023.

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<sup>1162</sup> Judgment of the Inquiry, 17 February 2023 (ORD.00009).

<sup>1163</sup> Transcript of the Inquiry, 20 April 2023, T3429.46–3430.19 (TRA.00044.00001).

<sup>1164</sup> Exhibit 6, Tab 381, Record of interview with Strath Gordon, 22 April 2015 (NPL.0147.0001.0015); Exhibit 6, Tab 382, Record of interview with Michael Willing, 24 April 2015 (NPL.0147.0001.0005); Exhibit 6, Tab 383, Record of interview with Siobhan McMahon, 24 April 2015 (NPL.0147.0001.0012); Exhibit 6, Tab 384, Record of interview with Georgina Wells, 27 April 2015 (NPL.0147.0001.0001).

- 9.22. Mr Willing ultimately gave further oral evidence, including on the *Lateline* topic, on 15 May 2023. On that occasion he was questioned by Senior Counsel Assisting, by his own Senior Counsel (the NSWPF by then having ceased to represent Mr Willing because of a possible conflict of interest said to be perceived by the NSWPF), and by Senior Counsel for the NSWPF.

## The reopening of Public Hearing 2

- 9.23. At the conclusion of the public hearing on 15 May 2023, I fixed a timetable for the exchange of written submissions in relation to Public Hearing 2, and the making of oral submissions by Counsel Assisting, the NSWPF and Mr Willing. In accordance with the timetable I had fixed, the following events occurred:
- a. On 7 June 2023, Counsel Assisting served their written submissions on all parties involved (**June CAS**);
  - b. On 21 June 2023, Senior Counsel for Mr Willing made oral submissions; and
  - c. On 28 June 2023, written submissions were provided by the NSWPF (**June NSWPF Submissions**), Mr Willing (**June Willing Submissions**) and Sergeant Steer (**Steer Submissions**).

## Terms of Reference

- 9.24. In Mr Willing's oral submissions, and in the June NSWPF Submissions and the June Willing Submissions, it was contended that Strike Force Macnamir fell outside the Inquiry's Terms of Reference, so that any findings in this Report about Strike Force Macnamir would be *ultra vires*.<sup>1165</sup> That submission was made for the first time more than a month after Mr Willing had completed his oral evidence (including about Strike Force Macnamir), and many months after a substantial volume of documentary material in relation to Strike Force Macnamir had been tendered and received in evidence without objection.
- 9.25. For the reasons I gave in my judgment of 18 July 2023,<sup>1166</sup> I rejected that submission. Those reasons included that various aspects of Strike Force Macnamir had been the subject of the Standing Committee Final Report to which I have been directed to have regard in Paragraph C of the Terms of Reference; and that a consideration of Strike Force Macnamir would enhance my understanding of NSWPF culture, practices and approaches to the investigation of potential LGBTIQ bias homicides, which in turn would assist me in determining the manner and cause of the deaths which fell within Paragraphs A and B of the Terms of Reference.

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<sup>1165</sup> Submissions of Michael Willing, 28 June 2023, [99]–[107] (SCOI.84210); Transcript of the Inquiry, 21 June 2023, T4462.4–4463.30 (TRA.00063.00001); Submissions of NSWPF, 28 June 2023, [80]–[90] (SCOI.84211).

<sup>1166</sup> Judgment of the Inquiry, 17 February 2023 (ORD.00012).

- 9.26. The submission that particular matters were outside the Terms of Reference was again ventilated in the supplementary submissions of the NSWPF and Mr Willing served on 23 October 2023.<sup>1167</sup> These submissions are addressed in **Chapter 11** of this Report.

## Evidence and Procedural Fairness

- 9.27. The June NSWPF Submissions and June Willing Submissions also contended that various findings and conclusions proposed by Counsel Assisting could not be made in the absence of evidence from certain individuals. The NSWPF identified more than 50 individuals said to fall into this category, as well as pointing to an unspecified number of other persons said to comprise groups which also fell within that category. Mr Willing for his part contended that another five individuals were also in that category.
- 9.28. It was further contended by the NSWPF, in relation to five of those 50 individuals it identified, that procedural unfairness had resulted or might result if they were not called to give evidence or given an opportunity to make submissions.
- 9.29. Those submissions, again, were made for the first time in late June 2023 (at a time when the reporting date for the Inquiry under its Letters Patent was 30 August 2023).
- 9.30. As will become apparent, the extension of the Inquiry's reporting date to 15 December 2023 enabled the Inquiry to take a pragmatic approach to these concerns. The exhaustive steps taken in this regard to ensure that all individuals identified as relevant to the issues raised by Public Hearing 2 were given an opportunity to be heard are outlined below.
- 9.31. However, it is instructive to first outline the context and procedural framework against which these complaints fell to be considered.

## The Inquiry's process for receiving evidence

- 9.32. Under the *SCOI Act*, the power to summon witnesses is reposed in me.<sup>1168</sup> The *SCOI Act* does not confer on interested parties a right to call witnesses.
- 9.33. However, given the subject matter addressed by Public Hearing 2, the Inquiry sought the assistance of the NSWPF in identifying appropriate and necessary witnesses and in obtaining written statements from those witnesses.
- 9.34. Consistent with the *SCOI Act*, the Inquiry's Practice Guideline 1, which was publicly available on the Inquiry's website from early October 2022, provided for the following arrangements in relation to witnesses at all relevant times:

*20. All witnesses at a public hearing will be called by Counsel Assisting.*

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<sup>1167</sup> Supplementary Submissions of NSWPF, 23 October 2023, [114]–[123] (SCOL86378); Supplementary Submissions of Michael Willing, 23 October 2023, [2], [294], [370], [441]–[442] (SCOI.86377).

<sup>1168</sup> *Special Commissions of Inquiry Act 1983*, s. 14.

*21. Any person authorised to appear at a hearing who wishes to have evidence of a witness or witnesses placed before the Commission is to notify Counsel Assisting of the names of such witnesses, and is to provide a signed statement of their expected evidence (if possible in the form of a statutory declaration) as soon as practicable.*

...

*23. Counsel Assisting will determine whether or not to call the witness. An application may be made directly to the Commissioner to call the witness only after the above procedure has been completed and Counsel Assisting has indicated that the witness will not be called.*

- 9.35. On 20 September 2022, the Inquiry wrote to the NSWPF to request witness statements from the following persons (**20 September letter**):<sup>1169</sup>
- a. As to Strike Force Parrabell and its methodology (together with certain other topics): Assistant Commissioner Crandell – the senior officer who set up Strike Force Parrabell and wrote its final report;
  - b. As to the academic review of Strike Force Parrabell: one or both of Dr de Lint, and/or Dr Dalton, of Flinders University;
  - c. As to various topics relating to Bias Crimes generally, including the BCU: Sergeant Steer (former Bias Crimes Co-ordinator), and/or the appropriate other officer; and
  - d. As to Strike Force Neiwand and its methodology: Detective Sergeant Morgan (the Investigation Supervisor) and/or former Detective Senior Constable Michael Chebl (the OIC) (hereafter referred to as Mr Chebl).
- 9.36. The Inquiry sought these statements because, as far as it was aware, the named individuals were best placed to give evidence in relation to the matters outlined in that letter, subject to any further input which might be provided by the NSWPF. The Inquiry offered the NSWPF choices as to the appropriate individual(s) to provide statements, because it recognised that the NSWPF would likely be best able to determine which individual(s) were the appropriate or necessary witnesses in relation to particular topics.
- 9.37. Each of the requests for a statement from officers of the NSWPF expressly noted that:<sup>1170</sup>
- a. If a topic fell outside the knowledge of the officer, the NSWPF should provide a statement from the appropriate officer to address that topic; and
  - b. If officers considered that other topics were relevant and should be addressed, they should do so.

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<sup>1169</sup> Exhibit 6, Tab 533, Letter from Kate Lockery to Patrick Hodgetts, 20 September 2022 (SCOI.82096).

<sup>1170</sup> Exhibit 6, Tab 533, Letter from Kate Lockery to Patrick Hodgetts, 20 September 2022 (SCOI.82096).

- 9.38. The NSWPF duly provided the following statements, as identified above:
- a. The Crandell Statement in relation to all topics required (including Strike Force Parrabell), with the exception of some topics relating to Bias Crimes which were to be addressed by others;
  - b. The Sharma Statement and the Kirgiz Statement in relation to some of the Bias Crimes topics;
  - c. The Dalton/de Lint Statement in relation to the academic review of Strike Force Parrabell; and
  - d. The Morgan Statement in relation to Strike Force Neiwand.
- 9.39. In relation to Strike Force Neiwand, the NSWPF provided a statement from Detective Sergeant Morgan, but not Mr Chebl.
- 9.40. As to Sergeant Steer, a statement prepared by him with the NSWPF's assistance had been created by 11 October 2022, but the NSWPF advised the Inquiry by letter dated 3 November 2022 that there was "potential for a conflict" between the interests of the NSWPF and those of Sergeant Steer.<sup>1171</sup> Accordingly, Sergeant Steer's first two statements (both dated 18 November 2022) were provided by solicitors separately representing Sergeant Steer, rather than by the NSWPF.<sup>1172</sup>
- 9.41. On 22 December 2022, the Inquiry requested a statement from Mr Willing. He was asked to address, "at least", the 25 topics identified in that letter, including in relation to Strike Force Macnamir, Strike Force Parrabell and Strike Force Neiwand.<sup>1173</sup> Mr Willing had been the Homicide Commander from 2011 to 2017, a six-year period which encompassed virtually the whole duration of all three of these strike forces.
- 9.42. The NSWPF duly provided the Inquiry with the Willing Statement (Mr Willing was by then no longer a police officer) addressing the requested topics.
- 9.43. At no time prior to 28 June 2023 did the NSWPF suggest to the Inquiry that any of the persons who produced these statements was not in a position to address all the topics raised, or that statements should also be obtained from other persons.

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<sup>1171</sup> Exhibit 6, Tab 537, Letter from Natalie Marsic to Enzo Camporeale, 3 November 2022 (SCOI.86184).

<sup>1172</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022 (SCOI.82080); Exhibit 6, Tab 6A, Supplementary Statement of Sergeant Geoffrey Steer, 18 November 2022 (SCOI.82081).

<sup>1173</sup> Exhibit 6, Tab 252A, Letter from Enzo Camporeale to Katherine Garaty, 22 December 2022 (SCOI.82369.00002).

- 9.44. The NSWPF subsequently submitted that it was not in a position to arrange for evidence to be provided from the 50 or so individuals it identified, because many are no longer serving NSWPF officers.<sup>1174</sup> According to the NSWPF, it has never indicated to the Inquiry that it represented all current or former employees of the NSWPF before this Inquiry, and “could not sensibly” have done so “either as a practicality or as a matter of law, having regard to the potential for conflicts of interest between different current or former NSWPF employees”.<sup>1175</sup>
- 9.45. These assertions do not address the concerns expressed above. It was at all times incumbent on the NSWPF to identify the officers best placed to give statements addressing the issues specified in the Inquiry’s letters of 20 September 2022 and 22 December 2022, whether or not they were current or serving officers. If the relevant officer was no longer serving and the NSWPF anticipated a potential conflict of interest in relation to that officer, that was for the NSWPF to communicate to the Inquiry. Nor, in any case, was the fact an officer was no longer serving an impediment to the NSWPF arranging for that officer to provide a statement and be separately represented, as the case of Mr Willing demonstrates.

### The submissions of the NSWPF and Mr Willing

- 9.46. Against this background, it is necessary to address the complaints made by the NSWPF and Mr Willing that witnesses had not been called.

#### Strike Force Parrabell

- 9.47. It was plain from the 20 September letter that the Inquiry was seeking evidence, from Assistant Commissioner Crandell and/or other appropriate officer(s), in relation to the way in which the various personnel working on Strike Force Parrabell were meant to, and did in fact, carry out their respective tasks.
- 9.48. The Inquiry understood Assistant Commissioner Crandell to be the officer best placed to give evidence in relation to these and other aspects of Strike Force Parrabell, because he made the decision to establish Strike Force Parrabell; because he was the Commander of that Strike Force throughout its existence; and because he was the author of the NSWPF portion of the Parrabell Report.
- 9.49. As noted above, the NSWPF provided the Inquiry with the Crandell Statement addressing the topics requested. Upon doing so, the NSWPF did not indicate that there was any topic that Assistant Commissioner Crandell was unable to address sufficiently.

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<sup>1174</sup> Supplementary Submissions of NSWPF, 23 October 2023, [17]–[21] (SCOI.86378).

<sup>1175</sup> Supplementary Submissions of NSWPF, 23 October 2023, [11] (SCOI.86378).

- 9.50. Assistant Commissioner Crandell also gave oral evidence over five days in December 2022. He was questioned at length about the proposed and actual methodology of Strike Force Parrabell, including the form of, changes to, and use of the BCIF.<sup>1176</sup> Senior Counsel for the NSWPF also questioned Assistant Commissioner Crandell at some length, including about such matters.<sup>1177</sup> No submission or suggestion was made that other officers should also give evidence about those matters. If, as the NSWPF has submitted, it is to be accepted that it was “readily apparent” from Assistant Commissioner Crandell’s evidence in December 2022 that he was “not involved in the day-to-day minutiae of the operations of Strike Force Parrabell”,<sup>1178</sup> that only casts further doubt on the NSWPF’s nomination of Assistant Commissioner Crandell as the only appropriate and necessary person to give evidence in the first place.
- 9.51. In light of the above, it was obvious that Assistant Commissioner Crandell’s evidence about these matters would supply the principal evidentiary basis for any findings and conclusions proposed by Counsel Assisting in relation to Strike Force Parrabell.
- 9.52. However, in the June NSWPF Submissions, the NSWPF contended for the first time that Assistant Commissioner Crandell was not able to address the methodology of Strike Force Parrabell. The NSWPF asserted that evidence about such matters was needed from all 16 officers who participated to any extent in Strike Force Parrabell, including Superintendent Middleton, Detective Inspector Grace and/or Detective Acting Sergeant Bignell.<sup>1179</sup>
- 9.53. The NSWPF also asserted that other witnesses should have been called to give evidence about Strike Force Parrabell, namely Dr Danielle Tyson, Jacqueline Braw and Dr Philip Birch.<sup>1180</sup>
- 9.54. The suggestion by the NSWPF that these officers were referred to in Assistant Commissioner Crandell’s evidence, and accordingly that Counsel Assisting could have called them to give evidence if they had wished, is not to the point.<sup>1181</sup> The Inquiry was entitled to proceed on the basis that an officer put forward by the NSWPF to give evidence on a specified topic, such as Strike Force Parrabell, was the appropriate one to do so, in the absence of any suggestion to the contrary.

<sup>1176</sup> See, e.g., Transcript of the Inquiry, 7 December 2022, T698.18–699.39, T706.9–708.35, T783.27–784.46, T785.27–786.17, T789.9–794.23, T813.24–816.41 (TRA.00012.00001); Transcript of the Inquiry, 8 December 2022, T829.11–832.25, T840.46–846.12 (TRA.00013.00001).

<sup>1177</sup> See, e.g., Transcript of the Inquiry, 12 December 2022, T1035.2–1038.30 (TRA.00015.00001).

<sup>1178</sup> Supplementary Submissions of NSWPF, 23 October 2023, [28] (SCOI.86378).

<sup>1179</sup> See Submissions of NSWPF, 28 June 2023, [47]–[48], [508], [510], [513], [520], [542]–[547], [554], [571] (SCOI.84211).

<sup>1180</sup> See Submissions of NSWPF, 28 June 2023, [650], [661]–[670], [730] (SCOI.84211).

<sup>1181</sup> Supplementary Submissions of NSWPF, 23 October 2023, [32]–[34] (SCOI.86378).



## Bias Crimes Unit

- 9.55. In the Crandell Statement, Assistant Commissioner Crandell indicated that he had “no particular knowledge” about matters relating to the BCU (and the EHCU) and was “not in a position to address” such matters, and that he understood that other members of the NSWPF would do so.<sup>1182</sup>
- 9.56. As noted above, the NSWPF did provide two other statements dealing with these matters, being the Sharma Statement and the Kirgiz Statement.
- 9.57. The First Steer Statement and the Second Steer Statement were provided to the Inquiry on or about 18 November 2022 by solicitors acting separately for Sergeant Steer. However, the first of those statements had been completed by Sergeant Steer (with the assistance of the NSWPF) by 11 October 2022, prior to the decision of the NSWPF to arrange for separate representation for him because of the “potential for conflict”.<sup>1183</sup>
- 9.58. The First Steer Statement addressed the problem of under-resourcing of the Bias Crimes Coordinator and the BCU.<sup>1184</sup> The content of this statement was known to the NSWPF by 11 October 2022. However, the NSWPF chose not to provide statements from witnesses capable of giving evidence about resource allocation or availability within the NSWPF.
- 9.59. The First Steer Statement did not deal directly with the effective abolition of the BCU in 2017, or his view that he was forced out at that time. However, those matters were squarely raised in numerous documents included in the tender bundle (which was Exhibit 6 before the Inquiry) and were also the subject of oral evidence from both Assistant Commissioner Crandell and Sergeant Steer, in particular, in December 2022.<sup>1185</sup>
- 9.60. In the June NSWPF Submissions, the NSWPF contended, again for the first time, that the Inquiry should have adduced evidence from a witness or witnesses (not identified by name) about certain matters, including in particular the following, and that the Inquiry therefore may not make any findings about such matters:
- a. The availability of resources, and the appropriate distribution of them among the various competing priorities of the NSWPF;<sup>1186</sup>
  - b. The objectivity of Sergeant Steer, and the accuracy of his opinions in relation to the restructuring of the BCU in 2017 and his being “forced out” of the BCU at that time;<sup>1187</sup> and

<sup>1182</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [12]–[13] (SCOI.76961).

<sup>1183</sup> Exhibit 6, Tab 537, Letter from Natalie Marsic to Enzo Camporeale, 3 November 2022 (SCOI.86184).

<sup>1184</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [12], [16], [39] (SCOI.82080).

<sup>1185</sup> See, eg, Transcript of the Inquiry, 6 December 2022, T619.1–629.20 (AC Crandell) (TRA.00011.00001); Transcript of the Inquiry, 12 December 2022, T1053.39–1054.45 (AC Crandell), T1125.21–T1128.1 (Sergeant Steer) (TRA.00015.00001).

<sup>1186</sup> Submissions of NSWPF, 28 June 2023, [29], [56] (SCOI.84211).

<sup>1187</sup> Submissions of NSWPF, 28 June 2023, [34], [36] (SCOI.84211).

- c. The reasons for the 2017 restructure, from the perspective of “those actually responsible for [it]”.<sup>1188</sup>

### Strike Force Neiwand

- 9.61. In its 20 September letter, the Inquiry requested, in relation to Strike Force Neiwand, a statement from Detective Sergeant Morgan (the Investigation Supervisor) and/or Mr Chebl (the OIC).
- 9.62. The NSWPF chose to provide only the Morgan Statement and did not provide a statement from Mr Chebl (either instead or as well).
- 9.63. Accordingly, the Inquiry proceeded on the basis that, in the view of the NSWPF, Detective Sergeant Morgan was the appropriate person to give comprehensive evidence about the work of Strike Force Neiwand, including its methodology and “any interim or final reports” (which, as the evidence revealed, comprised in particular nine Progress Reports, three “investigative summaries” and a “Post Operative Assessment”).
- 9.64. No indication was given, either in correspondence or in the statement of Detective Sergeant Morgan itself, that Detective Sergeant Morgan was in any respect unable to address such topics in a comprehensive way, or that his recollections or views were or might be in any way different from those of Mr Chebl.
- 9.65. On 22 December 2022, the topics which the Inquiry requested Mr Willing address included a number of topics on Strike Force Neiwand. The Inquiry took that step having regard to the contents of Detective Sergeant Morgan’s statement and the oral evidence of Assistant Commissioner Crandell in the December 2022 hearings.
- 9.66. The questioning of Detective Sergeant Morgan and Mr Willing by Senior Counsel Assisting, in February 2023, made it very clear that the work and methods of Strike Force Neiwand were being closely examined by the Inquiry and were likely to be the subject of proposed findings and conclusions in the submissions of Counsel Assisting.
- 9.67. However, in its written submissions, the NSWPF advanced the contention that Mr Chebl should have been called to give evidence about Strike Force Neiwand. In the absence of his evidence, it was said that the findings or conclusions proposed by Counsel Assisting to be made about him were not open and, if made, would occasion a procedural unfairness to him.<sup>1189</sup> It was also suggested that all the other officers involved in Strike Force Neiwand should have been called to give evidence;<sup>1190</sup> and that in relation to the death of Mr Warren, former Detective Sergeant Kenneth Bowditch should have been called (hereafter referred to as Mr Bowditch).<sup>1191</sup>

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<sup>1188</sup> Submissions of NSWPF, 28 June 2023, [36] (SCOI.84211).

<sup>1189</sup> Submissions of NSWPF, 28 June 2023, [148], [239]–[240], [300], [360], [364], [450] (SCOI.84211).

<sup>1190</sup> Submissions of NSWPF, 28 June 2023, [364] (SCOI.84211).

<sup>1191</sup> Submissions of NSWPF, 28 June 2023, [242] (SCOI.84211).

- 9.68. Mr Chebl was not able to provide a written statement or give oral evidence to the Inquiry, for reasons which were the subject of confidential documentary exhibits.<sup>1192</sup> Those reasons had been known to the NSWPF, but not to the Inquiry, for some years. Regardless, in circumstances where the NSWPF did not communicate this as a reason why it did not or could not provide a statement from Mr Chebl in answer to the 20 September letter, the position remains that the NSWPF failed to indicate to the Inquiry at any stage before 28 June 2023 that it considered Mr Chebl's evidence to be needed on any matter in issue.

### Strike Force Macnamir

- 9.69. In its letter of 22 December 2022, the Inquiry requested that Mr Willing also address, in his statement, a number of topics relating to Strike Force Macnamir. Those topics included:<sup>1193</sup>

*6. The background to and reasons for the establishment of Strike Force Macnamir.*

*7. Mr Willing's role in connection with the establishment of Strike Force Macnamir.*

...

*11. A summary of the work of Strike Force Macnamir from its inception to its conclusion.*

- 9.70. The Inquiry expected that Mr Willing would likely have sufficient knowledge of, and involvement in, Strike Force Macnamir to address such matters. That assumption was reinforced by parts of the Willing Statement when it was received, such as [47]–[48].
- 9.71. Mr Willing gave oral evidence on 20 and 21 February 2023,<sup>1194</sup> and again on 15 May 2023.<sup>1195</sup> The questioning of Mr Willing by Senior Counsel Assisting made it clear that both the *Lateline* topic and the approach adopted by Strike Force Macnamir to the reinvestigation of the death of Scott Johnson (including whether the strike force was committed to favouring what is described in **Chapter 11** as “the suicide theory”), were being closely examined by the Inquiry and were likely to be the subject of proposed findings and conclusions in the submissions of Counsel Assisting.<sup>1196</sup>

<sup>1192</sup> Supplementary Submissions of NSWPF, 30 October 2023, [18]–[20], [48]–[49] (SCOL86378).

<sup>1193</sup> Exhibit 6, Tab 252A, Letter from Enzo Camporeale to Katherine Garaty, 22 December 2022, [6]–[7], [11] (SCOL82369.00002).

<sup>1194</sup> Transcript of the Inquiry, 20 February 2023 (TRA.00023.00001); Transcript of the Inquiry, 21 February 2023 (TRA.00024.00001).

<sup>1195</sup> Transcript of the Inquiry, 15 May 2023 (TRA.00051.00001).

<sup>1196</sup> See, eg, Transcript of the Inquiry, 20 February 2023, T1625.8–28, T1626.23–27, T1676.26–47, T1701.27–38 (TRA.00023.00001); 21 February 2023, T1869.8–26 (TRA.00024.00001).

- 9.72. However, a recurring theme in the NSWPF’s written submissions was that the Inquiry had failed to obtain evidence from a number of officers, including Ms Young, Detective Sergeant Brown, Mr Leggat, Detective Senior Constable Rullo, Officer A, Mr Lehmann and Detective Sergeant Taylor, in relation to various topics concerning Strike Force Macnamir (which are addressed in more depth in **Chapter 11**).<sup>1197</sup>
- 9.73. Mr Willing also made submissions, in relation to the *Lateline* interview, that various findings could not be made because the Inquiry had not obtained evidence from a number of witnesses, including in particular Ms Young, Detective Sergeant Brown, Ms Wells and Ms Alberici.<sup>1198</sup>

### Procedural fairness

- 9.74. Nearly all the individuals in respect of whom it was submitted either that they should have been called as witnesses, or that they should be given notice of possible findings which may be “adverse to their interests”, were serving or former police officers, or other former or current members of staff of the NSWPF.
- 9.75. With respect to five of those individuals, namely Ms Young, Detective Sergeant Brown, Officer A, Mr Chebl, and Mr Lehmann, all of whom were involved in either Strike Force Macnamir or Strike Force Neiwand, or both, the NSWPF further contended that certain findings, if made, would be procedurally unfair without those individuals being called to give evidence or given an opportunity to be heard.<sup>1199</sup>
- 9.76. By contrast, Mr Willing contended that the absence of evidence from certain witnesses resulted in a potential injustice for Mr Willing himself.<sup>1200</sup>
- 9.77. The principles of procedural fairness insofar as they relate to Special Commissions of Inquiry are discussed in **Chapter 1** of the Report. For present purposes, I reiterate the statement of Deane J in *Kioa v West* that procedural fairness was owed in respect of a decision which “directly affected the rights, interest and status of the person ... in respect of whom it was made and against whom as an individual it was directed” (emphasis added).<sup>1201</sup>

<sup>1197</sup> See Submissions of NSWPF, 28 June 2023, [112]–[115] (SCOI.84211) (regarding *Australian Story*); [135], [278] (regarding the 2013 Issue Paper); [96], [101], [103] (as to the UHT’s assessment of the Scott Johnson case); [130], [132], [148] (as to the overlap between Strike Force Macnamir and SF Neiwand); [160]–[161], [178], [185], [186], [198]–[201] (as to the conduct of Strike Force Macnamir); and [205], [226], [234] (as to *Lateline*).

<sup>1198</sup> See Submissions of Michael Willing, 28 June 2023, [14], [52]–[56], [66] (SCOI.84210).

<sup>1199</sup> Submissions of NSWPF, 28 June 2023, [113], [115], [350]–[351] (SCOI.84211) (regarding Mr Lehmann); [199b], [205f] (regarding Ms Young); [186b], [199c] (regarding Detective Sergeant Brown and Officer A); [201] (regarding Ms Young and Detective Sergeant Brown); and [364] (regarding Mr Chebl and other personnel involved in the SF Neiwand investigations).

<sup>1200</sup> Submissions of Michael Willing, 28 June 2023, [14(c)], [69] (SCOI.84210).

<sup>1201</sup> *Kioa v West* (1985) 159 CLR 550, 632 (Deane J).

- 9.78. In my view, and with respect to at least some of the findings or conclusions that the NSWPF contended were not open to me to make because of various alleged failures to afford procedural fairness in the context of Public Hearing 2, it is doubtful that those findings affected an interest held by the relevant persons as an individual.
- 9.79. Rather, those proposed findings or conclusions, to the extent that Counsel Assisting advanced them, were of a different nature. As Counsel Assisting explained, they were to the effect that a group of NSWPF officers (of which the relevant officer was a member) acting in the execution of their duties and on behalf of the NSWPF, held a collective attitude, and/or sought and/or produced a particular result or consequence in the execution of either Strike Force Macnamir or Strike Force Neiwand.<sup>1202</sup>
- 9.80. Counsel Assisting had not submitted that any of those officers lied or engaged in misconduct.<sup>1203</sup> Counsel Assisting acknowledged that such a finding, if made, would obviously affect the officer's reputation, which the authorities recognise to be an interest which enlivens obligations of procedural fairness.<sup>1204</sup>
- 9.81. For instance, the NSWPF submitted that Mr Chebl, personally, had been the subject of "strident criticism" and "allegations ... in an entirely public forum" without being given an opportunity to respond.<sup>1205</sup> However, the relevant criticisms made by Counsel Assisting, were directed at Strike Force Neiwand as a whole rather than the conduct of Mr Chebl.<sup>1206</sup> Where Counsel Assisting did propose findings about an individual involved in Strike Force Neiwand, those findings were expressly limited to Detective Sergeant Morgan, who as the Investigation Supervisor, was said to be ultimately responsible for the direction, decisions, and written records of Strike Force Neiwand, and who was represented and gave evidence to the Inquiry.<sup>1207</sup>
- 9.82. In response the NSWPF emphasised that, when considering the requirements of procedural fairness, there is no relevant distinction to be drawn between one's "personal" and "professional" reputation. Both were said to be "inextricably intertwined"; and it was noted that the authorities do not suggest that a duty of procedural fairness is only enlivened where a person's "personal" but not "professional" reputation is affected.<sup>1208</sup> It was also observed that, inevitably, "[i]nquiries such as the present are concerned with the conduct of persons in their professional rather than personal capacity".<sup>1209</sup>

<sup>1202</sup> Supplementary Submissions of Counsel Assisting, 16 October 2023, [82] (SCOI.86243).

<sup>1203</sup> Supplementary Submissions of Counsel Assisting, 16 October 2023, [81] (SCOI.86243).

<sup>1204</sup> Supplementary Submissions of Counsel Assisting, 16 October 2023, [82] (SCOI.86243), referring to *Annetts v McCann* (1990) 170 CLR 596 at 608–609 (Brennan J); *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 578 (Mason CJ, Dawson, Toohey and Gaudron JJ), 592 (Brennan J).

<sup>1205</sup> Submissions of NSWPF, 28 June 2023, [360] (SCOI.84211).

<sup>1206</sup> See, eg, Submissions of Counsel Assisting, 7 June 2023, [576], [635]–[641] (SCOI.84380).

<sup>1207</sup> Submissions of Counsel Assisting, 7 June 2023, [677]–[678], [782] (SCOI.84380).

<sup>1208</sup> Supplementary Submissions of NSWPF, 23 October 2023, [102] (SCOI.86378).

<sup>1209</sup> Supplementary Submissions of NSWPF, 23 October 2023, [102] (SCOI.86378).

- 9.83. The NSWPF's observations are uncontroversial and may be accepted. However, in my view they are not to the point. The relevant distinction being drawn by Counsel Assisting was not between an individual's personal and professional reputation; but rather, between the reputation of an individual and the reputation of an institution of which they do or did form part, and in whose name they engaged in certain conduct in the exercise of their professional duties.
- 9.84. It was submitted by Counsel Assisting,<sup>1210</sup> and I accept, that to the extent that Counsel Assisting made submissions or proposed findings relating to the conduct of Strike Force Neiwand or Strike Force Macnamir (including, for instance, their methodologies and outcomes), they were not directed to impugning any individual officer's reputation, or to the probity of any one individual. Rather, they concerned those two strike forces collectively.
- 9.85. In some circumstances, it may be necessary to receive evidence from specific individual officers within a group such as a strike force, in order to generate a sufficiently detailed picture of the conduct of the group. That was precisely the motivation for the Inquiry's letters of 20 September 2022 and 22 December 2022 requesting statements from certain current or former NSWPF officers considered to be appropriate for that purpose.
- 9.86. However, procedural fairness did not require, in my view, that those individuals be called before a finding about the strike force's conduct could be made.

## Observations

- 9.87. Having regard to the above, I make the following observations.
- 9.88. First, it is regrettable the NSWPF did not comply with the requirements of Practice Guideline 1 or the terms of the 20 September letter in relation to any of the witnesses not called. If at any time the NSWPF considered that a statement should have been obtained from those witnesses or anyone else, the NSWPF should have so advised the Inquiry and should have provided the requisite statement or statements.
- 9.89. The NSWPF's failure to inform the Inquiry at the earliest available opportunity that it considered that further persons needed to be called to give evidence resulted in unnecessary delay and in considerable additional time and expense for both the Inquiry and interested parties. This is particularly so in circumstances where the NSWPF was the principal (if not the only) source of relevant information and documents. In the circumstances, Counsel Assisting were going to be hamstrung in performing their role in the absence of cooperation from the NSWPF.

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<sup>1210</sup> Supplementary Submissions of Counsel Assisting, 16 October 2023, [85] (SCOI.86243).

- 9.90. Secondly, this delay is brought into harsher perspective by the fact that in relation to this Inquiry, the NSWPF is in a position analogous to a model litigant. In civil claims and civil litigation, those bound by model litigant obligations (including the NSWPF) are required to observe those obligations in proceedings before “courts, tribunals, inquiries and in arbitration and other alternative dispute resolution processes”.<sup>1211</sup> Those obligations require model litigants not to cause unnecessary delay and to “act with complete propriety, fairly and in accordance with the highest professional standards”.<sup>1212</sup> I consider that the community’s expectation of a public agency’s conduct before this Inquiry would accord with this standard. My observations about the NSWPF’s response to this Inquiry are outlined in further detail in **Chapter 15**.
- 9.91. In the supplementary submissions made on behalf of the NSWPF, the NSWPF asserted that in making submissions to the above effect, Counsel Assisting was making serious assertions about the conduct of those representing the NSWPF.<sup>1213</sup> This was not my understanding of the submissions made by Counsel Assisting and in any event, none of the observations above should be understood as levelling any criticism at the legal representatives of the NSWPF, who presumably acted on the instructions of their client and whose efforts over the course of this Inquiry are acknowledged.
- 9.92. Thirdly, I consider that the NSWPF’s submissions alleging a denial of procedural fairness against certain individuals were misconceived, insofar as they incorrectly treated the findings and conclusions advanced by Counsel Assisting as being directed towards those individuals personally. I did not understand those suggested findings or conclusions to be so directed, and accordingly in my view they did not enliven the requirements of procedural fairness. In any event, as outlined below, the NSWPF’s complaints in this respect were rendered moot by the steps the Inquiry took to ensure that all witnesses identified by the NSWPF and Mr Willing were given an opportunity to provide a statement and/or submissions.

## The Inquiry’s pragmatic approach

- 9.93. Notwithstanding the above observations, from a practical perspective, the Inquiry took extensive steps to ensure that any of the individuals referred to in the submissions of the NSWPF or Mr Willing, who wished to give evidence and/or to make a submission, were given a proper opportunity to do so.
- 9.94. In what follows, I summarise what steps were taken to achieve that outcome.

<sup>1211</sup> Exhibit 6, Tab 534, NSW Department of Premier & Cabinet, M2016–03 Model Litigant Policy for Civil Litigation and Guiding Principles for Civil Claims for Child Abuse, cl 1.2 (SCOI.86186).

<sup>1212</sup> Exhibit 6, Tab 534, NSW Department of Premier & Cabinet, M2016–03 Model Litigant Policy for Civil Litigation and Guiding Principles for Civil Claims for Child Abuse, cl 1.2 (SCOI.86186).

<sup>1213</sup> Supplementary Submissions of NSWPF, 23 October 2023, [4] (SCOI.86378).



- 9.95. First, following the receipt of the June NSWPF Submissions and in anticipation of the further extension of time being granted to the Inquiry, on 10 August 2023 the Inquiry wrote to the NSWPF and requested that the NSWPF provide statements by 1 September 2023 from nine of the individuals referred to in its written submissions, and also from a witness or witnesses capable of addressing the Bias Crimes-related matters referred to above at [9.60] (**10 August letter**).<sup>1214</sup> All of those individuals were current or former police officers, namely:
- a. A witness or witnesses able to speak to the accuracy or otherwise of Sergeant Steer’s claims that he was “forced out” of the BCU in 2017, and the circumstances in which the BCU was restructured at that time;
  - b. Superintendent Middleton;
  - c. Detective Inspector Grace;
  - d. Detective Acting Sergeant Bignell;
  - e. Mr Leggat;
  - f. Mr Lehmann;
  - g. Ms Young;
  - h. Detective Sergeant Brown;
  - i. Detective Senior Constable Rullo; and
  - j. Mr Chebl.
- 9.96. The Inquiry requested that such statements address any matters in respect of which the NSWPF submitted there was insufficient evidence for me to make findings, and/or that procedural fairness required that the individuals in question be given an opportunity to provide evidence or be heard.<sup>1215</sup>

### Named police witnesses and issues regarding legal representation

- 9.97. By letters dated 17 and 18 August 2023, the legal representatives for the NSWPF indicated that, with the exception of Superintendent Middleton, they did not represent any of the current or former police officers or staff identified in the 10 August letter because of the possibility of a “conflict of interest”. The nature of such asserted possible conflict was not disclosed. They also indicated that, with respect to Detective Inspector Grace and Detective Acting Sergeant Bignell, they would seek their views as to whether they wished for the NSWPF to represent them.<sup>1216</sup>

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<sup>1214</sup> Exhibit 6, Tab 424, Letter from Enzo Camporeale to Katherine Garaty, 10 August 2023, [79] (SCOL.85244).

<sup>1215</sup> Exhibit 6, Tab 424, Letter from Enzo Camporeale to Katherine Garaty, 10 August 2023, [80] (SCOL.85244).

<sup>1216</sup> Exhibit 6, Tab 425, Letter from Natalie Marsic to Enzo Camporeale, 17 August 2023 (SCOL.85253); Exhibit 6, Tab 427, Letter from Katherine Garaty to Enzo Camporeale, 18 August 2023 (SCOL.85257).



- 9.98. On 21 August 2023, the Inquiry advised the NSWPF that it would liaise directly with all current or former police officers other than Superintendent Middleton and serve material directly on them.<sup>1217</sup>
- 9.99. On 21, 22 and 24 August 2023, the Inquiry summoned the nine current or former police officers identified in the 10 August letter, together with Mr Willing, to attend to give evidence before the Inquiry.
- 9.100. The accompanying cover letter outlined the relevant paragraphs in the submissions of Counsel Assisting, the NSWPF and/or Mr Willing where that witness and/or their work was discussed, advised the witness that they could provide a statement by 4 September 2023, should they wish, and advised the witness that they could provide any submissions by 5 October 2023, should they wish.<sup>1218</sup>
- 9.101. Of the nine current or former police officers in question, the NSWPF provided statements from three whom it ultimately represented—Superintendent Middleton, Detective Inspector Grace and Detective Acting Sergeant Bignell—all of whose evidence relates to Strike Force Parrabell.<sup>1219</sup>
- 9.102. Five of the remaining six current or former officers in question (Mr Leggat, Mr Lehmann, Ms Young, Detective Sergeant Brown and Detective Senior Constable Rullo) obtained separate representation. All of those individuals were involved to some extent in Strike Force Macnamir and/or Strike Force Neiwand. Witness statements were subsequently provided to the Inquiry by all five represented current or former officers.<sup>1220</sup> Mr Chebl indicated that he did not intend to provide a statement.<sup>1221</sup>
- 9.103. In the cases of Detective Acting Sergeant Bignell, Mr Leggat, Mr Lehmann, Detective Sergeant Brown and Ms Young, their witness statements were supplemented by oral evidence given to the Inquiry in the September/October 2023 hearings. Mr Willing also gave additional oral evidence to the Inquiry in the September/October 2023 hearings although no additional witness statement was obtained from him.

<sup>1217</sup> Exhibit 6, Tab 429, Letter from Enzo Camporeale to Katherine Garaty, 21 August 2023 (SCOI.85247).

<sup>1218</sup> Exhibit 6, Tab 468A, Letter from Enzo Camporeale to Stewart Leggat, 21 August 2023 (SCOI.85575); Exhibit 6, Tab 469A, Letter from Enzo Camporeale to John Lehmann, 21 August 2023 (SCOI.85548); Exhibit 6, Tab 470A, Letter from Enzo Camporeale to Pamela Young, 24 August 2023 (SCOI.85568); Exhibit 6, Tab 466, Letter from Enzo Camporeale to Penelope Brown, 21 August 2023 (SCOI.85578); Exhibit 6, Tab 471A, Letter from Enzo Camporeale to Paul Rullo, 21 August 2023 (SCOI.85583); Exhibit 6, Tab 467A, Letter from Enzo Camporeale to Michael Chebl, 22 August 2023 (SCOI.85554); Exhibit 6, Tab 464A, Letter from Enzo Camporeale to Craig Middleton, 21 August 2023 (SCOI.85562); Exhibit 6, Tab 465A, Letter from Enzo Camporeale to Paul Grace, 21 August 2023 (SCOI.85557); Exhibit 6, Tab 463A, Letter from Enzo Camporeale to Cameron Bignell, 21 August 2023 (SCOI.85558).

<sup>1219</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023 (NPL.9000.0029.0001); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023 (NPL.9000.0024.0012); Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023 (NPL.9000.0026.0007).

<sup>1220</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023 (SCOI.85707); Exhibit 6, Tab 513, Statement of John Lehmann, 29 August 2023 (SCOI.85495); Exhibit 6, Tab 521, Second statement of Pamela Young (SCOI.85816); Exhibit 6, Tab 519, Statement of Detective Sergeant Penelope Brown, 20 September 2023 (SCOI.85747); Exhibit 6, Tab 519A, Second Statement of Detective Sergeant Penelope Brown, 29 September 2023 (SCOI.85950); Exhibit 6, Tab 520, Statement of Detective Senior Constable Paul Rullo, 22 September 2023 (SCOI.85772); Exhibit 6, Tab 520A, Second statement of Detective Senior Constable Paul Rullo, 25 September 2023 (SCOI.85780).

<sup>1221</sup> Exhibit 71, Tab 3, Letter from Enzo Camporeale to Lina Chebl, 18 September 2023 (SCOI.85718); Exhibit 71, Tab 4, Email from Lina Chebl to Enzo Camporeale, 19 September 2023 (SCOI.85726).

## Other witnesses named by the NSWPF and Mr Willing

- 9.104. Although the Inquiry specifically did not request that the NSWPF provide statements from any of the more than 30 other individuals and groups who had been identified in the submissions of the NSWPF and Mr Willing as having not been called to give evidence, the 10 August letter also notified the NSWPF that, if it considered that any of those additional individuals should also provide a statement, the NSWPF should arrange for that to be done.
- 9.105. On 22 and 24 August 2023, the Inquiry wrote to a number of those additional witnesses, namely Officer A, Detective Sergeant Taylor, Ms Wells, Ms Alberici, Mr Bowditch, Ms Braw, former Commissioner Michael Fuller, Mr Gordon, Ms McMahon, former Detective Acting Superintendent Chris Olen, Zdenka Vaughan and Dr Birch.<sup>1222</sup>
- 9.106. These letters were in similar terms to those outlined above at [9.100].
- 9.107. Witness statements were subsequently provided by Officer A, Mr Gordon, Ms McMahon, Ms Wells, Detective Sergeant Taylor and Ms Alberici.<sup>1223</sup> Detective Sergeant Taylor, Ms Wells and Ms Alberici were also summoned and gave oral evidence to the Inquiry.<sup>1224</sup>
- 9.108. In addition, Officer A and Detective Sergeant Morgan were summoned to attend to give evidence before the Inquiry.<sup>1225</sup> Officer A ultimately provided a statement and was excused from giving evidence.<sup>1226</sup> Detective Sergeant Morgan did not provide a statement and was also excused from giving evidence.
- 9.109. On 24 August 2023, Mr Bowditch's solicitor advised the Inquiry that Mr Bowditch would not be able to provide a statement or submissions or attend the September/October hearing.<sup>1227</sup>

<sup>1222</sup> Exhibit 6, Tab 472A, Letter from Enzo Camporeale to Officer A, 22 August 2023 (SCOI.85513); Exhibit 6, Tab 474A, Letter from Enzo Camporeale to Alicia Taylor, 22 August 2023 (SCOI.85502); Exhibit 6, Tab 475A, Letter from Enzo Camporeale to Georgina Wells, 22 August 2023 (SCOI.85514); Exhibit 6, Tab 506A, Letter from Enzo Camporeale to Emma Alberici, 22 August 2023 (SCOI.85510); Exhibit 6, Tab 477A, Letter from Enzo Camporeale to Kenneth Bowditch, 22 August 2023 (SCOI.85474); Exhibit 6, Tab 478A, Letter from Enzo Camporeale to Jacqueline Braw, 22 August 2023 (SCOI.85471); Exhibit 6, Tab 479A, Letter from Enzo Camporeale to Michael Fuller, 22 August 2023 (SCOI.85480); Exhibit 6, Tab 480A, Letter from Enzo Camporeale to Strath Gordon, 22 August 2023 (SCOI.85469); Exhibit 6, Tab 481A, Letter from Enzo Camporeale to Siobhan McMahon, 22 August 2023 (SCOI.85473); Exhibit 6, Tab 482A, Letter from Enzo Camporeale to Christopher Olen, 22 August 2023 (SCOI.85470); Exhibit 6, Tab 483A, Letter from Enzo Camporeale to Zdenka Vaughan, 22 August 2023 (SCOI.85472); Exhibit 6, Tab 505A, Letter from Enzo Camporeale to Phillip Birch, 24 August 2023 (SCOI.85484).

<sup>1223</sup> Exhibit 6, Tab 512, Statement of Strath Gordon, 5 September 2023 (NPL.9000.0028.0001); Exhibit 6, Tab 510, Statement of Siobhan McMahon, 1 September 2023 (NPL.9000.0025.0009); Exhibit 6, Tab 511, Statement of Georgina Wells, 4 September 2023 (NPL.9000.0027.0001); Exhibit 6, Tab 517, Statement of Detective Sergeant Alicia Taylor, 20 September 2023 (NPL.9000.0033.0001); Exhibit 6, Tab 524, Statement of Emma Alberici, 25 September 2023 (SCOI.85817).

<sup>1224</sup> Exhibit 6, Tab 474B, Letter from Enzo Camporeale to Detective Sergeant Alicia Taylor, 11 September 2023 (SCOI.85528); Exhibit 6, Tab 475B, Letter from Enzo Camporeale to Georgina Wells, 11 September 2023 (SCOI.85535).

<sup>1225</sup> Exhibit 6, Tab 472B, Letter from Enzo Camporeale to Officer A, 25 August 2023 (SCOI.85569); Exhibit 6, Tab 473A, Letter from Enzo Camporeale to Detective Sergeant Steven Morgan, 8 September 2023 (SCOI.85524).

<sup>1226</sup> Exhibit 6, Tab 516, Statement of I446, 15 September 2023, [18] (NPL.9000.0031.0001).

<sup>1227</sup> Exhibit 71, Tab 6, Letter from Nicholas Eddy to Enzo Camporeale, 24 August 2023 (SCOI.85486).

- 9.110. On 24 August 2023, Dr Birch emailed the Solicitor Assisting the Inquiry and advised that, having reviewed the sections of the submissions of Counsel Assisting and the NSWPF which were relevant to him, he had nothing further to add. As for the research study he conducted on behalf of the NSWPF from October 2018 (addressed in **Chapter 10**), Dr Birch noted that the “systematic review conducted did not yield the data/information needed in order to develop an assessment tool for operational use”; but that his research was extended in a “Delphi study” conducted between October 2020 and October 2021 which “better served NSW Police in reflecting on their current policies and practices concerning the policing of hate crime”.<sup>1228</sup>
- 9.111. Despite advising the Inquiry on 4 September 2023 that they had received instructions to assist Ms Braw with her statement to the Inquiry, the NSWPF’s legal representatives did not ultimately provide a statement on behalf of Ms Braw.<sup>1229</sup>
- 9.112. No statements or submissions were provided by Mr Olen, Ms Vaughan or Mr Fuller. The Inquiry did not receive any acknowledgement or response from Mr Olen or Ms Vaughan to its correspondence.

### The academic team

- 9.113. Notwithstanding that the Inquiry sent correspondence to Dr Dalton and Dr de Lint on 7 June 2023, 10 July 2023 and 21 August 2023 concerning the submissions made by the parties in relation to Public Hearing 2,<sup>1230</sup> no responses or submissions were received by the Inquiry from either academic.
- 9.114. In the June NSWPF Submissions, the NSWPF asserted that the submissions made by Counsel Assisting<sup>1231</sup> as to the approach of the academic team contained an “extraordinary allegation... which seeks to impugn the integrity of three academics”, noting that Dr Danielle Tyson, the third member of the academic team, had not been called to give evidence.<sup>1232</sup>
- 9.115. Accordingly, the Inquiry also wrote to Dr Tyson on 22 August 2023, inviting her to provide a statement or submissions.<sup>1233</sup>

<sup>1228</sup> Exhibit 6, Tab 505B, Email from Associate Professor Phillip Birch to Enzo Camporeale, 24 August 2023, 1 (SCOI.85497).

<sup>1229</sup> Exhibit 6, Tab 451, Letter from Patrick Hodgetts to Enzo Camporeale, 4 September 2023 (SCOI.85671); Exhibit 6, Tab 455, Letter from Enzo Camporeale to Katherine Garaty, 11 September 2023, 2 (SCOI.85673).

<sup>1230</sup> Exhibit 6, Tab 502A, Email from Enzo Camporeale to Dr Derek Dalton, 7 June 2023 (SCOI.85550); Exhibit 6, Tab 503A, Email from Enzo Camporeale to Dr Willem de Lint, 7 June 2023 (SCOI.85582); Exhibit 6, Tab 502B, Letter from Enzo Camporeale to Derek Dalton, 10 July 2023 (SCOI.85505); Exhibit 6, Tab 503B, Letter from Enzo Camporeale to Dr Willem de Lint, 10 July 2023 (SCOI.85504); Exhibit 6, Tab 502C, Letter from Enzo Camporeale to Derek Dalton, 21 August 2023 (SCOI.85507); Exhibit 6, Tab 503C, Letter from Enzo Camporeale to Dr Willem de Lint, 21 August 2023 (SCOI.85501).

<sup>1231</sup> Submissions of Counsel Assisting, 7 June 2023, [1266]–[1283] (SCOI.84380).

<sup>1232</sup> Submissions of NSWPF, 28 June 2023, [730] (SCOI.84211).

<sup>1233</sup> Exhibit 6, Tab 504A, Letter from Enzo Camporeale to Danielle Tyson, 22 August 2023 (SCOI.85503).

9.116. On 5 September 2023, Dr Tyson emailed the Inquiry and advised that, whilst she had provided some “limited” editorial advice on early drafts of the Parrabell Report and took part in discussions about how to classify cases, she was “not one of the co-authors and [was] therefore unable to cast any further light on its content”. She also noted that she had “little...recollection of the specifics” of any discussion between members of the academic team about the methodology for coding cases or use of the BCIF. She further advised that she had destroyed all materials relating to the project, as required under the research agreement with the NSWPF.<sup>1234</sup>

## Bias Crimes Unit

- 9.117. In the 10 August letter, the Inquiry requested that the NSWPF provide a statement by 1 September 2023 from a witness or witnesses able to speak to the accuracy of Sergeant Steer’s claims that he was “forced out” of the BCU, or the circumstances in which the BCU was restructured such that it was moved to a position within the Fixated Persons Investigation Unit (**FPIU**).<sup>1235</sup>
- 9.118. On 18 August 2023, the NSWPF advised that “inquiries in relation to the identification of a witness who can speak to the matters addressed at [79(a)] [of the 10 August letter] are ongoing and we are unable to further comment at this time”.<sup>1236</sup>
- 9.119. On 24 August 2023, the Inquiry requested that the NSWPF identify an appropriate witness answering the description given at [79(a)] of its 10 August letter by no later than 1:00pm on 29 August 2023.<sup>1237</sup> No response was provided on that date.
- 9.120. On 30 August 2023, the Inquiry sent a further reminder via email to the NSWPF of the need to provide a response to the 10 August letter.<sup>1238</sup>
- 9.121. On 1 September 2023 (the day on which any such statement was due), the NSWPF wrote to the Inquiry and stated that the NSWPF was “making enquiries in relation to the identification of a witness who is best placed to speak to the matters” referred to at [34] of the June NSWPF Submissions.<sup>1239</sup>
- 9.122. On 12 September 2023, the Inquiry wrote again to the NSWPF outlining that if the NSWPF did not provide a witness statement or statements, as requested in paragraph [79(a)] of the 10 August letter, by 5:00pm that day, the Inquiry would take this to mean that the NSWPF withdrew any submissions to the effect that relevant evidence has not been obtained or taken into account.<sup>1240</sup>

<sup>1234</sup> Exhibit 6, Tab 504B, Email from Danielle Tyson to Enzo Camporeale, 5 September 2023 (SCOI.85563).

<sup>1235</sup> Exhibit 6, Tab 424, Letter from Enzo Camporeale to Katherine Garaty, 10 August 2023, [79(a)] (SCOI.85244).

<sup>1236</sup> Exhibit 6, Tab 427, Letter from Katherine Garaty to Enzo Camporeale, 18 August 2023 (SCOI.85257).

<sup>1237</sup> Exhibit 6, Tab 435, Letter from Enzo Camporeale to Katherine Garaty, 24 August 2023 (SCOI.85251).

<sup>1238</sup> Exhibit 6, Tab 446, Email from Enzo Camporeale to Katherine Garaty, 30 August 2023 (SCOI.85704).

<sup>1239</sup> Exhibit 6, Tab 449, Letter from Katherine Garaty to Enzo Camporeale, 1 September 2023 (SCOI.85667).

<sup>1240</sup> Submissions of NSWPF, 28 June 2023, [29], [34], [36] (SCOI.84211).

- 9.123. At 6:21pm that day, 12 September 2023, the NSWPF wrote to the Inquiry and provided an unsigned statement of Superintendent Hurst.<sup>1241</sup>
- 9.124. The provision of this statement at 6:21pm on 12 September 2023 was the first time the Inquiry was made aware that a statement was being obtained, or rather *had been* obtained, by the NSWPF from Superintendent Hurst.
- 9.125. On 13 September 2023, the Inquiry wrote to the NSWPF regarding the approach taken to this issue.<sup>1242</sup>
- 9.126. On 19 September 2023, following a request by the Inquiry for a supplementary statement, Sergeant Steer provided a third statement to the Inquiry, outlining *inter alia* the reasons he applied for a transfer out of the BCU in June 2017.<sup>1243</sup>

### Junior Strike Force Parrabell officers

- 9.127. The NSWPF made submissions concerning the “more junior members of the team” that conducted Strike Force Parrabell that could have been called by the Inquiry to give evidence.<sup>1244</sup>
- 9.128. On 10 August 2023, the Inquiry requested that the NSWPF identify any of these individuals from whom a statement ought to be provided by 1 September 2023.<sup>1245</sup>
- 9.129. On 21 August 2023, following the correspondence between the NSWPF’s legal representatives and the Inquiry as to the representation of the NSWPF officers named in the submissions of the NSWPF and Mr Willing set out above, the Inquiry further requested that the NSWPF provide the name and contact details for each of the persons falling within this category by 5:00pm on 23 August 2023.<sup>1246</sup>
- 9.130. On 28 August and 1 September 2023, the NSWPF provided the names and contact details for the 18 officers who were on the staff list for Strike Force Parrabell.<sup>1247</sup>
- 9.131. As at these dates, five of the 18 officers identified had already been contacted by the Inquiry.<sup>1248</sup>

<sup>1241</sup> Exhibit 6, Tab 460, Letter from Katherine Garaty to Enzo Camporeale, 12 September 2023 (SCOI.85674).

<sup>1242</sup> Exhibit 6, Tab 461, Letter from Enzo Camporeale to Katherine Garaty, 13 September 2023 (SCOI.85682).

<sup>1243</sup> Exhibit 6, Tab 518, Third Statement of Sergeant Geoffrey Steer, 19 September 2023 (SCOI.85731).

<sup>1244</sup> See, e.g., Submissions of NSWPF, 28 June 2023, [520] (SCOI.84211).

<sup>1245</sup> Exhibit 6, Tab 424, Letter from Solicitor Assisting the Inquiry to Katherine Garaty, 10 August 2023, [83(n)], [85]–[86] (SCOI.85244).

<sup>1246</sup> Exhibit 6, Tab 428, Letter from Enzo Camporeale to Katherine Garaty, 21 August 2023 (SCOI.85246).

<sup>1247</sup> See Exhibit 6, Tab 440, Letter from Katherine Garaty to Enzo Camporeale, 28 August 2023 (SCOI.85273); Exhibit 6, Tab 448, Letter from Katherine Garaty to Enzo Camporeale, 1 September 2023 (SCOI.85695). The names provided were: Craig Middleton; Paul Grace; Jo–Anne Kenworthy; Geoffrey Steer; Andrew Agostino; Hugh Brandon; Cameron Bignell; Chelsea Bennetts; Christopher Borg; Adam Churchill; Renee Cochrane; Kathleen Collins; Sarah Fleming; Jody Gibbons; Rebecca Parish; Timothy Ryan; Brad Yusuf; and Ashley Grimes.

<sup>1248</sup> The Inquiry had already written to Superintendent Middleton, Detective Inspector Grace and Detective Acting Sergeant Bignell. Sergeant Steer was an interested party in Public Hearing 2 and the Inquiry had already received a statement from Ms Kenworthy.

- 9.132. On 28–29 August 2023 and 1 September 2023, the Inquiry wrote to the remaining 13 officers.<sup>1249</sup> Each letter drew the officers’ attention to the sections of Counsel Assisting’s and the interested parties’ written submissions concerning Strike Force Parrabell, and invited the officers to provide a statement by 8 September 2023 or written submissions by 5 October 2023 as to the issues raised by Public Hearing 2 if they wished. Follow-up letters were sent to the officers on 15 and 18 September 2023, advising that, as the deadline by which to provide a statement had passed, the Inquiry would proceed on the assumption that the officer did not wish to provide a statement.<sup>1250</sup>
- 9.133. The Inquiry received no statements or submissions from any of the 13 officers contacted.<sup>1251</sup>

### Strike Force Neiwand officers

- 9.134. The NSWPF made submissions concerning the “extraordinary denial of natural justice” caused by Counsel Assisting’s “decision not to call evidence from any of the personnel actually involved in the investigations (beyond Detective Sergeant Morgan)” in Strike Force Neiwand.<sup>1252</sup>
- 9.135. On 10 August 2023, the Inquiry requested that NSWPF identify any of the officers involved in Strike Force Neiwand from whom a statement ought to be provided by 1 September 2023.<sup>1253</sup>

<sup>1249</sup> Exhibit 6, Tab 489A, Letter from Enzo Camporeale to Adam Churchill, 29 August 2023 (SCOI.85475); Exhibit 6, Tab 490A, Letter from Enzo Camporeale to Andrew Agostino, 29 August 2023 (SCOI.85481); Exhibit 6, Tab 491A, Letter from Enzo Camporeale to Brad Yusuf, 29 August 2023 (SCOI.85479); Exhibit 6, Tab 492A, Letter from Enzo Camporeale to Chelsea Bennetts, 29 August 2023 (SCOI.85477); Exhibit 6, Tab 493A, Letter from Enzo Camporeale to Christopher Borg, 29 August 2023 (SCOI.85483); Exhibit 6, Tab 494A, Letter from Enzo Camporeale to Hugh Brandon, 29 August 2023 (SCOI.85478); Exhibit 6, Tab 495A, Letter from Enzo Camporeale to Jodie Gibbons, 29 August 2023 (SCOI.85487); Exhibit 6, Tab 496A, Letter from Enzo Camporeale to Renee Cochrane, 29 August 2023 (SCOI.85488); Exhibit 6, Tab 497A, Letter from Enzo Camporeale to Sarah Fleming, 1 September 2023 (SCOI.85496); Exhibit 6, Tab 498A, Letter from Enzo Camporeale to Kathleen Collins, 1 September 2023 (SCOI.85665); Exhibit 6, Tab 499A, Letter from Enzo Camporeale to Rebecca Parish, 1 September 2023 (SCOI.85666); Exhibit 6, Tab 500A, Letter from Enzo Camporeale to Timothy Ryan, 1 September 2023 (SCOI.85668); Exhibit 6, Tab 501A, Letter from Enzo Camporeale to Ashley Grimes, 1 September 2023 (SCOI.85663).

<sup>1250</sup> Exhibit 6, Tab 489B, Letter from Enzo Camporeale to Adam Churchill, 15 September 2023 (SCOI.85681); Exhibit 6, Tab 490B, Letter from Enzo Camporeale to Andrew Agostino, 15 September 2023 (SCOI.85688); Exhibit 6, Tab 491B, Letter from Enzo Camporeale to Brad Yusuf, 15 September 2023 (SCOI.85680); Exhibit 6, Tab 492B, Letter from Enzo Camporeale to Chelsea Bennetts, 15 September 2023 (SCOI.85676); Exhibit 6, Tab 493B, Letter from Enzo Camporeale to Christopher Borg, 15 September 2023 (SCOI.85686); Exhibit 6, Tab 494B, Letter from Enzo Camporeale to Hugh Brandon, 15 September 2023 (SCOI.85683); Exhibit 6, Tab 495B, Letter from Enzo Camporeale to Jodie Gibbons, 15 September 2023 (SCOI.85689); Exhibit 6, Tab 496B, Letter from Enzo Camporeale to Renee Cochrane, 15 September 2023 (SCOI.85690); Exhibit 6, Tab 497B, Letter from Enzo Camporeale to Sarah Fleming, 18 September 2023 (SCOI.85709); Exhibit 6, Tab 498B, Letter from Enzo Camporeale to Kathleen Collins, 18 September 2023 (SCOI.85717); Exhibit 6, Tab 499B, Letter from Enzo Camporeale to Rebecca Parish, 18 September 2023 (SCOI.85720); Exhibit 6, Tab 500B, Letter from Enzo Camporeale to Timothy Ryan, 18 September 2023 (SCOI.85721); Exhibit 6, Tab 501B, Letter from Enzo Camporeale to Ashley Grimes, 18 September 2023 (SCOI.85715).

<sup>1251</sup> Although the partner of one officer did contact the Inquiry to advise that the officer was unable to provide a response: see Exhibit 71, Tab 7, Email from Daniel Parker to Enzo Camporeale, 20 September 2023 (SCOI.85774).

<sup>1252</sup> Submissions of NSWPF, 28 June 2023, [364] (SCOI.84211).

<sup>1253</sup> Exhibit 6, Tab 424, Letter from Enzo Camporeale to Katherine Garaty, 10 August 2023 (SCOI.85244).



- 9.136. On 21 August 2023, following the correspondence between the NSWPF’s legal representatives and the Inquiry as to the representation of the NSWPF officers named in the submissions of the NSWPF and Mr Willing set out above, the Inquiry further requested that the NSWPF provide the name and contact details for each of the persons falling within this category by 5:00pm on 23 August 2023.<sup>1254</sup>
- 9.137. On 25 August 2023, the NSWPF advised that nine individuals (in addition to Detective Sergeant Morgan) were involved in the investigation in relation to Strike Force Neiwand.<sup>1255</sup> Four of these nine officers had previously been contacted by or summoned to appear before the Inquiry.<sup>1256</sup>
- 9.138. On 28 August, 1 September, and 6 September 2023, having obtained contact details for these officers,<sup>1257</sup> the Inquiry wrote to the remaining five officers in the same terms as outlined above.<sup>1258</sup>
- 9.139. By the time Counsel Assisting’s supplementary submissions were served on 16 October 2023, the Inquiry had received a response from two of the five officers contacted. On 4 September 2023, Jon Oldfield advised the Inquiry that he would not be filing written submissions.<sup>1259</sup> On 11 September 2023, Bianca Comina advised that she did not wish to put on a statement or submissions as she was “not part of the leadership group within [Strike Force] Neiwand” and hence “would not be able to shed any light on the decisions made and the course of action taken”.<sup>1260</sup>
- 9.140. No response was received from the other three officers. On 15 and 18 September 2023, the Inquiry wrote to those officers, noting that the date for their statements had now passed and advising of its understanding that they did not intend to provide a statement.<sup>1261</sup>

<sup>1254</sup> Exhibit 6, Tab 428, Letter from Enzo Camporeale to Katherine Garaty, 21 August 2023 (SCOI.85246).

<sup>1255</sup> See Exhibit 6, Tab 438, Letter from Katherine Garaty to Enzo Camporeale, 25 August 2023, 2–3 (SCOI.85255). The nine individuals referred to were: Christopher Olen; Stewart Leggat; Penelope Brown; Michael Chebl; Tamer Kilani; Katherine Tierney; Jon Oldfield; Craig Crouch; and Bianca Comina.

<sup>1256</sup> Namely, Christopher Olen, Stewart Leggat, Penelope Brown and Michael Chebl.

<sup>1257</sup> Exhibit 6, Tab 441, Letter from Enzo Camporeale to Katherine Garaty, enclosing Summons NSWPF174, 28 August 2023 (SCOI.85269); Exhibit 6, Tab 447, Letter from Katherine Garaty to Enzo Camporeale, 1 September 2023 (SCOI.85692); Exhibit 6, Tab 453, Letter from Enzo Camporeale to Katherine Garaty, 6 September 2023 (SCOI.85675); Exhibit 6, Tab 454, Letter from Katherine Garaty to Enzo Camporeale, 6 September 2023 (SCOI.85672).

<sup>1258</sup> Exhibit 6, Tab 484A, Letter from Enzo Camporeale to Tamer Kilani, 28 August 2023 (SCOI.85476); Exhibit 6, Tab 485A, Letter from Enzo Camporeale to Jon Oldfield, 28 August 2023 (SCOI.85482); Exhibit 6, Tab 486A, Letter from Enzo Camporeale to Katherine Tierney, 1 September 2023 (SCOI.85489); Exhibit 6, Tab 487A, Letter from Enzo Camporeale to Craig Crouch, 1 September 2023 (SCOI.85664); Exhibit 6, Tab 488A, Letter from Enzo Camporeale to Bianca Comina, 6 September 2023 (SCOI.85485).

<sup>1259</sup> Exhibit 6, Tab 485B, Email correspondence between Enzo Camporeale and Jon Oldfield, 4 September 2023 (SCOI.85491).

<sup>1260</sup> Exhibit 6, Tab 488B, Email from Bianca Comina to Enzo Camporeale, 11 September 2023 (SCOI.85492).

<sup>1261</sup> Exhibit 6, Tab 484B, Letter to Tamer Kilani, 15 September 2023 (SCOI.85691); Exhibit 6, Tab 486B, Letter to Katherine Tierney, 18 September 2023 (SCOI.85708); Exhibit 6, Tab 487B, Letter to Craig Crouch, 18 September 2023 (SCOI.85716).

## Strike Force Macnamir and those assisting the State Coroner

- 9.141. In the June CAS, Counsel Assisting submitted that for the period between February 2013 and November 2017, the “unchanging and inflexible view held, and propounded, by [Strike Force] Macnamir was that Scott Johnson’s death was a suicide”.<sup>1262</sup>
- 9.142. In response, the NSWPF contended, in relation to the conduct of Strike Force Macnamir between April 2015 and November 2017, that a finding of “partiality in the context of a coronial investigation under the purview of the State Coroner” was “grave” and could not be made without calling the “relevant witnesses”, including Detective Sergeant Brown and Officer A and potentially also “those assisting the State Coroner”.<sup>1263</sup>
- 9.143. On 22 August 2023, the Inquiry asked the NSWPF to clarify, by 5:00pm on 23 August 2023, whom the phrase “those assisting the State Coroner” was intended to capture.<sup>1264</sup>
- 9.144. On 23 August 2023, the NSWPF wrote to the Inquiry and outlined:<sup>1265</sup>
- a. The period of time of Strike Force Macnamir’s operation from February 2013 to 30 November 2017 included a period (from 13 April 2015 onwards) during which “the work of SF Macnamir fell under the auspices of the State Coroner” and was “subject to directions given to investigating officers by the lawyers assisting the State Coroner”; and
  - b. It was “conceivable” that, depending on the evidence given to the Inquiry by Detective Sergeant Brown and Officer A about the conduct of Strike Force Macnamir between April 2015 and November 2017, it might be necessary to undergo “further examination of the instructions and directions provided to [Detective Sergeant] Brown and [Officer A]” by the legal advisors assisting the State Coroner.
- 9.145. As a result of this correspondence, a summons to attend to give evidence was issued to Officer A on 25 August 2023.<sup>1266</sup>

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<sup>1262</sup> Submissions of Counsel Assisting, 7 June 2023, [502] (SCOI.84380).

<sup>1263</sup> Submissions of NSWPF, 28 June 2023, [199(c)] (SCOI.84211).

<sup>1264</sup> Exhibit 6, Tab 432, Letter from Enzo Camporeale to Katherine Garaty, 22 August 2023 (SCOI.85248).

<sup>1265</sup> Exhibit 6, Tab 433, Letter from Katherine Garaty to Enzo Camporeale, 23 August 2023 (SCOI.85254).

<sup>1266</sup> Exhibit 6, Tab 472B, Letter from Enzo Camporeale to Officer A enclosing summons to attend, 25 August 2023 (SCOI.85569).



- 9.146. On 25 August 2023, the Inquiry wrote to the NSWPF to clarify that Strike Force Macnamir did not “fall under the auspices of the Coroner” from 13 April 2015 onwards. After the State Coroner ordered that a fresh inquest be held, police officers were indeed allocated to assist him with the coronial investigation; and the officers assigned were those familiar with the Scott Johnson case. However, that coronial investigation took place concurrently with police investigations which were not subject to the Coroner’s directions.<sup>1267</sup>
- 9.147. Further, the Inquiry’s letter clarified that during the third inquest, the NSWPF was granted leave under s. 57 of the *Coroners Act 2009* to be represented as a party with sufficient interest in the inquest. In that capacity, the NSWPF received input from police officers as to factual matters for the purpose of providing instructions to the NSWPF’s representatives. The Inquiry clarified that this was “separate to the role of the police officers responsible for assisting the State Coroner in the coronial investigation”. Thus the reference in Counsel Assisting’s submissions<sup>1268</sup> to the “unchanging and flexible view” held by Strike Force Macnamir was, for the period from 13 April 2015 onwards, to be read as the view of those officers involved in providing input into instructions on behalf of the NSWPF as a sufficient interest party in the inquest.<sup>1269</sup>

### “Others” in State Crime Command

- 9.148. The NSWPF submitted that there was “no evidence” to support Counsel Assisting’s submission that “perhaps others in State Crime Command” personally supported what Ms Young had said in her interview to *Lateline* on 13 April 2015 (dealt with in **Chapter 11**).<sup>1270</sup> The NSWPF characterised this submission as a “grave allegation” without supporting documentary records, noting that the “others” had neither been identified nor called to give evidence.<sup>1271</sup> On 10 August 2023, the Inquiry requested that the NSWPF identify any of these individuals from whom a statement ought to be provided by 1 September 2023.<sup>1272</sup>
- 9.149. On 21 August 2023, the Inquiry further requested that the NSWPF provide the name and contact details for each of the persons falling within this category by 5:00pm on 23 August 2023.<sup>1273</sup>
- 9.150. On 25 August 2023, the NSWPF wrote to the Inquiry outlining:<sup>1274</sup>
- a. That Counsel Assisting’s submissions had not identified any “others” in State Crime Command who personally supported what Ms Young did; and

<sup>1267</sup> Exhibit 6, Tab 436, Letter from Enzo Camporeale to Katherine Garaty, 25 August 2023 (SCOI.85252).

<sup>1268</sup> Submissions of Counsel Assisting, 7 June 2023, [502] (SCOI.84380).

<sup>1269</sup> Exhibit 6, Tab 436, Letter from Enzo Camporeale to Katherine Garaty, 25 August 2023 (SCOI.85252).

<sup>1270</sup> Submissions of Counsel Assisting, 7 June 2023, [503] (SCOI.84380); Submissions of NSWPF, 28 June 2023, [207], [234] (SCOI.84211).

<sup>1271</sup> Submissions of NSWPF, 28 June 2023, [207], [234] (SCOI.84211).

<sup>1272</sup> Exhibit 6, Tab 424, Letter from Enzo Camporeale to Katherine Garaty, 10 August 2023 (SCOI.85244).

<sup>1273</sup> Exhibit 6, Tab 428, Letter from Enzo Camporeale to Katherine Garaty, 21 August 2023 (SCOI.85246).

<sup>1274</sup> Exhibit 6, Tab 438, Letter from Katherine Garaty to Enzo Camporeale, 25 August 2023 (SCOI.85255).

- b. That the NSWPF were not aware of any such persons.
- 9.151. On 28 August 2023, the Inquiry summoned the NSWPF for a list of all officers in the State Crime Command as at 13 April 2015.<sup>1275</sup>
- 9.152. On 1 September 2023, the NSWPF wrote to the Inquiry advising:<sup>1276</sup>

*In response to Category 1 of the Summons, which requests a list of the full names of all officers in the State Crime Command of the NSW Police Force as at 13 April 2015, we have caused for enquiries to be made of the Human Resources Manager of the State Crime Command and have been informed that as at that date approximately 1,000 personnel were attached to the State Crime Command at that time.*

*Of those 1,000 personnel, we are instructed the vast majority of the State Crime Command staff were not involved in Strike Force Macnamir. Further, a number of State Crime Command employees hold covert roles or have their identities otherwise suppressed. In standard court proceedings, the Commissioner would usually make a claim of public interest immunity over their identities.*

*We therefore respectfully request that Inquiry narrow the scope of Category 1 of the Summons to a particular strike force, team and/or squad within the State Crime Command as at 13 April 2015.*

## Strike Force Welsford

- 9.153. The NSWPF noted that no documentary records were tendered or oral evidence called as to the “nature of the evidence obtained in the context of the Strike Force Welsford investigation in 2019”, which was a reinvestigation into the death of Scott Johnson, or as to the circumstances leading to the charging and conviction of Scott White in 2023 for manslaughter.<sup>1277</sup>
- 9.154. As was ultimately clarified by way of correspondence between the Inquiry and the NSWPF:<sup>1278</sup>
- a. The Inquiry did not understand the NSWPF’s submission to contend that procedural fairness needed to be afforded to individuals working on Strike Force Welsford; and
  - b. Counsel Assisting did not make any criticism of Strike Force Welsford or its officers; nor could they in circumstances where the diligent work of those officers led to the apprehension of Mr White.<sup>1279</sup>

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<sup>1275</sup> Exhibit 6, Tab 441, Letter from Enzo Camporeale to Katherine Garaty, 28 August 2023 (SCOI.85269).

<sup>1276</sup> Exhibit 6, Tab 447, Letter from Katherine Garaty to Enzo Camporeale, 1 September 2023 (SCOI.85692).

<sup>1277</sup> Submissions of the NSWPF, 28 June 2023, [77], [103] (SCOI.84211).

<sup>1278</sup> Exhibit 6, Tab 438, Letter from Katherine Garaty to Enzo Camporeale, 25 August 2023 (SCOI.85255); Exhibit 6, Tab 441, Letter from Enzo Camporeale to Katherine Garaty, 28 August 2023 (SCOI.85269).

<sup>1279</sup> Exhibit 6, Tab 441, Letter from Enzo Camporeale to Katherine Garaty, 28 August 2023 (SCOI.85269).

## “Others” who shared the views of Ms Young and Detective Sergeant Brown

9.155. The NSWPF submitted that any findings as to the approach of Strike Force Macnamir to the reinvestigation of Scott Johnson’s death “would constitute a serious denial of procedural fairness” if Ms Young and Detective Sergeant Brown were not called.<sup>1280</sup> The NSWPF also submitted that, if the Inquiry made findings without calling or otherwise giving an opportunity to be heard to “‘others’ alleged to have held the same views”, this would also constitute a breach of procedural fairness.<sup>1281</sup> The “others” contemplated by the NSWPF appeared to include “those assisting the State Coroner” during the period from April 2015 to November 2017.<sup>1282</sup> On 25 August 2023, the NSWPF advised the Inquiry that:<sup>1283</sup>

*In our respectful submission, Counsel Assisting has not explored the views held by DCI Young and DS Brown with them. Nor has Counsel Assisting identified the other persons alleged to hold those views. It is not possible to sensibly identify other persons who held the views of DCI Young and DS Brown without first taking evidence of DCI Young and DS Brown as to what their views were. It might then be possible to explore whether officers held those views with the relevant officers.*

9.156. On 28 August 2023, the Inquiry wrote to the NSWPF, stating that Ms Young and Detective Sergeant Brown would each give oral evidence in the September/October hearings.<sup>1284</sup> The Inquiry did not receive any further response from the NSWPF on this point.

## Summary of Inquiry’s contact with persons identified in submissions

9.157. The Inquiry wrote to 40 individuals identified in the June NSWPF Submissions and June Willing Submissions, including all nine of those from whom the Inquiry had requested the NSWPF to provide statements by the 10 August letter. Of those 40 individuals, 37 were present or former police officers or staff of the NSWPF.

9.158. Of the 40 individuals contacted by the Inquiry:

- a. 17 did not respond;
- b. Nine responded to say that they could not, or did not wish to, make a statement or submissions; and
- c. 14 provided statements.

9.159. In addition, the Inquiry also received two additional statements from Superintendent Hurst and Sergeant Steer in relation to the BCU issue.

<sup>1280</sup> Submissions of NSWPF, 28 June 2023, [198]–[201] (SCOI.84211).

<sup>1281</sup> Submissions of NSWPF, 28 June 2023, [201] (SCOI.84211).

<sup>1282</sup> Submissions of NSWPF, 28 June 2023, [199(c)] (SCOI.84211).

<sup>1283</sup> Exhibit 6, Tab 438, Letter from Katherine Garaty to Enzo Camporeale, 25 August 2023 (SCOI.85255).

<sup>1284</sup> Exhibit 6, Tab 441, Letter from Enzo Camporeale to Katherine Garaty, 28 August 2023 (SCOI.85269).

- 9.160. All of those statements were tendered and received in evidence.
- 9.161. Finally, there were four groups whose members (although not identified) the NSWPF contended had not been called to give evidence—namely, officers who worked on Strike Force Welsford or otherwise were able to speak to the ultimate charging and conviction of Mr White;<sup>1285</sup> “those assisting the State Coroner” at the third inquest in relation to the death of Scott Johnson;<sup>1286</sup> “others” who shared the views of Ms Young and Detective Sergeant Brown;<sup>1287</sup> and “others” in State Crime Command.<sup>1288</sup> I formed the view that it was not necessary to write to individuals in these four groups, on the basis that obtaining statements from all such persons might lead to the Inquiry becoming “so protracted as to render it practically futile”.<sup>1289</sup>

### The position reached for the September/October 2023 hearings

- 9.162. As a result of the above steps, the Inquiry reached the following position during the September/October 2023 hearings.
- 9.163. All of the individuals in respect of whom the NSWPF or Mr Willing had made submissions about procedural fairness, with the exception of Mr Chebl, provided written statements and/or were called to give oral evidence.
- 9.164. All of the individuals, in respect of whom it was asserted that certain findings could not be made without their giving evidence, either gave evidence by written statements or in oral evidence or both; or, having been offered the opportunity to make a submission or statement, declined to do so. The exceptions in that regard were Mr Bowditch and Mr Chebl, each of whom informed the Inquiry that they were unable to provide a written statement or give oral evidence on grounds which were the subject of confidential documentary exhibits.

### September/October 2023 hearings

- 9.165. In the September/October 2023 hearings, the following witnesses gave oral evidence:
- a. Detective Acting Sergeant Bignell, Senior Investigator in Strike Force Parrabell;
  - b. Detective Sergeant Taylor, former member of the UHT;
  - c. Mr Leggat, former Investigation Coordinator of Strike Force Neiwand from March 2017 onwards;

<sup>1285</sup> Submissions of NSWPF, 28 June 2023, [103] (SCOI.84211).

<sup>1286</sup> Submissions of NSWPF, 28 June 2023, [199(c)] (SCOI.84211).

<sup>1287</sup> Submissions of NSWPF, 28 June 2023, [201] (SCOI.84211).

<sup>1288</sup> Submissions of NSWPF, 28 June 2023, [207] (SCOI.84211).

<sup>1289</sup> Dr Stephen Donaghue KC, *Royal Commissions and Permanent Commissions of Inquiry* (Butterworths, 2001) 190, quoting *National Companies and Securities Commission v News Corporation Ltd* (1984) 156 CLR 296 at 313–314 (Gibbs CJ).

- d. Mr Lehmann, former Investigation Coordinator for the UHT and original Investigation Supervisor of Strike Force Neiwand;
  - e. Ms Alberici, journalist and former host of the ABC *Lateline* program;
  - f. Ms Wells, former Media Supervisor at NSWPF State Crime Command;
  - g. Detective Sergeant Brown, OIC of Strike Force Macnamir and original OIC of Strike Force Neiwand;
  - h. Ms Young, former Investigation Supervisor of Strike Force Macnamir; and
  - i. Mr Willing, former Deputy Commissioner and Homicide Commander.
- 9.166. The NSWPF represented Detective Acting Sergeant Bignell, Detective Sergeant Taylor and Ms Wells before the Inquiry.
- 9.167. Each of Mr Leggat, Mr Lehmann, Ms Young, Detective Sergeant Brown, Ms Alberici and Detective Senior Constable Rullo was granted authorisation to appear and be represented separately as interested parties in Public Hearing 2.
- 9.168. Each witness was questioned by Senior Counsel Assisting and by Senior Counsel for the NSWPF (with the exception of Detective Sergeant Taylor, for whom Senior Counsel for the NSWPF had no questions). In addition:
- a. Detective Sergeant Taylor was also questioned by counsel for Mr Lehmann;
  - b. Mr Lehmann was also questioned by his own counsel;
  - c. Ms Wells was also questioned by Senior Counsel for Ms Young;
  - d. Ms Alberici was also questioned by counsel for Mr Lehmann on 28 September 2023, and by Senior Counsel for Mr Willing and her own solicitor via audio-visual link on 3 October 2023;
  - e. Detective Sergeant Brown was also questioned by Senior Counsel for Mr Willing and her own counsel;
  - f. Ms Young was also questioned by Senior Counsel for Mr Willing and counsel for Mr Lehmann; and
  - g. Mr Willing was questioned by Senior Counsel for Ms Young and his own Senior Counsel.
- 9.169. On 29 September 2023, Mr Willing made an application to be excused from giving further evidence. Counsel for Mr Willing made oral submissions in support of that application on 3 October 2023. Senior Counsel for Ms Young and counsel for Detective Sergeant Brown were also heard on the application. For reasons I gave in my judgment of 4 October 2023, which was the subject of a non-publication direction, I dismissed that application.

- 9.170. Of those summoned to give evidence in the September/October 2023 hearings, Superintendent Middleton, Detective Inspector Grace, Officer A, Detective Senior Constable Rullo, Detective Sergeant Morgan, and Mr Chebl were all excused from giving evidence. With the exception of Detective Sergeant Morgan and Mr Chebl, each provided a statement.
- 9.171. On 16 October 2023, Counsel Assisting served supplementary written submissions in relation to Public Hearing 2 on all interested parties (**October CAS**). On 23 and 24 October 2023, written submissions were provided on behalf of the NSWPF (**NSWPF October Submissions**), Mr Willing (**Willing October Submissions**), Detective Sergeant Brown (**Brown Submissions**), Ms Young (**Young Submissions**), Mr Leggat (**Leggat Submissions**) and Mr Lehmann (**Lehmann Submissions**).



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# **Chapter 10: NSWPF Responses to Hate/Bias Crimes**

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## NSWPF RESPONSES TO HATE/BIAS CRIMES

- 10.1. This Chapter considers the approaches adopted by the NSWPF towards hate and/or bias crimes since the mid-1990s, which have fluctuated considerably over that time.
- 10.2. This Chapter reviews early attempts within the NSWPF to establish a hate crimes capability. It then considers the establishment, de-establishment, and re-establishment of the position of the Hate Crimes Coordinator between 2007 and 2015; the establishment of the BCU in 2015; the resources allocated to the BCU over time; the effective near-abolition of the BCU between 2017 and 2020; the steps taken by the NSWPF to develop a bias crime tool; and the current structure of the BCU.

### Early attempts to establish a hate crimes capability

#### 1995–2000: Hate Crimes Data Collection Project

- 10.3. As the NSWPF has acknowledged,<sup>1290</sup> early initiatives within the NSWPF to identify and record instances of bias crime in the 1990s progressed slowly and unsatisfactorily.
- 10.4. In October 1995, the NSW Minister for Police, Paul Whelan, announced the establishment of the Hate Crimes Data Collection Project, which was to research methods of collecting data in relation to hate crimes. A committee, including representatives of the NSWPF, the Ethnic Affairs Commission, the Privacy Commission, and the Anti-Discrimination Board, was formed to consider strategies and to formulate an action plan.<sup>1291</sup>
- 10.5. In 1996, alterations were made to COPS to permit (although not require) the recording of “prejudice-related” crimes.<sup>1292</sup>
- 10.6. The Hate Crimes Data Collection Project, which by that stage was known as the “Prejudice Related Crime Data Collection Project” (**the Project**), aimed to introduce a system under which officers would be able to record specific data on the COPS system in relation to prejudice-related incidents.<sup>1293</sup>

<sup>1290</sup> Submissions of NSWPF, 28 June 2023, [53] (SCOI.84211).

<sup>1291</sup> Exhibit 6, Tab 229, Attachment B to Issue Paper by Chitrita Mukerjee, ‘Six monthly report on the prejudice related crime data collection system on COPS’, 22 December 2000, 4 (SCOI.76960.00002).

<sup>1292</sup> Exhibit 6, Tab 229, Attachment B to Issue Paper by Chitrita Mukerjee, ‘Six monthly report on the prejudice related crime data collection system on COPS’, 22 December 2000, 4 (SCOI.76960.00002).

<sup>1293</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [18]–[19] (SCOI.76960).



- 10.7. In 1998, the changes to the COPS system were modified and formalised following a pilot conducted at Newtown LAC.<sup>1294</sup> In July of the same year, an evaluation report was prepared by Newtown LAC and submitted to the Commissioner of Police, the Minister for Police, and the Premier of NSW. That report recommended that the changes to COPS be implemented state-wide via a public launch of the Project.<sup>1295</sup>
- 10.8. In October 1999, Peter Ryan (the then Commissioner of Police) and Stepan Kerkyasharian (the then Chair of the Ethnic Affairs Commission/Community Relations Commission) jointly launched the new computer “screens” that were specifically designed to collect data on prejudice-related crimes. At this time, the NSWPF made a commitment to report on prejudice-related data every six months.<sup>1296</sup>
- 10.9. The new screens permitted officers to select “Possible Prejudice Related” as an “Associated Factor” when entering the details of a specific incident into the COPS system. If an officer did so, a second screen would appear which asked: “Do you consider the Offender’s actions were prejudice related?”<sup>1297</sup>
- 10.10. Under the first question on the second screen, there was one space for the victim’s response and a second space for the officer’s response.<sup>1298</sup> Presumably, the officer completing this screen would have been able to enter either “Y” or “N” in each of these spaces. It is not clear from the printed version of the screens produced to the Inquiry whether merely “Y” or “N” was able to be typed into these spaces, or whether it was possible for an officer to enter a more comprehensive response.
- 10.11. The second question on the second screen asked, “What type of prejudice was involved?”. The officer was able to select from the following five categories: “Racial/Ethnicity”, “Religious”, “Sexual Preference”, “Political”, “Other”. On the screen, there is additional space for “Victim Comments” and “Officer Comments”.<sup>1299</sup>

<sup>1294</sup> Exhibit 6, Tab 229, Attachment B to Issue Paper by Chitrita Mukerjee, ‘Six monthly report on the prejudice related crime data collection system on COPS’, 22 December 2000, 1, 4 (SCOI.76960.00002). See also Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [17] (SCOI. 76960).

<sup>1295</sup> Exhibit 6, Tab 229, Attachment B to Issue Paper by Chitrita Mukerjee, ‘Six monthly report on the prejudice related crime data collection system on COPS’, 22 December 2000, 4 (SCOI.76960.00002).

<sup>1296</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [28] (SCOI. 76960).

<sup>1297</sup> Exhibit 6, Tab 229, Attachment A to Issue Paper by Chitrita Mukerjee, ‘Six monthly report on the prejudice related crime data collection system on COPS’, 22 December 2000, 3 (SCOI.76960.00002).

<sup>1298</sup> Exhibit 6, Tab 229, Attachment A to Issue Paper by Chitrita Mukerjee, ‘Six monthly report on the prejudice related crime data collection system on COPS’, 22 December 2000, 3 (SCOI.76960.00002).

<sup>1299</sup> Exhibit 6, Tab 229, Attachment A to Issue Paper by Chitrita Mukerjee, ‘Six monthly report on the prejudice related crime data collection system on COPS’, 22 December 2000, 3 (SCOI.76960.00002).

10.12. On 22 December 2000, a briefing report on the Project indicated that the first report on the Project, originally due in July 2000, had been delayed.<sup>1300</sup> It also indicated that in 1995, the NSWPF had contracted the services of an expert to develop a training package, but that by 2000, the draft training package had not been finalised and the allocated funding had been spent.<sup>1301</sup>

### 2001: Proposal for the establishment of a Hate Crimes Unit

10.13. In October 2001, Dr Eric Heller-Wagner, who lectured at the NSW Police Academy, prepared a memorandum articulating a rationale for the establishment of a hate crimes unit within the NSWPF, which he sent to the Organisational Policy and Development Command (**OP&D**) for comment.<sup>1302</sup>

10.14. The proposal was not adopted.<sup>1303</sup>

10.15. As Acting Team Leader of the Cultural Diversity Team within OP&D at that time, Ms Sharma authored an Issue Paper in response to Dr Heller-Wagner’s proposal.<sup>1304</sup> Ms Sharma considered that there was insufficient evidence to determine if a dedicated hate crimes unit would be beneficial to the NSWPF or to the community.<sup>1305</sup> In that regard, she noted that:

- a. The data retrieval from COPS for prejudice-related “Associated Factors” under the new system was “still very clunky”;
- b. Police were still incorrectly flagging bias crime factors;
- c. The training in relation to “Dealing with Racist Violence” had not been finalised; and
- d. A rhythm of six-monthly reports on the prejudice-related crime data had not been established.<sup>1306</sup>

10.16. In short, Ms Sharma considered that the NSWPF needed to prioritise improvement in data recording and analysis, in conjunction with a comprehensive training program for NSWPF officers, and that a dedicated hate crimes unit was an option more appropriately considered in the future.<sup>1307</sup>

<sup>1300</sup> Exhibit 6, Tab 229, Issue Paper by Chitrita Mukerjee, ‘Six monthly report on the prejudice related crime data collection system on COPS’, 22 December 2000, 1 (SCOI.76960.00002).

<sup>1301</sup> Exhibit 6, Tab 229, Issue Paper by Chitrita Mukerjee, ‘Six monthly report on the prejudice related crime data collection system on COPS’, 22 December 2000, 2 (SCOI.76960.00002).

<sup>1302</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [30] (SCOI.76960).

<sup>1303</sup> Transcript of the Inquiry, 13 December 2022, T1178.14–16 (TRA.00016.00001).

<sup>1304</sup> Exhibit 6, Tab 187, Issue Report by Shobha Sharma, ‘Establishment of a Hate Crime unit within the NSWPS’, 2001 (SCOI.76960.00001).

<sup>1305</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [32] (SCOI.76960).

<sup>1306</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [32] (SCOI.76960).

<sup>1307</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [33] (SCOI.76960); Exhibit 6, Tab 187, Issue Report by Shobha Sharma, ‘Establishment of a Hate Crime unit within the NSWPS’, 2001, 2–3 (SCOI.76960.00001).

## 2006: Another proposal for a hate crimes capability

- 10.17. In 2006, in the aftermath of the Cronulla riots in Sydney, Sergeant Steer submitted a report through the chain of command in which he expressed his concern that the NSWPF had limited capability to identify and effectively respond to hate crimes, and proposed the creation of such a capability, including the creation of the role of Hate Crimes Coordinator.<sup>1308</sup>
- 10.18. Sergeant Steer recommended a two-tier model (based on the UK model which he regarded as international best practice). The model involved having bias crime/hate crime expertise within an organisation, which could then be used to provide oversight in relation to hate crimes reported by officers with less knowledge and experience.<sup>1309</sup>
- 10.19. Sergeant Steer's experience in bias crime includes the following:
- a. In 2001, he completed the Hate & Bias Crimes Training Program run by the Federal Law Enforcement Training Centre (USA) in conjunction with Auburn University Montgomery (USA) and the Southern Poverty Law Centre (USA);<sup>1310</sup>
  - b. In 2005, he completed the Advanced Hate Crimes course run by the Federal Law Enforcement Training Centre in conjunction with the Centre for Hate and Extremism, California State University San Bernardino, and the Southern Poverty Law Centre;<sup>1311</sup>
  - c. In 2012, he joined the Skinhead Intelligence Network, which is a global law enforcement network that tracks and monitors white supremacist groups;<sup>1312</sup>
  - d. In 2015, he spent a week with the New York Police Department Hate Crimes Task Force, the Suffolk County Police Department (New York) Hate Crimes Unit and the Nassau County Police Department (New York) Community Affairs Unit (Hate Crimes);<sup>1313</sup>
  - e. He has presented papers at several conferences in relation to the policing of bias motivated crimes; and<sup>1314</sup>

<sup>1308</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [7] (SCOI.82080); Transcript of the Inquiry, 6 December 2022, T616.45-617.13 (TRA.00011.00001); Transcript of the Inquiry, 12 December 2022, T1072.16 (TRA.00015.00001).

<sup>1309</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [9] (SCOI.82080); Transcript of the Inquiry, 12 December 2022, T1074.14-24 (TRA.00015.00001).

<sup>1310</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [3] (SCOI.82080).

<sup>1311</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [3] (SCOI.82080).

<sup>1312</sup> Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 4 (SCOI.77469).

<sup>1313</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [5] (SCOI.82080).

<sup>1314</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [4] (SCOI.82080); Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 4 (SCOI.77469).

- f. Overall, Sergeant Steer described himself as having “established a strong network of subject matter experts with regards to hate crimes and right-wing extremism in the USA, Canada, New Zealand, and the UK.”<sup>1315</sup> Through this network, he said he was able to develop a robust approach to hate crime investigations and a plan for the development of an effective hate crime capability for the NSWPF.<sup>1316</sup>

## 2007: Position of Hate Crimes Coordinator established

- 10.20. In 2007, in response to Sergeant Steer’s report, the role of Hate Crimes Coordinator was established on a trial basis. Sergeant Steer was assigned to the position.<sup>1317</sup>
- 10.21. Initially, the position was attached to the Community Contact Unit within the Counter Terrorism and Special Tactics Command of the NSWPF.<sup>1318</sup>
- 10.22. The position started as a stand-alone, trial position with no resources allocated to it. Assistant Commissioner Crandell gave evidence that when it was established, the position was only a temporary position (as indicated by the description of it as an “overstrength position”).<sup>1319</sup>
- 10.23. Sergeant Steer gave evidence that his first 12 months in the role were spent assessing the existing capabilities of the NSWPF, and establishing processes that would be used in the Hate Crimes Unit (which at this point, was comprised of himself alone).<sup>1320</sup>
- 10.24. Sergeant Steer said that another aspect of the Hate Crimes Coordinator role was tracking and monitoring hate crimes, a task which had previously been undertaken by Ms Thompson. By 2002, Ms Thompson had left the NSWPF, and Sergeant Steer thought it unlikely that prejudice-related data had been systematically tracked and reviewed between 2002 and 2007 as Ms Thompson had previously done.<sup>1321</sup>
- 10.25. In 2008, the position of Hate Crimes Coordinator was moved to the Operational Programs Command (**Operational Programs**). It had been decided that the position did not “fit” within the Counter Terrorism and Special Tactics Command, because that Command focused on issues related to race, religion and counter terrorism.<sup>1322</sup>

<sup>1315</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [6] (SCOI.82080).

<sup>1316</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [6] (SCOI.82080).

<sup>1317</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [7], [9] (SCOI.82080).

<sup>1318</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [7] (SCOI.82080).

<sup>1319</sup> Transcript of the Inquiry, 6 December 2022, T617.21–24 (TRA.00011.00001); Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469).

<sup>1320</sup> Transcript of the Inquiry, 12 December 2022, T1073.13–19 (TRA.00015.00001); Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [9] (SCOI.82080).

<sup>1321</sup> Transcript of the Inquiry, 12 December 2022, T1074.36–T1075.4–7 (TRA.00015.00001).

<sup>1322</sup> Transcript of the Inquiry, 12 December 2022, T1073.21–26 (TRA.00015.00001).

- 10.26. Operational Programs was described by Sergeant Steer as the “diversity team”, which included “cultural diversity, vulnerable communities, [and] the LGBTI community”.<sup>1323</sup> Sergeant Steer considered that Operational Programs was “a better fit – not the best fit but it was a better fit than being at Counter Terrorism”.<sup>1324</sup>
- 10.27. Within Operational Programs, Sergeant Steer reported to the Manager, Cultural Diversity, Policy and Programs.<sup>1325</sup>
- 10.28. Sergeant Steer gave evidence that there was no interaction with the Homicide Squad or UHT during the 2007–2009 period.<sup>1326</sup>

## 2009: De-establishment of the role

- 10.29. In 2009, after two years as a standalone position (comprising one officer, with no resources), the “overstrength” position of Hate Crimes Coordinator was “de-established”.<sup>1327</sup> The position simply ceased to exist for the next three years.<sup>1328</sup>
- 10.30. Over those three years, from 2009 to 2012, Sergeant Steer was attached to Blacktown LAC as a general duties supervisor.<sup>1329</sup>

## 2012–2017: Re-establishment of the role

- 10.31. In 2012, Ms Sharma returned to the NSWPF (after having left in 2006), in the role of Manager, Policy and Programs Team within Operational Programs.<sup>1330</sup>
- 10.32. In the same year, then Deputy Commissioner Naguib (Nick) Kaldas contacted Sergeant Steer and asked him if he was willing to recommence in the position of Hate Crimes Coordinator.<sup>1331</sup> Sergeant Steer was then recruited by Ms Sharma for the position, which was to be located within her team at Operational Programs.<sup>1332</sup>
- 10.33. From 2012, the position became known as “Bias Crimes Coordinator”,<sup>1333</sup> or “Team Leader, Bias Motivated Crimes”,<sup>1334</sup> rather than “Hate Crimes Coordinator”.

<sup>1323</sup> Transcript of the Inquiry, 12 December 2022, T1077.3–7 (TRA.00015.00001).

<sup>1324</sup> Transcript of the Inquiry, 12 December 2022, T1073.29–30 (TRA.00015.00001).

<sup>1325</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [13] (SCOI.82080).

<sup>1326</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [13] (SCOI.82080).

<sup>1327</sup> Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469).

<sup>1328</sup> Transcript of the Inquiry, 6 December 2022, T617.21–24 (TRA.00011.00001); Transcript of the Inquiry, 12 December 2022, T1075.11–40 (TRA.00015.00001).

<sup>1329</sup> Transcript of the Inquiry, 12 December 2022, T1075.34–35 (TRA.00015.00001).

<sup>1330</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [5], [34]–[35] (SCOI.76960).

<sup>1331</sup> Transcript of the Inquiry, 12 December 2022, T1075.43–1076.7 (TRA.00015.00001); see also, Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [37] (SCOI.76960).

<sup>1332</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [38] (SCOI.76960).

<sup>1333</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [37] (SCOI.76960).

<sup>1334</sup> Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469).

- 10.34. Sergeant Steer’s understanding was that the terms “hate crime” and “bias crime” were interchangeable, but that by 2012:<sup>1335</sup>

*there were concerns that the term hate crime was potentially confusing as hatred is an extreme emotion and people were confused why they were hate crimes when they didn’t reach that level of emotion ie I don’t hate that group of people. The term bias was determined to be easier to understand as it was a) not an emotion like hatred and b) was more accurate with respect to cognitive processing (bias is a cognitive process not an emotion).*

- 10.35. Sergeant Steer gave evidence that he was aware that more recently the terminology had changed back again to “hate crime”, but he did not know why that was the case.<sup>1336</sup>
- 10.36. Sergeant Kirgiz, who took up the position of Hate Crimes Coordinator in August 2020, gave evidence that the use by the NSWPF of the term “hate crime” rather than “bias crime” was proposed on 18 November 2019 and approved on 16 January 2020.<sup>1337</sup> He said that this was because it was considered that the term “hate crime” would provide greater clarity to frontline officers when considering possible hate/bias motivations, and enhance their ability to correctly flag in the COPS report that the incident might involve hate crime.<sup>1338</sup>
- 10.37. Sergeant Steer said that upon his resuming the role in 2012, its functions and responsibilities were similar to what they had been in 2007–2009, although there was an increased emphasis on education and training, development of resources and the creation of SOPs for bias crimes investigations.<sup>1339</sup>
- 10.38. From 2012, Sergeant Steer was supported by a Senior Policy Officer, Yasmin Hunter, who had dual responsibilities in respect of both “bias crimes” and “vulnerable communities”.<sup>1340</sup> Together, the pair drafted a Bias Crimes Strategic Plan.<sup>1341</sup>
- 10.39. In 2013, a NSWPF Corporate Sponsor for Bias Motivated Crimes was appointed (Superintendent Danny Sullivan).<sup>1342</sup>

<sup>1335</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [22] (SCOI.82080); see also Transcript of the Inquiry, 12 December 2022, T1076.20–27 (TRA.00015.00001).

<sup>1336</sup> Transcript of the Inquiry, 12 December 2022, T1076.29–34 (TRA.00015.00001).

<sup>1337</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [12] (SCOI.82035).

<sup>1338</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [12] (SCOI.82035).

<sup>1339</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [11] (SCOI.82080).

<sup>1340</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [12] (SCOI.82080); Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [38] (SCOI.76960); Transcript of the Inquiry, 12 December 2022, T1077.14–17 (TRA.00015.00001).

<sup>1341</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [38] (SCOI.76960).

<sup>1342</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [43] (SCOI.76960).

- 10.40. From this time, the Bias Crimes Coordinator position reported to the Manager, Cultural Diversity Team, Operational Programs (Ms Sharma), the Corporate Sponsor for Bias Motivated Crimes (Superintendent Sullivan), and the Corporate Sponsor for Cultural Diversity (Deputy Commissioner Kaldas).<sup>1343</sup>

## Training

- 10.41. From 2012 to 2017, hate crime training was offered within both rural and metropolitan commands, through direct presentations within training courses such as those for Youth Liaison Officers, GLLOs, Crime Prevention Officers and Multicultural Liaison Officers.<sup>1344</sup>

## Data Collection

- 10.42. Ms Sharma considered that the re-establishment of the Bias Crimes Coordinator position generated a renewed focus on the importance of ensuring officers entered bias-related data on COPS. Officers were instructed to “flag” incidents when they suspected that an offence was motivated by bias, and then the final determination—as to whether an incident was deemed to be “bias motivated” or “suspected bias motivated”—would be made by the Bias Crimes Coordinator (who was required to review all incidents flagged on COPS and prepare summaries in relation to those incidents).<sup>1345</sup>

## 2013–2015: Development of SOPs

- 10.43. In 2013, Sergeant Steer and Ms Hunter set out to create SOPs for the investigation of bias crimes. The SOPs were trialled for three months across several regional and metropolitan commands.<sup>1346</sup> In 2014, the SOPs were forwarded to the Commissioner of Police’s Executive Team for final approval,<sup>1347</sup> and in 2015, they were endorsed (**the 2015 SOPs**).<sup>1348</sup>

## 2013–2014: Operation Parrabell

- 10.44. In about August 2013, following the series of media articles in 2013 about actual or suspected gay hate homicides referred to in **Chapter 13**, Sergeant Steer initiated Operation Parrabell. Its intended scope, and its actual scope, are summarised in **Chapter 13** of this Report.

<sup>1343</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [14] (SCOI.82080).

<sup>1344</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [26] (SCOI.82080).

<sup>1345</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [39]–[42] (SCOI.76960).

<sup>1346</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [38], [45] (SCOI.76960).

<sup>1347</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [20] (SCOI.82080).

<sup>1348</sup> Exhibit 6, Tab 188, NSW Police Force Bias Crimes Unit, ‘Standard Operating Procedures: Bias Crime Response and Investigation’, September 2015 (SCOI.75057); Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [45] (SCOI.76960).



- 10.45. By October 2014, the scale of the proposed undertaking and the lack of sufficient resources had led to Operation Parrabell being placed on permanent hold.<sup>1349</sup>

### 2014–2015: Resourcing; and establishment of the BCU

- 10.46. Sergeant Steer gave evidence that as the scope of the role of Bias Crimes Coordinator expanded, “it became impossible for one person to undertake the amount of work that was required”.<sup>1350</sup> He said that he had made numerous requests to establish a stand-alone unit with sufficient resources and staff, but this was not forthcoming.<sup>1351</sup>
- 10.47. In 2014, Sergeant Steer made a formal request through Human Resources Command requesting a phased build-up of a Hate Crimes Unit and a capability of a maximum of 12 staff. Sergeant Steer said that this request progressed through the chain of command, but he never received a response.<sup>1352</sup>
- 10.48. In October 2015, the BCU came into existence when two other persons were added to the team: a civilian Intelligence Analyst, Elizabeth Blake,<sup>1353</sup> and a project officer, Senior Constable Nathan Corbett.<sup>1354</sup> The addition of those two staff members, together with Sergeant Steer (and the half-time assistance of the Senior Policy Officer, Ms Hunter), thereby constituted the four-person strong (really 3.5) BCU.<sup>1355</sup>
- 10.49. Counsel Assisting noted that, at the time, there were more than 16,000 police officers in the NSWPF (as there are still in 2023).<sup>1356</sup>
- 10.50. While Sergeant Steer was the Bias Crimes Coordinator, the BCU was always a sub-unit of another larger unit, never “stand-alone”. Nor was it ever separately resourced.<sup>1357</sup>

### 2015–2017: The Bias Crimes Unit and Strike Force Parrabell

- 10.51. Neither the BCU nor Sergeant Steer personally had significant involvement in the work of Strike Force Parrabell. The extent of that involvement is considered in **Chapter 13**.

<sup>1349</sup> Exhibit 6, Tab 51, Email from Jacqueline Braw to Geoffrey Steer re Questions on Notice 6370 – Gay Hate Crimes, 29 October 2014, 2 (SCOI.74080).

<sup>1350</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [16] (SCOI.82080).

<sup>1351</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [16] (SCOI.82080).

<sup>1352</sup> Transcript of the Inquiry, 12 December 2022, T1077.33–41 (TRA.00015.00001).

<sup>1353</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [47] (SCOI. 76960).

<sup>1354</sup> Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [44] (SCOI. 76960); Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [12] (SCOI.82080); Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469).

<sup>1355</sup> Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469). See also Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [16] (SCOI.82080).

<sup>1356</sup> Exhibit 6, Tab 387, NSW Police Force Annual Report 2014–2015, 23 November 2015, 6 (SCOI.83991); Exhibit 6, Tab 388, NSW Police Force Annual Report 2021–2022, 5 December 2022, 6 (SCOI.83990).

<sup>1357</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [16] (SCOI.82080).



## 2017: The Bias Crimes Unit is radically reduced and relocated

- 10.52. In July 2017, less than two years after the BCU had finally been established with the addition of two more personnel, the unit was virtually abolished. As part of a restructure, the BCU was moved, “overnight”, to the newly created FPIU.<sup>1358</sup>
- 10.53. Among the effects were:
- a. Three of the four members of the BCU left and were redeployed, namely the Team Leader (Sergeant Steer), the Intelligence Analyst (Ms Blake) and the Senior Policy Officer (Ms Hunter);
  - b. The unit was left with one member (Senior Constable Corbett); and
  - c. The unit, now aligned with the FPIU, was back under the Counter Terrorism and Special Tactics Command.<sup>1359</sup>
- 10.54. Some months later, in 2017, the BCU (consisting now of one officer) was realigned again. Still within the Counter Terrorism and Special Tactics Command, it was moved to the EIU.<sup>1360</sup>
- 10.55. By November–December 2017, the NSWPF effectively had no BCU, as the three vacated positions had not been filled and the one remaining officer was on extended leave due to injury.<sup>1361</sup>
- 10.56. As at June 2018, there was still effectively only one staff member doing the BCU’s core duties.<sup>1362</sup>
- 10.57. Assistant Commissioner Crandell said that he was not aware of the reasons behind Sergeant Steer’s departure or why the BCU was reduced to one person in 2017.<sup>1363</sup>
- 10.58. Sergeant Steer’s view was that this depletion of the BCU was due to “internal politics”.<sup>1364</sup> He expressed his views in unambiguous terms. He said he was notified of the change in the following way:<sup>1365</sup>

*... I walked in to work one day, was told by my commander to come and see him and he told me that we had just been transferred to counter terrorism. There was no consultation with us. Effective immediately we were attached to the Fixated Persons Investigation Unit.*

*From memory, a couple of days later we had a meeting with the then Acting Commander ... where he basically told us that we were attached to Fixated Persons, we weren’t doing hate crimes anymore, we were to do what we were*

<sup>1358</sup> Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469).

<sup>1359</sup> Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469).

<sup>1360</sup> Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469).

<sup>1361</sup> Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469).

<sup>1362</sup> Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469).

<sup>1363</sup> Transcript of the Inquiry, 6 December 2022, T621.8–24, T622.33–623.46 (TRA.00011.00001).

<sup>1364</sup> Transcript of the Inquiry, 12 December 2022, T1126.14 (TRA.00015.00001).

<sup>1365</sup> Transcript of the Inquiry, 12 December 2022, T1126.13–19 (TRA.00015.00001).

*told and shut up, at which point I politely pointed out to him that I would be transferring out of the unit.*

- 10.59. Sergeant Steer moved to general duties at Hawkesbury LAC. He said that this was his choice:<sup>1366</sup>

*I'd been given certain information from a number of reliable sources both within the NSW Police and the New South Wales Government that I was not popular anymore doing hate crimes and that the intent was to get rid of me. So I didn't see the point in remaining in a unit where my work would be undervalued.*

- 10.60. The likely impact of anticipated changes on the NSWPF's ability to address bias crimes had been foreshadowed by Sergeant Steer, in an email to Dr Dalton, one of the members of the Strike Force Parrabell academic team, on 29 May 2017, as follows:<sup>1367</sup>

*As a result of the restructure the Bias Crimes Unit will effectively cease to exist. It has been merged with the newly created Fixed Person Investigations Unit and will no longer be doing bias crimes. From what we have been told is that the new role will not focus on bias crimes or the protected categories including sexual orientation and gender identity. Bias crimes will be left to the relevant corporate sponsors and the unit will focus on right wing, left wing and anti-government groups. The capability around bias crimes will no longer exist. There will be no training and education capability, no monitoring and quality review capability and no expertise around identification, investigation and response to bias motivated crimes. Additionally there will be no compliance with the current Bias Crimes SOPS as the roles and functions outlined in the SOPS will no longer exist. Whilst some progress was made within the NSWPF around bias motivated crimes, the work was in it's [sic] infancy. There would be a greater awareness of bias motivated crimes but that is about it. The ability of the NSWPF to identify, investigate and respond effectively to bias crimes in my opinion is not there.*

- 10.61. A year later, in an email to Assistant Commissioner Crandell of 9 June 2018, Sergeant Steer put it this way:<sup>1368</sup>

*My experience with hate crimes in the NSWPF fully supports the concept of organisational cognitive dissonance. If the information supplied differs from the core belief then all information, no matter how relevant or accurate will be disregarded to avoid conflict with core belief systems. As the NSWPF clearly has fought every attempt to integrate a hate crimes response into every day policing, I am not surprised by the way it has ended.*

<sup>1366</sup> Transcript of the Inquiry, 12 December 2022, T1126.34–41 (TRA.00015.00001).

<sup>1367</sup> Exhibit 6, Tab 249, Email correspondence between Geoffrey Steer and Derek Dalton, 29 May 2017 (SCOI.79872).

<sup>1368</sup> Exhibit 6, Tab 126, Email from Geoffrey Steer to Anthony Crandell, 9 June 2018, 3 (SCOI.74679).

- 10.62. In his oral evidence, asked what he meant by his reference to “organisational cognitive dissonance” in this email to Assistant Commissioner Crandell, Sergeant Steer said:<sup>1369</sup>

*Basically, what we were doing did not gel with what the NSW Police wanted. ... So from the outset, the unit was not popular because there is a belief that we're a multicultural society and everything works well. The fact that we have a unit that says that people don't get on, that there are issues, was always at odds with that belief system. So there was always tension between what we did, because we were identifying issues that people would prefer not get raised.*

*Through seven years, I probably spent half that time defending everything I did. I sought guidance on multiple occasion from senior officers as to what direction the NSW Police wanted to take. I was told consistently, “You're the expert, you do what you want to do”, but in the same breath I would get attacked. ...*

*It was seven years of trying to convince an organisation that wasn't interested in hate crimes to take it seriously, that there are positive outcomes when you do take hate crime seriously, but - yeah. So that's what I mean, it was basically what we were promoting wasn't what the NSW Police wanted to hear.*

- 10.63. Assistant Commissioner Crandell said that while he was sure it was Sergeant Steer's “perception” that the NSWPF suffered from “organisational cognitive dissonance”, he did not agree that the organisation had “turned its back” on bias crimes.<sup>1370</sup>

## From 2018 to the present

- 10.64. After 2017, the BCU was not re-established, in any substantive or realistic sense, until the appointment of Sergeant Kirgiz to the position of Hate Crimes Coordinator in August 2020.
- 10.65. In January 2018, the vacant Team Leader position in the BCU was laterally filled by Sergeant Ragheb (Ray) Hussein. He was the only staff member in the unit until Senior Constable Corbett returned in February 2018.<sup>1371</sup> However, in April 2018, Sergeant Hussein was required to relieve as Team Leader in the EIU and left the BCU, which thus reverted again to having only one officer.<sup>1372</sup> By mid-2018, Senior Constable Corbett also left the BCU, which again left the unit without any staff until Sergeant Hussein returned in November 2018.<sup>1373</sup>

<sup>1369</sup> Transcript of the Inquiry, 12 December 2022, T1128.28–1129.10 (TRA.00015.00001).

<sup>1370</sup> Transcript of the Inquiry, 6 December 2022, T630.20–631.31 (TRA.00011.00001).

<sup>1371</sup> Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469).

<sup>1372</sup> Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469).

<sup>1373</sup> Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469); Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [9] (SCOI.82035).

- 10.66. Between November 2018 and July 2020, according to Sergeant Kirgiz, three different officers held the position of Hate Crimes Coordinator “at various times”,<sup>1374</sup> i.e., for intermittent rather than continuous periods:<sup>1375</sup>
- a. From November 2018 to December 2019, Sergeant Husseini;
  - b. From 2019 to 2020, Sergeant Mark Dance; and
  - c. From January 2020 to July 2020, Sergeant Simon Henry.
- 10.67. In December 2019, the BCU was amalgamated with the EIU, thereby forming the EHCU.<sup>1376</sup>
- 10.68. The EHCU is one unit of four within the Anti-Terrorism and Security Group (also referred to by Sergeant Kirgiz in his oral evidence as the Anti-Terrorism and Intelligence Group) (**ATIG**).<sup>1377</sup> The other three units are the Terrorism and Security Intelligence Unit, the Security Investigations Unit and the High-Risk Terrorism Offenders Unit.<sup>1378</sup>
- 10.69. The EHCU provides an intelligence function within the NSWPF (as opposed to an investigative function). The Homicide Squad consults with the EHCU where the victimology of a case suggests that the crime may have been motivated by hate, prejudice, and/or bias.<sup>1379</sup> This report includes further discussion of the role and function of the EHCU in **Chapter 8**.
- 10.70. In August 2020, Sergeant Kirgiz was appointed to the position of Hate Crimes Coordinator.<sup>1380</sup>
- 10.71. For the previous 22 years, since 1998, Sergeant Kirgiz had performed duties in dignitary protection.<sup>1381</sup> Sergeant Kirgiz candidly stated that apart from his three-week induction period in the EHCU, he had not previously had any training with respect to hate crime,<sup>1382</sup> although he considered that the two and a half years that he had been in the Hate Crimes Coordinator position by December 2022 to be relevant “training” for the job.<sup>1383</sup> He also did not have “direct” experience in hate

<sup>1374</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [9] (SCOI.82035).

<sup>1375</sup> Transcript of the Inquiry, 13 December 2022, T1253.12 (TRA.00016.00001).

<sup>1376</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [5] (SCOI.82035); see also Exhibit 6, Tab 192, Issue Report by Chief Inspector AF Long, ‘Request to rename the “Engagement & Intervention Unit/Bias Crimes Unit” to “Engagement & Hate Crime Unit”’, 13 December 2019 (SCOI.82046).

<sup>1377</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [10] (SCOI.82035); Transcript of the Inquiry, 13 December 2022, T1257.1–2 (TRA.00016.00001).

<sup>1378</sup> Transcript of the Inquiry, 13 December 2022, T1257.1–11 (TRA.00016.00001).

<sup>1379</sup> Exhibit 51, Tab 1, Statement of Detective Superintendent Doherty, 18 April 2023, [92] (NPL.9000.0006.0001).

<sup>1380</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [6] (SCOI.82035); Transcript of the Inquiry, 13 December 2022, T1254.38 (TRA.00016.00001).

<sup>1381</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [2] (SCOI.82035); Transcript of the Inquiry, 13 December 2022, T1254.12, T1254.20 (TRA.00016.00001).

<sup>1382</sup> Transcript of the Inquiry, 13 December 2022, T1253.31–43 (TRA.00016.00001).

<sup>1383</sup> Transcript of the Inquiry, 13 December 2022, T1253.31–37, 1272.35–45 (TRA.00016.00001).

crimes, but considered his previous experience in intelligence analysis and risk management to be relevant to his position as Hate Crimes Coordinator.<sup>1384</sup>

- 10.72. The primary purpose of Sergeant Kirgiz’s role, as described in the Role Description, is to:<sup>1385</sup>

*... supervise, lead and contribute to the effective building/ maintaining of partnerships with communities who are at risk of radicalisation, or are likely to be impacted by NSW Police Force use of terrorism powers, and communities who may be the victims of terrorism or politically motivated violence and hate crimes.*

- 10.73. Sergeant Kirgiz was asked whether this description (in combination with the seven key accountabilities listed under the description) indicated that the role was predominantly focused on politically-motivated or terrorist activities.<sup>1386</sup> He said that even though the description may read that way, it was “not how [the position] works in reality.”<sup>1387</sup> He suggested that the description could have been “worded more accurately”.<sup>1388</sup> He added:<sup>1389</sup>

*I think there’s this perception that by bringing hate crime under the umbrella of counter terrorism, that somehow, the focus of hate crime was moulded to fit the counter terrorism focus. In my experience, it’s actually the other way around. The hate crime focus and portfolio was brought into counter terrorism and the procedures of counter terrorism were changed to accommodate and fully support the hate crime focus.*

*So it’s actually very advantageous to have at our disposal the full resources and capabilities of the CT command. ... And it’s not a question of “We look at hate crimes but with a counter terrorism focus”; it is quite the contrary. The CT command looks at hate crime with a holistic hate crime focus. ... [F]or example, if a member of the LGBTIQ community is targeted by a particular hate group or we have incidences of where certain nationalist, racist, violent extremist groups are active, well, the full capability of the TSIU [Terrorism Security Intelligence Unit] comes into play to paint a picture and gather the information we need.*

<sup>1384</sup> Transcript of the Inquiry, 13 December 2022, T1253.36–1254.7 (TRA.00016.00001).

<sup>1385</sup> Exhibit 6, Tab 193, Role Description – Team Leader EHCUSRD 101, 11 November 2020, 2 (SCOI.82038).

<sup>1386</sup> Transcript of the Inquiry, 13 December 2022, T1258.3–T1259.8 (TRA.00016.00001).

<sup>1387</sup> Transcript of the Inquiry, 13 December 2022, T1258.21–22 (TRA.00016.00001).

<sup>1388</sup> Transcript of the Inquiry, 13 December 2022, T1260.8 (TRA.00016.00001).

<sup>1389</sup> Transcript of the Inquiry, 13 December 2022, T1271.27–T1272.9 (TRA.00016.00001).

- 10.74. As Counsel Assisting submitted, this role description would indicate, on its face, that the focus of the Hate Crimes Coordinator is increasingly on “radicalisation”, “terrorism” and “politically motivated” hate crimes. However, as Counsel Assisting noted, Sergeant Kirgiz gave evidence that this is not how the position works “in reality”.<sup>1390</sup>

## Current Structure

- 10.75. Sergeant Kirgiz outlined the current structure of the EHCU.<sup>1391</sup> Reporting to him as Hate Crimes Coordinator is one police officer, namely a Project Officer (Constable/Senior Constable), along with two civilians, being an Intelligence Coordinator and a Project Coordinator. The civilian positions are externally funded by the Department of Communities and Justice.<sup>1392</sup>
- 10.76. Sergeant Kirgiz said that another position (nominally attached to the EHCU), that of an Intelligence Analyst, had in fact been utilised by the Terrorism Security Intelligence Unit since at least July 2020.<sup>1393</sup>
- 10.77. The two externally funded civilian positions were introduced to promote awareness of the requirements of hate speech legislation introduced in 2018, in the form of s. 93Z of the *Crimes Act 1900*.<sup>1394</sup> Sergeant Kirgiz’s evidence was that, in practice, both positions form “an integral part of the Hate Crime Team and contribute to all its functions”.<sup>1395</sup>
- 10.78. Sergeant Kirgiz gave evidence that in March 2021 the Hate Incident Review Committee (**HIRC**) was established. Its members are the ATIG Commander, the EHCU Manager and “the entire Hate Crime Team”, which Sergeant Kirgiz said comprised three people, namely, himself, the Intelligence Coordinator, and the Project Coordinator.<sup>1396</sup>
- 10.79. He said that the HIRC convenes fortnightly and monitors all hate crimes and hate incidents that have been assessed by the Hate Crime Team to require attention or follow up.<sup>1397</sup>

<sup>1390</sup> Submissions of Counsel Assisting, 7 June 2023, [291] (SCOI.84380).

<sup>1391</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [10] (SCOI.82035).

<sup>1392</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [10], [11] (SCOI.82035); Transcript of the Inquiry, 13 December 2022, T1256.11–28 (TRA.00016.00001).

<sup>1393</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [10] (SCOI.82035); Transcript of the Inquiry, 13 December 2022, T1256.1–16 (TRA.00016.00001).

<sup>1394</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [11], [15] (SCOI.82035). I note that further hate speech legislation was introduced in 2022, in the form of s. 93ZA of the *Crimes Act 1900*.

<sup>1395</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [11] (SCOI.82035); see also Transcript of the Inquiry, 13 December 2022, T1256.22–38 (TRA.00016.00001).

<sup>1396</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [16] (SCOI.82035).

<sup>1397</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [16] (SCOI.82035).

- 10.80. Sergeant Kirgiz gave evidence that education was a key priority of the EHCU, noting that:
- a. The EHCU is focused on “putting as many educational tools in play... and making those available to frontline policing and actively marketing them to frontline police”;<sup>1398</sup>
  - b. The 2022 Hate Crimes Guidelines have been developed;<sup>1399</sup>
  - c. An online “Hate Crime Awareness package aimed at frontline officers” which involved “scenarios and tests the officers’ knowledge” has been developed and rolled out (although I note that this training is not mandatory);<sup>1400</sup> and
  - d. An average of two training session presentations per week are provided by the EHCU. These are directed to both frontline officers (during mandatory training days) and specialist commands and areas (including GLLOs).<sup>1401</sup>
- 10.81. As to the 2022 Hate Crime Guidelines, the NSWPF acknowledged that the indicators in those Guidelines are “very similar” to the indicators in the BCIF used by Strike Force Parrabell.
- 10.82. However, it was submitted by the NSWPF that the HIRC has rendered the *process* for responding to potential hate crimes “extraordinarily different”, by providing a “level of senior oversight” through the fortnightly meetings to monitor all hate crimes and incidents. This was said to produce two positive results; first, a matter’s categorisation no longer depends entirely on the Hate Crimes Coordinator and secondly, further resourcing or investigation can be facilitated at an early stage.<sup>1402</sup>

<sup>1398</sup> Transcript of the Inquiry, 13 December 2022, T1264.23–26 (TRA.00016.00001).

<sup>1399</sup> Transcript of the Inquiry, 13 December 2022, T1265.14–32 (TRA.00016.00001). The EHCU also undertook a body of research that included online meetings with other police forces and a review of documents from police forces and prosecuting bodies in the United Kingdom and the United States of America. This research led to the development of the 2022 Hate Crime Guidelines, and online HATE Crime Awareness Course: Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [27]–[28] (SCOI.82035).

<sup>1400</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [28(ii)]; Transcript of the Inquiry, 13 December 2022, T1268.28–30 (TRA.00016.00001); Transcript of the Inquiry, 6 July 2023, T5087.22-5088.16 (TRA.00074.00001). I also note that Assistant Commissioner Crandell gave evidence that in 2018 he believed the NSWPF could improve the education component in relation to bias crimes, as was indicated in the recommendation of Strike Force Parrabell. He expressed the view, that since the publication of the Strike Force Parrabell report, he has seen real changes in the greater commitment of education throughout NSWPF and “particularly criminal investigative training and general training of police officers through investigators courses that now contain bias crime components”, and specifically, within the investigators course, the detectives training and the detectives designation course, there are now modules on bias crime. In addition to general training being boosted with bias crime components, Assistant Commissioner Crandell also stated that there is a gay and lesbian liaison course, which already had a bias crime component and a forthcoming adult sexual assault investigation course which will incorporate a bias crimes component: Transcript of the Inquiry, 12 December 2022, T1066.45–1068.31 (TRA.00015.00001). Detective Superintendent Doherty similarly referred to the GLLO Course in his oral evidence: Transcript of the Inquiry, 6 July 2023, T5090.8–24 (TRA.00074.00001).

<sup>1401</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [28(iii)] (SCOI.82035).

<sup>1402</sup> Submissions of NSWPF, 28 June 2023, [51(a)] (SCOI.84211).

## Development of a Bias Crimes Tool

- 10.83. One of the recommendations of the Parrabell Report published in June 2018 was the development of “a revised system applicable to the early identification of bias crimes” (**Recommendation 3**), given that “the current system with ten bias crime indicators requires greater rigour and is not user friendly for operational police”.<sup>1403</sup>
- 10.84. In October 2018,<sup>1404</sup> Assistant Commissioner Crandell commissioned Dr Birch of Charles Sturt University (**CSU**) (now Associate Professor at the University of Technology) to carry out a research study for the purpose of developing “better, more streamlined” bias crimes classification criteria for the NSWPF, consistent with that recommendation.<sup>1405</sup> The study was a joint undertaking by CSU and the University of Central Lancashire in the UK.<sup>1406</sup>
- 10.85. In March 2019, Dr Birch provided the NSWPF Education and Training Command with a preliminary report, titled ‘Hate Crime: The development of an assessment tool for criminal justice practitioners’. Despite its title, this report did not put forward such a proposed tool. Rather, it “involved a literature review of hate crime studies conducted in the USA, UK and Sweden”.<sup>1407</sup>
- 10.86. In 2020, the EHCU “took carriage of the next phases of the research” and was “supporting and collaborating with the CSU”.<sup>1408</sup>
- 10.87. When asked whether a tool had ever subsequently been developed, either with CSU’s contribution or by the EHCU itself, Sergeant Kirgiz responded that to the best of his knowledge, there is “no such tool in existence, and when we say ‘tool’, my understanding is a tool that can be provided to frontline officers when they go to attend to take reports and the like.”<sup>1409</sup>

<sup>1403</sup> See recommendation 3 at Exhibit 1, Tab 2, Final Report of Strike Force Parrabell, June 2018, 39 (SCOI.02632).

<sup>1404</sup> Exhibit 6, Tab 194, Issue Report by Leanne Martin re ‘Counter Terrorism & Special Tactics Command response to request for further progress updates for Strike Force Parrabell Recommendations 3-5’, 12 August 2021, 2 (SCOI.82045); Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [25]–[26] (SCOI.82035).

<sup>1405</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [11] (SCOI.76961).

<sup>1406</sup> Exhibit 6, Tab 194, Issue Report by Leanne Martin re ‘Counter Terrorism & Special Tactics Command response to request for further progress updates for Strike Force Parrabell Recommendations 3-5’, 12 August 2021, 2 (SCOI.82045).

<sup>1407</sup> Exhibit 6, Tab 194, Issue Report by Leanne Martin re ‘Counter Terrorism & Special Tactics Command response to request for further progress updates for Strike Force Parrabell Recommendations 3-5’, 12 August 2021, 2 (SCOI.82045).

<sup>1408</sup> Exhibit 6, Tab 194, Issue Report by Leanne Martin re ‘Counter Terrorism & Special Tactics Command response to request for further progress updates for Strike Force Parrabell Recommendations 3-5’, 12 August 2021, 2 (SCOI.82045).

<sup>1409</sup> Transcript of the Inquiry, 13 December 2022, T1263.29–32 (TRA.00016.00001).



- 10.88. In February 2022, Dr Birch provided a “Report of Final Findings” co-authored with three researchers from the University of Central Lancashire.<sup>1410</sup> That report developed and extended the research referred to in the preliminary report, but did not attempt to propose an assessment tool as an alternative to the 10 bias crimes indicators found in the BCIF used by Strike Force Parrabell, or “more streamlined bias crime classification criteria for the NSWPF”.<sup>1411</sup>
- 10.89. Sergeant Kirgiz said that no tool, “per se”, had been developed. He said:<sup>1412</sup>
- Insofar as a tool, to speak of, in the sense of a tool per se, no, because in the research that was conducted and whilst also collaborating and communicating with Professor Birch, I guess that the tool would have been satisfied through education to actually bring that to the attention of frontline officers and to educate them into awareness. And so we focused our attention on putting as many educational tools in play and make that - in play and making those available to frontline policing and actively marketing them to frontline police.*
- 10.90. When asked if he could identify the “suitable system of bias crime identification” that has now been “determined” (the language of Recommendation 4 in the Parrabell Report),<sup>1413</sup> Sergeant Kirgiz said:<sup>1414</sup>
- Well, it is the, I guess, the collection of training packages and educating frontline police officers. So there isn't a tool per se or a system per se, because what emerged when looking at the literature and speaking with some of the academics, Professor Birch in particular, is that there isn't a measure or a tool that you can run over any particular incident, the sure-fire way is to get it into the front of minds of frontline officers.*
- 10.91. Sergeant Kirgiz gave evidence that the BCIF “is not currently in use by frontline police officers nor the EHCU”.<sup>1415</sup> He said that he was “not aware if any other units of the NSWPF have used or are still using the [BCIF]”.<sup>1416</sup>
- 10.92. Accordingly, on this evidence of Sergeant Kirgiz, the BCIF has not been used since Strike Force Parrabell, but no tool has come into existence to replace it (or the 10 indicators found within it).

<sup>1410</sup> Exhibit 6, Tab 140, Philip Birch, et al, ‘Developing consensus amongst New South Wales (NSW) Police Officers (Sworn) for addressing Hate Crime – Report of Final Findings’ (University of Technology Sydney, February 2022) (SCOI.82042); Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [26] (SCOI.82035).

<sup>1411</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [11] (SCOI.76961); Transcript of the Inquiry, 13 December 2022, T1264.17–26, 1265.5–12 (TRA.00016.00001).

<sup>1412</sup> Transcript of the Inquiry, 13 December 2022, T1264.17–26 (TRA.00016.00001).

<sup>1413</sup> Exhibit 1, Tab 2, Final Report of Strike Force Parrabell, June 2018, 39 (SCOI.02632).

<sup>1414</sup> Transcript of the Inquiry, 13 December 2022, T1265.5–12 (TRA.00016.00001).

<sup>1415</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [13] (SCOI.82035).

<sup>1416</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [13] (SCOI.82035).

- 10.93. However, it became apparent that a full appraisal of the current position needs to take into account evidence concerning the 2015 SOPs,<sup>1417</sup> and the 2022 Hate Crime Guidelines.<sup>1418</sup>
- 10.94. The 2015 SOPs contained, almost verbatim, the same 10 indicators which formed part of the BCIF created and used by Strike Force Parrabell.
- 10.95. The 2015 SOPs have effectively been replaced, for practical purposes, by the 2022 Hate Crime Guidelines.<sup>1419</sup>
- 10.96. The 2022 Hate Crime Guidelines contain nine indicators, not 10. Those nine indicators are in substantially identical terms to the second to tenth indicators found in both the 2015 SOPs and the BCIF. The one missing from the Hate Crime Guidelines is the first indicator from the SOPs/BCIF, namely “Differences”.
- 10.97. Sergeant Kirgiz agreed that the procedures under the 2022 Hate Crime Guidelines are “substantially similar” to the procedures set out in the 2015 SOPs. He added that the HIRC was now an additional procedural feature. He also agreed that with respect to the indicators, the nine in the 2022 Hate Crime Guidelines were “basically the same” as nine of the 10 in the former SOPs.<sup>1420</sup>
- 10.98. Following the conclusion of questioning by Senior Counsel Assisting, in answer to a leading question from Senior Counsel for the NSWPF, Sergeant Kirgiz gave evidence that the “indicators”, as now found in the 2022 Hate Crime Guidelines, were “approved” by “five different academics in three different countries”.<sup>1421</sup>
- 10.99. The Inquiry thereafter reviewed all material which had been produced by the NSWPF in response to Summons NSWPF18 (which requested, *inter alia*, material relating to policies, guidelines and SOPs associated with the EHCU) to ascertain whether there were any documents constituting such “approval”. The Inquiry noted that four “Hate Crimes Guidelines Review” forms had been produced, two of them attributed to named academics and two unattributed.<sup>1422</sup> The form informed those completing it that the Hate Crime Guidelines were a “police training document”, and that they were asked to provide “feedback” on the Guidelines by reference to five criteria, namely: “Clear”, “Concise”, “Contemporary”, “Logical”, and “Inclusive and uses appropriate language”.<sup>1423</sup>

<sup>1417</sup> Exhibit 6, Tab 188, NSW Police Force Bias Crimes Unit, ‘Standard Operating Procedures: Bias Crime Response and Investigation’, September 2015 (SCOI.75057).

<sup>1418</sup> Exhibit 6, Tab 195, ‘Hate Crime Guidelines’, 13 April 2022 (SCOI.77445).

<sup>1419</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [14], [28] (SCOI.82035); Transcript of the Inquiry, 13 December 2022, T1266.47–1267.14 (TRA.00016.00001).

<sup>1420</sup> Transcript of the Inquiry, 13 December 2022, T1267.16–47 (TRA.00016.00001).

<sup>1421</sup> Transcript of the Inquiry, 13 December 2022, T1279.17–1280.14 (TRA.00016.00001).

<sup>1422</sup> Exhibit 6, Tab 549, Email from Associate Professor Philip Birch to Caroline Booth, 30 November 2021 (NPL.0111.0001.0001); Exhibit 6, Tab 549A, Hate Crime Guidelines Review Criteria – Professor Garth den Heyer, Undated (NPL.0111.0001.0026); Exhibit 6, Tab 549B, Hate Crime Guidelines Review Criteria – Professor Jane Ireland, Undated (NPL.0111.0001.0029); Exhibit 6, Tab 549C, Hate Crime Guidelines Review Criteria [no author specified but document titled ‘Rogers Response’ in email], Undated (NPL.0111.0001.0033); Exhibit 6, Tab 549D, Hate Crime Guidelines Review Criteria [no author specified but document titled ‘Tong Response’ in email], Undated (NPL.0111.0001.0036).

<sup>1423</sup> See, eg, Exhibit 6, Tab 549A, Hate Crime Guidelines Review Criteria – Professor Garth den Heyer, Undated, 1 (NPL.0111.0001.0026).

- 10.100. The “feedback” so provided in all four completed forms was broadly favourable. The reviewers were not asked to comment, and did not comment, on the indicators found within the Guidelines.
- 10.101. Counsel Assisting accordingly submitted, in the June CAS, that those documents did not appear to amount to “approval” of the indicators.<sup>1424</sup>
- 10.102. The NSWPF submitted, in reply: that Counsel Assisting was thereby challenging the “veracity” of Sergeant Kirgiz; that Counsel Assisting had not suggested to Sergeant Kirgiz that his evidence was inaccurate; that Sergeant Kirgiz’s evidence was supported by an “issues paper” which had been produced to the Inquiry by the NSWPF in response to Summons NSWPF18; and that Counsel Assisting had not tendered that “issues paper”.<sup>1425</sup>
- 10.103. Those submissions by the NSWPF are unfortunate, for a number of reasons. First, there was no challenge to Sergeant Kirgiz’s “veracity” by Counsel Assisting. Secondly, there had been no opportunity for Counsel Assisting to ask Sergeant Kirgiz anything about his evidence concerning international academic approval for the indicators, because that evidence was given after Senior Counsel Assisting’s questioning of Sergeant Kirgiz had concluded, and at a time when any documents that might bear upon the accuracy of his evidence were not in evidence, and had not been requested to be tendered by the NSWPF. Thirdly, in fact no such “issues paper” had been produced by the NSWPF in response to Summons NSWPF18, even as at the date of the June NSWPF submissions, and so the claim that Counsel Assisting had not tendered the “issues paper” was quite wrong.
- 10.104. Following receipt of the June NSWPF Submissions, the Inquiry requested that the NSWPF produce the “issues paper” referred to. An “Issue Paper” was subsequently produced, titled ‘Request for approval of the Hate Crime Guidelines and Policy Statement’, and that document was duly tendered into evidence.<sup>1426</sup>
- 10.105. The “Issue Paper”, which was prepared by the Project Coordinator, EHCUC, and dated 31 January 2022, sought approval for “the new Hate Crime Guidelines” (internal use only). Under the heading “Process”, the following relevantly appeared:<sup>1427</sup>

*The Hate Crime Guidelines then went through an extensive internal and external review process with the following Commands and people:*

- *Five international academics specialising in Hate Crime and Criminology (from Australia, UK and America)*

<sup>1424</sup> Submissions of Counsel Assisting, 7 June 2023, [279] (SCOI.84380).

<sup>1425</sup> Submissions of NSWPF, 28 June 2023, [51b] (SCOI.84211).

<sup>1426</sup> Exhibit 6, Tab 550, Issue Paper: Request for approval of the Hate Crime Guidelines and Policy Statement, 31 January 2022 (NPL.110.013.9035\_E).

<sup>1427</sup> Exhibit 6, Tab 550, Issue Paper: Request for approval of the Hate Crime Guidelines and Policy Statement, 31 January 2022 (NPL.110.013.9035\_E).

... [General Counsel and eight Commands listed]

*There was some minor feedback, which has been incorporated.*

- 10.106. In my view, neither the four review forms, nor the Issue Paper, amounts to proof that the indicators themselves were “approved” by academics. Indeed, the “feedback” which the reviewers were asked to provide did not relate to the indicators themselves.
- 10.107. I pause there to note that this is yet another example, small but telling, of the unduly defensive if not combative approach sometimes adopted by the NSWPF towards this Inquiry.
- 10.108. Under the 2022 Hate Crime Guidelines, incidents brought to the attention of the EHCU are now assigned to one of five categories, namely “Hate Crime”, “Hate Incident”, “Suspected Hate Crime”, “Not a Hate Crime” and “Insufficient Information”.<sup>1428</sup>
- 10.109. The first four of those five categories (substituting the word “bias” for “hate”) were also found in the 2015 SOPs.<sup>1429</sup>
- 10.110. Sergeant Kirgiz noted that there exists a vulnerability within the system in that if an officer does not correctly flag a hate incident with “Hate Crime Related”, that incident will not be captured in the search. To mitigate this vulnerability, the Intelligence Coordinator performs a “dip sample” exercise every few months.<sup>1430</sup>
- 10.111. Sergeant Kirgiz gave evidence that the determination as to which of these five categories is applicable is made by him.<sup>1431</sup> In answer to a question I asked him, he agreed that the process required him to “take a holistic view of all the factors” and “then come to a conclusion about it”.<sup>1432</sup> Put another way, he agreed that the process essentially is his “own attempt as the person in the role of Hate Crime Coordinator to use the information that you get and to simply make a call.”<sup>1433</sup>
- 10.112. Sergeant Kirgiz said that approximately 15-20% of the hate crime reports reaching the Hate Crimes Team related to people in the LGBTIQ community.<sup>1434</sup>

<sup>1428</sup> Exhibit 6, Tab 195, Hate Crime Guidelines, 13 April 2022, 19 (SCOI.77445); Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [21(vi)] (SCOI.82035); Transcript of the Inquiry, 13 December 2022, T1269.5-20 (TRA.00016.00001).

<sup>1429</sup> Exhibit 6, Tab 188, NSW Police Force Bias Crimes Unit, ‘Standard Operating Procedures: Bias Crime Response and Investigation’, September 2015, 42 (SCOI.75057).

<sup>1430</sup> Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [21(ii)] (SCOI.82035).

<sup>1431</sup> Transcript of the Inquiry, 13 December 2022, T1270.31–38 (TRA.00016.00001).

<sup>1432</sup> Transcript of the Inquiry, 13 December 2022, T1270.46–1271.3 (TRA.00016.00001).

<sup>1433</sup> Transcript of the Inquiry, 13 December 2022, T1272.28–32 (TRA.00016.00001).

<sup>1434</sup> Transcript of the Inquiry, 13 December 2022, T1273.8–13 (TRA.00016.00001).

- 10.113. In the light of the evidence referred to above, Counsel Assisting submitted that the evidence suggested that it appeared that Recommendation 3 in the Parrabell Report had not yet been acted upon.<sup>1435</sup> That is, no “revised system applicable to the early identification of bias crimes” had been developed, to replace “the current system with ten bias crime indicators” which was “not user friendly”. Rather, nine of the 10 indicators in the BCIF are still in use, via the 2022 Hate Crime Guidelines.
- 10.114. To my mind, it is glaringly obvious that this is indeed the case. This was confirmed by the evidence of Sergeant Kirgiz. Whether the indicators are good or bad, and whether or not any superior alternative has been proposed, are different questions.
- 10.115. However, once again, the NSWPF chose to adopt a defensive posture. The NSWPF submitted that Recommendation 3 had, in fact, been “acted upon”, by the commissioning of Dr Birch and by “numerous steps” taken consistent with his “research and advice”. It was further submitted that Recommendation 3 did not require a specific “tool” to be developed, and that the evidence did not disclose that any bias crimes review tool for frontline officers had ever been “successfully developed and applied” within Australia or internationally.<sup>1436</sup>
- 10.116. I consider that it is unfortunate that the development of a “revised system applicable to the early identification of bias crimes”, as recommended in the Parrabell Report, has not proceeded. It is significant that Dr Birch “highlighted the need for a structured risk assessment tool which can be used by police officers in identifying likely perpetrators of hate crime”.<sup>1437</sup>
- 10.117. Dr Birch did not propose any such tool, and the NSWPF noted in submissions that it was “not clear” why this was so.<sup>1438</sup>
- 10.118. To date, no tool has been developed to replace the bias crimes indicators found in both the 2015 SOPs drafted by Sergeant Steer and the BCIF used in Strike Force Parrabell. Instead, nine of the 10 “indicators” in the BCIF are still in use, via the 2022 Hate Crime Guidelines, as are three of the four available “findings” in the BCIF (with the exception of “Insufficient Information”).
- 10.119. It may be the case that, as Dr Birch thought, mechanisms for standard risk assessment are currently lacking across policing more generally. Dr Birch stated that there was no standard hate crime risk assessment across the 43 police forces in England and Wales. He noted that in the USA, the Vera Institute of Justice has developed a Bias Crime Assessment Tool, the aim of which is to capture victims’ experiences more effectively, increase confidence in the reporting process, and record data more accurately.<sup>1439</sup>

<sup>1435</sup> Submissions of Counsel Assisting, 7 June 2023, [293] (SCOI.84380).

<sup>1436</sup> Submissions of NSWPF, 28 June 2023, [43] – [49] (SCOI.84211).

<sup>1437</sup> Exhibit 6, Tab 140, Developing consensus amongst New South Wales (NSW) Police Officers (Sworn) for addressing Hate Crime – Report of Final Findings, February 2022 (SCOI.82042) 2, 9; Submissions of NSWPF, 28 June 2023, [46] (SCOI.84211).

<sup>1438</sup> Submissions of NSWPF, 28 June 2023, [47] (SCOI.84211).

<sup>1439</sup> Exhibit 6, Tab 140, Developing consensus amongst New South Wales (NSW) Police Officers (Sworn) for addressing Hate Crime – Report of Final Findings, February 2022, 9 (SCOI.82042).

- 10.120. The evidence of Professor Asquith, an expert in policing and hate crimes (particularly LGBTIQ hate crimes), is summarised in **Chapter 13** of this Report. Her evidence demonstrates that work in relation to developing and refining approaches to bias crime identification is ongoing. Professor Asquith referred to other sets of hate crime indicators which have been developed more recently, including by the USA-based International Association of Chiefs of Police in 2021,<sup>1440</sup> and by Vergani et al in 2022.<sup>1441</sup> The set of criteria developed by Vergani et al “not only provide a set of criteria for all hate crimes, but also identify the unique characteristics of each form of hate crime.”<sup>1442</sup> This includes suggested indicators for “heterosexist violence” (or homophobic violence)<sup>1443</sup> and “hate crimes against transgender and gender diverse people”.<sup>1444</sup>
- 10.121. Professor Asquith acknowledged that devising an alternative and “universally accepted” model to the typology underlying the first nine bias crime indicators used in the BCIF is a difficult task, partially due to “jurisdictional issues,” including differences in legislation or policing practices.<sup>1445</sup> However, Professor Asquith noted that there had been a “lot of work... particularly post 2017” in this area in Australia, and that a “much easier model of doing this, particularly at the frontline of first responders” had been developed in the UK.<sup>1446</sup>
- 10.122. I am aware that developing a replacement for the bias crime indicators may not be a simple task. However, it is disappointing that the NSWPF did not frankly concede that a replacement for the bias crime indicators has not actually been developed, rather than attempting to obfuscate this point. Although it may well be a difficult task, I consider that it would be more appropriate for the NSWPF to press forward with an attempt to develop a better system, rather than continuing with the very system which Recommendation 3 of the Parrabell Report identified as requiring “greater rigour” and as being “not user friendly for operational police”.<sup>1447</sup>
- 10.123. Contrary to what appears to be supposed by the June NSWPF Submissions, Counsel Assisting did not seek to criticise Sergeant Kirgiz or to suggest that any findings ought to be made which were critical of him. Nor do I take this approach. I agree with the NSWPF that Sergeant Kirgiz presented as committed to his current role, and as thoughtful and diligent. He is working within a prescribed system and can only use the particular tools available to him in his position. The introduction of the HIRC in an oversight capacity is also encouraging.

<sup>1440</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2022, [98] (SCOI.82368).

<sup>1441</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2022, [[111]–[112]] (SCOI.82368).

<sup>1442</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2022, [105] (SCOI.82368).

<sup>1443</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2022, [61] (SCOI.82368).

<sup>1444</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2022, [111]–[112] (SCOI.82368).

<sup>1445</sup> Transcript of the Inquiry, 3 March 2023, T2808.14–2809.7 (TRA.00032.00001).

<sup>1446</sup> Transcript of the Inquiry, 3 March 2023, T2808.14–46 (TRA.00032.00001).

<sup>1447</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report*, (Report, June 2018) 39 (SCOI.02632).

- 10.124. However, as noted elsewhere in this Report, it is not evident that the NSWPF has taken appropriate steps to ensure its investigating officers, particularly those within the UHT, are aware of the assistance that can be provided by the EHCU in connection to potential hate and bias crimes. The lack of engagement between the UHT and the EHCU is an unsatisfactory state of affairs.

## Conclusions and recommendations of the Inquiry

### History of the Bias Crimes Unit

- 10.125. Overall, Counsel Assisting submitted that the history of the BCU indicated that there had been a distinct lack of any sustained institutional focus on the investigation and impact of bias crimes, including those against the LGBTIQ community. Among other things, Counsel Assisting highlighted a perennial lack of sufficient staff, frequent moves to and from different Commands, and the effective abolition of the bias crimes capability both between 2009 and 2012, and between 2017 and 2020, which may suggest a historical reluctance within the NSWPF to bring some aspects of bias crimes investigation into mainstream policing practice.<sup>1448</sup>
- 10.126. The NSWPF submitted, on the other hand, that there was evidence regarding significant developments in the NSWPF's approach to the investigation (rather than identification) of anti-LGBTIQ bias crimes and in the organisation's efforts to "substantially improve" its relationship with the LGBTIQ community.<sup>1449</sup>
- 10.127. I agree that such efforts by the NSWPF are to be recognised and encouraged. However, in my view, a combination of factors illustrate that, as submitted by Counsel Assisting, bias crimes have not been an area of sustained focus within the organisation. Those factors include:
- a. The extremely limited resources available to the Hate Crimes Coordinator until very recently, and the relatively modest resources available even now (two police officers and two non-police personnel, in a police force of over 16,000 police officers);
  - b. The disestablishment of the bias crime capability altogether from 2009 to 2012, and its effective abolition between 2017 and 2020;
  - c. The frequent movement of the Hate Crimes Team and its predecessors between departments within the NSWPF;
  - d. The views of Sergeant Steer, whose particular experience in the subject of bias crimes appears to be unique within the organisation, and is certainly much more extensive than that of Sergeant Kirgiz, who took up the position of Hate

<sup>1448</sup> Submissions of Counsel Assisting, 7 June 2023, [285], [292] (SCOI.84380).

<sup>1449</sup> Submissions of NSWPF, 28 June 2023, [54], [59] (SCOI.84211).

Crimes Coordinator only in 2020 having had very little experience in the area previously; and

- e. Sergeant Steer’s effectively being forced out of the BCU by 2017 (a topic to which I shall come shortly).

## The June NSWPF Submissions

- 10.128. In the June NSWPF Submissions, the NSWPF submitted that I could not make findings about the following three issues, as no witnesses had been called to give evidence about such matters:
- a. The availability of resources, and the appropriate distribution of them among the various competing priorities of the NSWPF;<sup>1450</sup>
  - b. The objectivity of Sergeant Steer, and the accuracy of his opinions in relation to the restructuring of the BCU in 2017 and his being “forced out” of the unit at that time;<sup>1451</sup> and
  - c. The reasons for the 2017 restructure, from the perspective of “those actually responsible for it”.<sup>1452</sup>
- 10.129. As to the first of those three matters (resources), the NSWPF acknowledged that the availability of adequate resources across the organisation “was and continues to be a real issue”,<sup>1453</sup> but submitted that without evidence to suggest that the lack of resourcing was “in some way linked to apathy or lack of concern” about anti-LGBTIQ bias crimes, “resourcing difficulties cannot properly be used to support the finding sought by Counsel Assisting”.<sup>1454</sup>
- 10.130. As to the second factor (the objectivity and accuracy of the views of Sergeant Steer), the NSWPF submitted that Sergeant Steer’s “strongly-held opinions” regarding the restructure of the BCU should be viewed in light of his “obvious disgruntlement”.<sup>1455</sup> It was asserted that he perceived, “accurately or otherwise”, that he had been “forced out” of the BCU, and that he “clearly considered” that he should have been more significantly involved in Strike Force Parrabell.<sup>1456</sup> It was asserted that Counsel Assisting had failed to acknowledge “that Sergeant Steer’s objectivity, and thus his opinions, may in any way be compromised”.<sup>1457</sup>

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<sup>1450</sup> Submissions of NSWPF, 28 June 2023, [29] (SCOI.84211).

<sup>1451</sup> Submissions of NSWPF, 28 June 2023, [34], [36] (SCOI.84211).

<sup>1452</sup> Submissions of NSWPF, 28 June 2023, [36] (SCOI.84211).

<sup>1453</sup> Submissions of NSWPF, 28 June 2023, [56] (SCOI.84211).

<sup>1454</sup> Submissions of NSWPF, 28 June 2023, [56] (SCOI.84211).

<sup>1455</sup> Submissions of NSWPF, 28 June 2023, [31] (SCOI.84211).

<sup>1456</sup> Submissions of NSWPF, 28 June 2023, [31] (SCOI.84211).

<sup>1457</sup> Submissions of NSWPF, 28 June 2023, [35] (SCOI.84211).



- 10.131. The NSWPF also pointed to Assistant Commissioner Crandell’s evidence rejecting Sergeant Steer’s allegations of organisational cognitive dissonance, “at least from his perspective in respect of the LGBTIQ portfolio”.<sup>1458</sup>
- 10.132. As to the third factor (the reasons for the 2017 restructure, and the absence of evidence from “those actually responsible for it”), the NSWPF noted that Assistant Commissioner Crandell had “confirmed he had no oversight or understanding of” the restructure of the BCU, “other than that it was part of a broader restructure directed under the new Commissioner” (Mr Fuller) and “would have likely been within the remit of Deputy Commissioner Kaldas”,<sup>1459</sup> and that Ms Sharma had speculated that the relocation of the BCU “at most... communicated an intention to treat the subject matter differently by putting it in a different place”.<sup>1460</sup>

### The Inquiry’s response after June 2023

- 10.133. As I outlined in **Chapter 9**, in the 10 August letter, the Inquiry:
- a. Noted that if the NSWPF had considered that evidence was needed from any witnesses able to address the points set out at [10.128] above, the NSWPF should have informed the Inquiry of that fact at the appropriate time and should have provided the appropriate statements; and
  - b. Requested that statement(s) be provided from a witness or witnesses able to speak to “the accuracy or otherwise of Sergeant Steer’s claims that he was ‘forced out’ of the BCU, or the circumstances in which the BCU was restructured such that it was moved to a position within the Fixated Persons Unit”.<sup>1461</sup>
- 10.134. The NSWPF did not provide any such statement in relation to the second of those two matters (the circumstances of the restructure). Instead—notwithstanding its submission that it was essential that there be evidence about the reasons for the 2017 restructure from the perspective of “those actually responsible for it”—the NSWPF produced a statement from a witness who expressly disclaimed knowledge of those reasons.
- 10.135. In September 2023, the NSWPF provided the Hurst Statement. Superintendent Hurst was, for a six-week period from 28 April to 10 June 2017, the Acting Commander of Operational Programs, the Command which included the BCU.<sup>1462</sup> Otherwise, Superintendent Hurst had no association with or knowledge of the BCU whatsoever, before or after that short period.<sup>1463</sup>

<sup>1458</sup> Submissions of NSWPF, 28 June 2023, [36] (SCOI.84211).

<sup>1459</sup> Submissions of NSWPF, 28 June 2023, [34] (SCOI.84211).

<sup>1460</sup> Submissions of NSWPF, 28 June 2023, [34] (SCOI.84211).

<sup>1461</sup> Exhibit 6, Tab 424, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 10 August 2023, [79] (SCOI.85244).

<sup>1462</sup> Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst, 19 September 2023, [21] (NPL.9000.0030.0015).

<sup>1463</sup> See Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst, 19 September 2023, [9]–[22] (NPL.9000.0030.0015).

10.136. In particular, Superintendent Hurst expressly stated:<sup>1464</sup>

*I am unable to comment on the circumstances for the BCU's restructure such that it was transferred to the FPIU. During this time, the NSWPF was undergoing a re-engineering process. I am unable to comment on the rationale for the re-engineering process, which I was not part of.*

10.137. Superintendent Hurst addressed only one of the three matters about which complaint was made by the NSWPF in the June NSWPF Submissions, namely the question of Sergeant Steer being “forced out” of the BCU in 2017. He did not offer any evidence or views about Sergeant Steer’s “objectivity”.

10.138. Superintendent Hurst denied that Sergeant Steer had been “forced out” in the manner alleged.<sup>1465</sup> His evidence was that Sergeant Steer (along with other BCU members) did not want to work at Hurstville where the BCU (once absorbed into the FPIU) was going to be located, having previously been based at Parramatta. He referred to the Transfer Application form lodged by Sergeant Steer, in which Sergeant Steer: requested a transfer to Hawkesbury; said it was not feasible for him to travel to Hurstville; and said he had no interest in the new role that had been established within the FPIU.<sup>1466</sup>

10.139. The Inquiry requested and obtained the Third Steer Statement, partially in response to the evidence of Superintendent Hurst.

10.140. Sergeant Steer’s evidence was that, while the relocation to Hurstville was a factor in his decision, it was by no means the only one, and by no means the main one. Sergeant Steer said he agreed “[i]n general” with Superintendent Hurst’s statement, with the specific exception, however, of Superintendent Hurst’s assertion that Sergeant Steer was not “forced out” of the BCU.<sup>1467</sup>

10.141. Sergeant Steer outlined a history of hostile behaviour towards him, in his role as Bias/Hate Crime Coordinator, by very senior officers, including:

- a. Then Deputy Commissioner Owens in 2009;<sup>1468</sup>
- b. Then Assistant Commissioner Michael Fuller in 2015 (after which Assistant Commissioner Fuller had been reprimanded by then Deputy Commissioner Kaldas);<sup>1469</sup> and
- c. The Commander of the Terrorism Intelligence Unit and other senior officers in 2016.<sup>1470</sup>

<sup>1464</sup> Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst, 19 September 2023, [44] (NPL.9000.0030.0015).

<sup>1465</sup> Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst, 19 September 2023, [32]–[41], [43] (NPL.9000.0030.0015).

<sup>1466</sup> Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst, 19 September 2023, [40] (NPL.9000.0030.0015).

<sup>1467</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [41] (SCOI.85731).

<sup>1468</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [5]–[8] (SCOI.85731).

<sup>1469</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [12]–[15] (SCOI.85731).

<sup>1470</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [17]–[19] (SCOI.85731).

- 10.142. He said that “[a]fter 7 years of trying to introduce hate crimes to the NSW Police and constant resistance and pushback [he] was tired of fighting”.<sup>1471</sup>
- 10.143. Sergeant Steer said that his decision to leave “broke down to several key factors”, namely:<sup>1472</sup>
- a. It was apparent to him that it was “untenable for [him] to remain in the role”, because since the departure of Mr Kaldas (whom he regarded as “a major supporter of the work of the [BCU]”) <sup>1473</sup>, there was no longer an “advocate at the higher levels” for the BCU,<sup>1474</sup> and the environment he worked in was “even more hostile and toxic”;
  - b. He was informed by “several senior officers” that he was “not popular with the new regime”;
  - c. It appeared to him that “the issues around hate crimes were not about hate crimes anymore but had become a personality conflict” between him and “several senior officers”;
  - d. After the incident with Mr Fuller in 2015, he felt that while he remained in the role, the work of the BCU would suffer;
  - e. He “was warned that [he] was not in favour with the new Commissioner” (i.e., Mr Fuller, who was appointed Commissioner of Police in March 2017);
  - f. Given the “lack of understanding about hate crimes” by the senior management of the NSWPF, and “the toxic environment hate crimes had devolved to”, he felt that there would be “minimal chance of correcting the false assumptions about hate crimes and what the [BCU] did” and “advanc[ing] the direction of bias crimes” within the NSWPF;
  - g. The psychological impact of the work, and the toxic environment it had become, was impacting his life negatively; and
  - h. International colleagues in the field of bias crimes advised him that “the work would destroy [him] if [he] was not supported”.
- 10.144. Sergeant Steer concluded that:<sup>1475</sup>

*I felt that I was not supported, that there was no chance of that situation changing and that it was a fight I could not win, so I made the decision to leave.*

<sup>1471</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [29] (SCOI.85731).

<sup>1472</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [30]–[35] (SCOI.85731).

<sup>1473</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [20] (SCOI.85731).

<sup>1474</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [20] (SCOI.85731).

<sup>1475</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [35] (SCOI.85731).

10.145. He said that the “distance” factor (relating to the move from Parramatta to Hurstville) was only “the final straw”.<sup>1476</sup> He also said that in discussions with Superintendent Hurst he had raised the issues relating to working from Hurstville, but not “the previous history nor my decision-making process”.<sup>1477</sup>

10.146. It may be noted that in his Transfer Application, the “Reason for Application” box was filled in by Sergeant Steer as follows:<sup>1478</sup>

*The Bias Crimes Unit has been transferred to Fixated Persons Investigation Unit and the work undertaken by the Bias Crimes unit will cease. Given the location of FPIU at Hurstville it is not feasible for me to travel to Hurstville and I have no interest in the new role that has been established.*

10.147. Thus, the distance/Hurstville factor was only one of three reasons stated in the Transfer Application, the other two being:

- a. That the work of the BCU would cease; and
- b. That (in those circumstances) Sergeant Steer had no interest in “the new role”.

10.148. As Sergeant Steer noted in his third statement, in his previous evidence to the Inquiry he had pointed out that “the unit was told that we were not doing hate crimes, only working on left-wing and right-wing groups”.<sup>1479</sup> That was the “new role”, in which he had no interest, to which he was referring in the Transfer Application.<sup>1480</sup>

10.149. None of the interested parties made an application for Sergeant Steer to be called to give further oral evidence, despite having the capacity to do so pursuant to Practice Guideline 1 of the Inquiry at [20]–[24].

10.150. In the October CAS, Counsel Assisting submitted that the evidence of Sergeant Steer accordingly stands unchallenged. It was submitted that nothing in Superintendent Hurst’s statement detracts from Sergeant’s Steer’s evidence. This was so given that, on his own evidence as well as that of Sergeant Steer, it is clear that Superintendent Hurst had no knowledge of any of the factors (other than the move to Hurstville) which led to Sergeant Steer’s decision. Accordingly, Counsel Assisting submitted that Sergeant Steer’s evidence as to the reasons for his departure from the BCU should be accepted.<sup>1481</sup>

<sup>1476</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [28] (SCOI.85731).

<sup>1477</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [41] (SCOI.85731).

<sup>1478</sup> Exhibit 6, Tab 518A, Transfer Application Form of Sergeant Geoffrey Steer, 8 June 2017 (NPL.0217.0001.0001).

<sup>1479</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [28] (SCOI.85731).

<sup>1480</sup> Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [41] (SCOI.85731).

<sup>1481</sup> Supplementary submissions of Counsel Assisting, 16 October 2023, [135] (SCOI.86243).

- 10.151. In the October NSWPF submissions, the NSWPF asserted that Sergeant Steer’s evidence “speaks to the depth of [his] resentment”,<sup>1482</sup> and urged me to approach his evidence cautiously, given “his obvious disgruntlement and his lack of insight into the various considerations informing determinations made by senior police...regarding resourcing and restructure”.<sup>1483</sup>
- 10.152. I consider that the evidence of Sergeant Steer as to the reasons for his departure from the BCU should be accepted, as submitted by Counsel Assisting.
- 10.153. I found Sergeant Steer to be an honest and helpful witness when giving evidence before the Inquiry in the December 2022 hearings. I consider that neither his oral evidence nor his written comments, including in the email to Assistant Commissioner Crandell of 9 June 2018 addressing the reasons for his departure from the BCU,<sup>1484</sup> displayed “resentment” or “disgruntlement” as submitted by the NSWPF. Rather, they exhibited an understandable disappointment in the approach of the NSWPF to bias crimes. This arose from the fact that the NSWPF had neither utilised Sergeant Steer’s significant training and expertise in bias crimes as they could have, nor given him and the BCU the support needed for an effective bias/hate crimes capability. Sergeant Steer’s email exhibited further disappointment that the NSWPF in general, and particularly Strike Force Parrabell, had failed to grasp the way in which the bias crimes indicators were meant to be used. I will discuss the deficiencies in the NSWPF’s use of the bias crime indicators further in **Chapter 13**.
- 10.154. Therefore, I accept the evidence of Sergeant Steer, which underlines the force of the submissions of Counsel Assisting and my observations above.
- 10.155. Remarkably, given the terms of the Inquiry’s 10 August letter and the deliberate choice made by the NSWPF to provide a statement only from Superintendent Hurst, the NSWPF submitted that “[a] proper analysis” of matters such as the reasons for the 2017 restructure “would require evidence to be adduced from a variety of former senior officers of the NSWPF, including then Deputy Commissioner Owens and then Assistant Commissioner Michael Fuller.”<sup>1485</sup>
- 10.156. To similar effect the NSWPF added:
- a. That, since Superintendent Hurst identified the “other key decision-maker” as appearing to have been former Assistant Commissioner Mark Murdoch, Mr Murdoch should have been called; and (conversely)
  - b. That, in the submission of the NSWPF, it was actually Mr Fuller who was “most likely” to have the relevant knowledge.<sup>1486</sup>

<sup>1482</sup> Supplementary Submissions of NSWPF, 23 October 2023, [129] (SCOI.86378).

<sup>1483</sup> Supplementary Submissions of NSWPF, 23 October 2023, [129] (SCOI.86378).

<sup>1484</sup> Exhibit 6, Tab 126, Email from Geoffrey Steer to Anthony Crandell, 9 June 2018, 3 (SCOI.74679).

<sup>1485</sup> Supplementary Submissions of NSWPF, 23 October 2023, [125] (SCOI.86378).

<sup>1486</sup> Supplementary Submissions of NSWPF, 23 October 2023, [125]–[127] (SCOI.86378).

- 10.157. It is not necessary for the Inquiry to receive this evidence for me to draw conclusions as to the NSWPF's attitude towards and prioritisation (or lack thereof) of bias crimes. I do not consider that it is necessary for me to make findings as to the reasons for the 2017 restructure; the sequence of continual movement and restructure of the BCU is itself instructive.
- 10.158. Even so, this submission by the NSWPF is somewhat disingenuous in circumstances where it was specifically provided with an opportunity to provide a statement from persons able to speak to the points set out at [10.128] above and elected instead to provide the statement from Superintendent Hurst, who had no relevant knowledge of the BCU beyond a six-week period and frankly conceded that he could not provide insight on the circumstances of the restructure or general "re-engineering process" within the NSWPF.<sup>1487</sup>
- 10.159. In August and September 2023, the Inquiry wrote to Mr Fuller to provide him with the opportunity to file a statement and/or make written submissions should he wish to.<sup>1488</sup> Mr Fuller did not take up this opportunity.
- 10.160. On 18 and 20 September 2023, the Inquiry wrote to Mr Kaldas to notify him that he had been identified in certain documents that had been tendered or would be tendered into evidence before the Inquiry, including documents relating to Sergeant Steer and the BCU, and invited him to contact Inquiry staff if he had any queries in relation to this matter.<sup>1489</sup>
- 10.161. As to resourcing generally, the NSWPF observed that, in the Investigative Practices Hearing, Counsel Assisting had acknowledged that resourcing within the NSWPF necessarily raises "complex social and policy considerations", and that the question of the appropriate allocation of resources to the UHT "is not one that falls within the purview of the Inquiry".<sup>1490</sup> The suggestion seemed to be that because overall questions of availability of resources, and choices to be made about deployment of resources generally, were not the subject of comprehensive evidence before me, I could not make findings or reach conclusions about matters affecting the BCU.
- 10.162. I reject any such suggestion.

## Conclusions

- 10.163. It is clear to me that the area of bias crimes has not historically been an area of sustained focus within the NSWPF. That emerges in my view inescapably from the evidence summarised at [10.3]-[10.74] above.

<sup>1487</sup> Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst, 19 September 2023, [44] (NPL.9000.0030.0015).

<sup>1488</sup> Exhibit 6, Tab 479A, Letter from Enzo Camporeale to Michael Fuller, 22 August 2023 (SCOI.85480); Exhibit 6, Tab 479B, Letter from Enzo Camporeale to Michael Fuller, 18 September 2023 (SCOI.85719); Exhibit 6, Tab 479C, Email from Michael Fuller to Enzo Camporeale, 21 September 2023 (SCOI.85773); Exhibit 6, Tab 579D, Letter from Enzo Camporeale to Michael Fuller, 28 September 2023 (SCOI.86053).

<sup>1489</sup> Exhibit 6, Tab 532A, Letter from Enzo Camporeale to Nick Kaldas, 18 September 2023 (SCOI.86051); Exhibit 6, Tab 532B, Letter from Enzo Camporeale to Nick Kaldas, 20 September 2023 (SCOI.86052).

<sup>1490</sup> Supplementary Submissions of NSWPF, 23 October 2023, [46] (SCOI.86378).

- 10.164. As to resources, I am not in a position, nor is it my role, to conduct a comprehensive analysis of the various competing demands for resources within the NSWPF. I agree with the submission of Counsel Assisting, embraced by the NSWPF, that its arrangements in relation to resourcing necessarily raise “complex social and policy considerations”.<sup>1491</sup>
- 10.165. However, I do not consider that I need to carry out such an analysis in order to infer, from the extremely limited resources allocated to the BCU (and its predecessors) prior to 2020, that this area was plainly not a priority for the NSWPF. I refer again to the evidence summarised at [10.29] and [10.47]–[10.50] above.
- 10.166. In my view, the number of times that the BCU was forced to move, the perennial lack of resources, the two periods of several years in which the BCU ceased to exist, and the views of Sergeant Steer (which I accept) reflect both a lack of strategic direction in the area of bias crimes and little understanding of what a better-resourced version of the unit could potentially offer to the NSWPF and its investigative capabilities.

## Recommendations

- 10.167. I recognise and encourage the efforts made by the NSWPF since 2020 in this area.
- 10.168. However, I consider the following recommendations are appropriate:

### Recommendation 18

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

### Recommendation 19

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

- a. Ensuring that the NSWPF practices in the area of bias crimes are aligned with international best practice as identified by reference to the practices of other police forces (both national and international) recognised as leaders in this field. The report of Professor Asquith, discussed in **Chapter 13**, refers to some of these practices which the NSWPF could consider;

<sup>1491</sup> Supplementary Submissions of NSWPF, 23 October 2023, [46] (SCOI.86378).

- b. Considering alternative systems of early identification of bias crimes developed since the introduction of the 2015 SOPs and the 2016 BCIF, noting that Recommendation 3 of the Parrabell Report remains unaddressed to date; and
- c. Considering whether the present arrangement, whereby the Hate Crimes Coordinator is organisationally located within the EHCUC, are appropriate or whether the NSWPF Hate Crimes Capability should be a stand-alone unit, resourced as such.

10.169. Finally, having regard to the history of the NSWPF approach to bias and/or hate crimes I encourage the NSWPF to consider commissioning an independent review of the NSWPF's institutional approach to the LGBTIQ community (including LGBTIQ employees). I consider that the VEOHRC review, which I will discuss in **Chapter 15**, is a valuable example of this type of exercise.





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# Chapter 11: Strike Force Macnamir

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## STRIKE FORCE MACNAMIR

- 11.1. The basic facts concerning Strike Force Macnamir, and its place in the chronology of events leading up to the establishment of the Inquiry, are set out in **Chapter 2**. As explained in **Chapter 1**, an issue arose concerning whether consideration of Strike Force Macnamir fell within the Inquiry’s Terms of Reference. For the reasons explained in **Chapter 1**, I considered that Strike Force Macnamir was a matter falling within my Terms of Reference.
- 11.2. One of the most instructive aspects of this evidence, for the reasons explained below, concerns the attitude of Ms Young (one of the two senior officers within the UHT) and Mr Willing (Homicide Commander) to the reinvestigation of, and third inquest into, Scott Johnson’s death. Both of these senior officers took the view that a finding of homicide at the third inquest would represent a “defeat” for the NSWPF and a “win” for the Johnson family. I return to the significance of this evidence at the end of this Chapter. It is also relevant in this context that Mr Willing had involvement in Strike Force Parrabell and Strike Force Neiwand.
- 11.3. A number of the documents and witnesses referred to in this Chapter and the following Chapters use the language of “gay hate violence”. It is important to note that violence directed at the LGBTIQ community in the relevant period was not directed exclusively to gay men. The use of this language, based on this evidence, should not be read as suggesting that it was only gay men who were targeted, or who were the victims of hate-motivated violence.

### 1988–2012: The first and second inquests into the death of Scott Johnson

- 11.4. Scott Johnson was a 27 year-old American student completing a PhD in mathematics in Australia. He was posthumously awarded his doctorate by the Australian National University in 1995.<sup>1492</sup>
- 11.5. On the morning of 10 December 1988, his body was found at the bottom of a cliff at Blue Fish Point near North Head, Sydney. He had suffered “unsurvivable traumatic injuries”.<sup>1493</sup> He was naked, and a folded pile of his clothes and personal effects was recovered at the top of the cliff.<sup>1494</sup>

<sup>1492</sup> Exhibit 6, Tab 232, Findings of State Coroner Michael Barnes, Third Inquest into the death of Scott Russell Johnson, 30 November 2017, [40] (SCOI.11064.00018).

<sup>1493</sup> Exhibit 6, Tab 232, Findings of State Coroner Michael Barnes, Third Inquest into the death of Scott Russell Johnson, 30 November 2017, [1] (SCOI.11064.00018).

<sup>1494</sup> Exhibit 6, Tab 232, Findings of State Coroner Michael Barnes, Third Inquest into the death of Scott Russell Johnson, 30 November 2017, [1], [193] (SCOI.11064.00018).

- 11.6. On 16 March 1989, an inquest was conducted by Deputy State Coroner Derek Hand. His Honour made a finding of suicide, namely that between 8 and 10 December 1988, at North Head, Manly, Scott Johnson “died of the effect of multiple injury [sic] sustained then and there when he jumped from the top to the rocks below with the intention of taking his own life”.<sup>1495</sup>
- 11.7. That finding was based primarily on the following circumstances, as summarised many years later in 2017 by State Coroner Barnes, in the third inquest into Scott Johnson’s death:<sup>1496</sup>
- a. Scott Johnson’s reserved and introverted personality was consistent with the type of person who would commit suicide;
  - b. The evidence of Scott Johnson’s partner at the time of his death that Scott Johnson had mentioned having attempted suicide at some earlier time when he thought he might have contracted HIV/AIDS; and
  - c. The absence of evidence of a struggle at the top of the cliff or damage to Scott Johnson’s clothing, or of anyone else having been present at the time.
- 11.8. At the 1989 inquest, the OIC of the original investigation, Detective Sergeant Doreen Cruickshank, gave evidence that the area on the clifftop where Scott Johnson’s clothes were found was not then known to the NSWPF as being a meeting place or beat used by gay men. That evidence was based solely on the fact that police had not received any reports of violence directed towards gay men in that area.<sup>1497</sup>
- 11.9. There is evidence before the Inquiry which would indicate that from at least the 1970s it had in fact been well-known, to police and more generally, that there was a beat at North Head.<sup>1498</sup>
- 11.10. On 9 March 2005, Senior Deputy State Coroner Milledge delivered her findings in the inquest concerning the deaths of three men near Bondi in 1985 and 1989 (referred to in this Report as the **Milledge Inquest**).<sup>1499</sup> The police officer who had earlier conducted Operation Taradale into those three deaths between 2000 and 2002 was then Detective Sergeant Page. Subsequently a journalist contacted Mr Page and put him in contact with Scott Johnson’s brother, Steve Johnson.<sup>1500</sup>

<sup>1495</sup> Exhibit 6, Tab 232, Findings of State Coroner Michael Barnes, Third Inquest into the death of Scott Russell Johnson, 30 November 2017, [1], [9] (SCOI.11064.00018).

<sup>1496</sup> Exhibit 6, Tab 232, Third Inquest into the death of Scott Russell Johnson – Findings of State Coroner Michael Barnes, 30 November 2017, [10] (SCOI.11064.00018).

<sup>1497</sup> Exhibit 6, Tab 232, Findings of State Coroner Michael Barnes, Third Inquest into the death of Scott Russell Johnson, 30 November 2017, [6], [8] (SCOI.11064.00018).

<sup>1498</sup> See, e.g., Exhibit 12, Tab 27, Doug Ryan, ‘90 arrested by new police beach unit’, *The Manly Daily*, 27 April 1977, 1 (SCOI.82350), which refers to a “‘Starsky and Hutch’ beach patrol” policing crime in the beach areas of Manly and states that the patrol featured plain clothes officers who had, among other things, “busted homosexual activities at North Head”.

<sup>1499</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005 (SCOI.02751.00021).

<sup>1500</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [10]–[11], [20]–[21] (SCOI.82472).

- 11.11. In early 2006, Steve Johnson drew Mr Page’s attention to similarities between the circumstances of Scott Johnson’s death and those which had been the subject of the Milledge Inquest, in each case involving a gay man found at the foot of a cliff, or disappearing, in an area known as a beat. Mr Page considered that Scott Johnson’s case warranted reinvestigation on that basis.<sup>1501</sup>
- 11.12. On 16 March 2006, Mr Page and Steve Johnson attended Manly Police Station and requested a review of Scott Johnson’s death.<sup>1502</sup> It appears that, at this time, an officer at the Manly LAC reviewed the coronial brief and transcript of the 1989 inquest and declined to carry out a reinvestigation on the basis that “no new lines of inquiry [had been] identified”.<sup>1503</sup> Mr Page continued to assist the Johnson family and Dan Glick, an investigative journalist retained by Steve Johnson, with information gathering.<sup>1504</sup>
- 11.13. On 29 August 2007, the Johnson family sent a 12-page report to Detective Inspector Michael Ashwood, then head of the UHT, containing a summary of information they had gathered up to that point. That information was said to establish that the area where Scott Johnson died at Blue Fish Point was an active beat in 1988; that “gay hate” violence had occurred at that site and across the Northern Beaches in the 1980s; and that the area around Blue Fish Point had not been a popular spot for suicides.<sup>1505</sup>
- 11.14. It appears that the UHT conducted a review of Scott Johnson’s case in late 2007 or early 2008.<sup>1506</sup> That review examined the information provided by the Johnson family, as well as the original investigative file and information concerning “a number of cases of gay-hate violence in the 1980s”.<sup>1507</sup> That review “did not include active investigations”.<sup>1508</sup> It concluded that there was “no evidence to support anything other than suicide” and that no reinvestigation was warranted.<sup>1509</sup> The matter was suspended on 21 January 2008.<sup>1510</sup>

<sup>1501</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [22] (SCOI.82472).

<sup>1502</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [23] (SCOI.82472).

<sup>1503</sup> Exhibit 6, Tab 252F, Statement of Detective Chief Inspector Pamela Young, 20 November 2013, [25] (SCOI.83088).

<sup>1504</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [24] (SCOI.82472).

<sup>1505</sup> Exhibit 6, Tab 403, ‘The Case of Scott Russell Johnson – Timeline and Evidence, prepared by Steve Johnson’, 14 January 2013, 70–81 (NPL.0209.0001.0004).

<sup>1506</sup> Exhibit 6, Tab 252F, Statement of Detective Chief Inspector Pamela Young, 20 November 2013, [28] (SCOI.83088); Exhibit 6, Tab 399A, NSWPF Review of an Unsolved Homicide Case Screening Form – Scott Johnson, Undated, 5–6 (SCOI.85777).

<sup>1507</sup> Exhibit 6, Tab 252F, Statement of Detective Chief Inspector Pamela Young, 20 November 2013, [28] (SCOI.83088).

<sup>1508</sup> Exhibit 6, Tab 252F, Statement of Detective Chief Inspector Pamela Young, 20 November 2013, [28] (SCOI.83088).

<sup>1509</sup> Exhibit 6, Tab 252F, Statement of Detective Chief Inspector Pamela Young, 20 November 2013, [28] (SCOI.83088).

<sup>1510</sup> Exhibit 6, Tab 399A, NSWPF Review of an Unsolved Homicide Case Screening Form – Scott Johnson, Undated, 6 (SCOI.85777).

- 11.15. In 2011, the Johnson family redoubled its efforts to urge a reinvestigation of Scott Johnson’s death. To that end, they supplied various reports and letters to the NSWPF and relevant officeholders. These included:
- a. A letter from Steve Johnson to then State Coroner Mary Jerram dated 6 October 2011, in which Steve Johnson noted he had recently spoken with Detective Inspector Luke Arthurs at the Manly LAC, who had advised that NSWPF investigators were “preparing a report that they will give to [the State Coroner] soon”.<sup>1511</sup> In the letter, Steve Johnson also noted that Detective Inspector Arthurs had told him that the “place where Scott died was a well-known suicide spot”.<sup>1512</sup> The letter went on to express various concerns about the progress of the police investigation into Scott Johnson’s death.<sup>1513</sup>
  - b. Reports prepared by Ms Thompson dated 2 January 2011<sup>1514</sup> and Mr Page dated 12 May 2011<sup>1515</sup> in their capacity as consultants to the Johnson family. Each report provided information about gay hate violence at beats in Sydney (including the deaths the subject of the Milledge Inquest); and referred to evidence which suggested that Blue Fish Point was an active beat in 1988.<sup>1516</sup> By reference to that information, Ms Thompson expressed the view that Scott Johnson’s death “was at a beat location” and “fits with an MO [modus operandi] of a gay murder at a beat”.<sup>1517</sup> Mr Page considered that the original finding of suicide was “unsafe”, that proceedings should commence to amend [that finding] to that of open causes”, that murder “cannot be ruled out”, and that “the death should be regarded as suspicious”.<sup>1518</sup>
- 11.16. On 27 June 2012, a second inquest into Scott Johnson’s death was held. At that inquest, Detective Senior Constable Timothy Wilson of the Manly LAC gave evidence of a review he had conducted, which identified similarities between the circumstances of Scott Johnson’s death and those the subject of the Taradale Inquest. The review was also said to have identified potential avenues for further investigation, including persons of interest.<sup>1519</sup>

<sup>1511</sup> Exhibit 6, Tab 403, ‘The Case of Scott Russell Johnson – Timeline and Evidence, prepared by Steve Johnson’, 14 January 2013, 49 (NPL.0209.0001.0004).

<sup>1512</sup> Exhibit 6, Tab 403, ‘The Case of Scott Russell Johnson – Timeline and Evidence, prepared by Steve Johnson’, 14 January 2013, 49 (NPL.0209.0001.0004).

<sup>1513</sup> Exhibit 6, Tab 403, ‘The Case of Scott Russell Johnson – Timeline and Evidence, prepared by Steve Johnson’, 14 January 2013, 49–50 (NPL.0209.0001.0004).

<sup>1514</sup> Exhibit 6, Tab 403, ‘The Case of Scott Russell Johnson – Timeline and Evidence, prepared by Steve Johnson’, 14 January 2013, 55–63 (NPL.0209.0001.0004).

<sup>1515</sup> Exhibit 6, Tab 403, ‘The Case of Scott Russell Johnson – Timeline and Evidence, prepared by Steve Johnson’, 14 January 2013, 65–69 (NPL.0209.0001.0004).

<sup>1516</sup> Exhibit 6, Tab 403, ‘The Case of Scott Russell Johnson – Timeline and Evidence, prepared by Steve Johnson’, 14 January 2013, 61–63, 67–69 (NPL.0209.0001.0004).

<sup>1517</sup> Exhibit 6, Tab 403, ‘The Case of Scott Russell Johnson – Timeline and Evidence, prepared by Steve Johnson’, 14 January 2013, 61 (NPL.0209.0001.0004).

<sup>1518</sup> Exhibit 6, Tab 403, ‘The Case of Scott Russell Johnson – Timeline and Evidence, prepared by Steve Johnson’, 14 January 2013, 69 (NPL.0209.0001.0004).

<sup>1519</sup> Exhibit 6, Tab 232, Findings of State Coroner Michael Barnes, Third Inquest into the death of Scott Russell Johnson, 30 November 2017, [17]–[18] (SCOI.11064.00018).

- 11.17. On the same day, at the conclusion of the second inquest, Deputy State Coroner Forbes made an open finding. Her Honour found that Scott Johnson “died between 8 and 10 December 1988 at North Head, Manly, north of Blue Fish Point, from the effects of multiple injuries he sustained as a result of falling from a cliff”.<sup>1520</sup>
- 11.18. One reason for departing from the 1989 suicide finding, and instead making the open finding, was that “the information about the deaths at Bondi has, however, sown a seed of doubt as to the positive finding of suicide”.<sup>1521</sup> One of the possibilities, said Deputy State Coroner Forbes, was “that Mr Johnson was the victim of a ‘gay hate’ crime similar to those that occurred in Bondi”.<sup>1522</sup>
- 11.19. Her Honour recommended that the death be referred to “Cold Cases” for further investigation.<sup>1523</sup> Mr Willing explained that “Cold Cases” in this context referred to what later became the UHT.<sup>1524</sup>

## The Homicide Squad and Unsolved Homicide Team

- 11.20. In November 2011, Mr Willing was appointed Homicide Commander. Before that appointment he had been a Superintendent and Local Area Commander since 2007.<sup>1525</sup> He formally remained in his position as Homicide Commander until November 2017, when he was appointed as Commander of the Counter Terrorism and Special Tactics Command.<sup>1526</sup>
- 11.21. However, in April 2017 Mr Willing was tasked to work on matters arising from the Lindt Café siege inquest. From that time on, his day-to-day responsibilities as Homicide Commander were taken on by an Acting Homicide Commander.<sup>1527</sup>
- 11.22. At the time of his appointment, the Homicide Squad consisted of around 100 staff members, divided into six investigation response teams (each led by an Investigation Coordinator of Detective Chief Inspector/Inspector rank), an intelligence team (led by an Inspector), and the UHT (led by two Investigation Coordinators of Detective Chief Inspector/Inspector rank).<sup>1528</sup>

<sup>1520</sup> Exhibit 6, Tab 317, Second inquest into the death of Scott Russell Johnson – Findings of Deputy State Coroner Forbes, 27 June 2012, 2 (SCOI.11115.00128).

<sup>1521</sup> Exhibit 6, Tab 317, Second inquest into the death of Scott Russell Johnson – Findings of Deputy State Coroner Forbes, 27 June 2012, 1 (SCOI.11115.00128).

<sup>1522</sup> Exhibit 6, Tab 317, Second inquest into the death of Scott Russell Johnson – Findings of Deputy State Coroner Forbes, 27 June 2012, 1 (SCOI.11115.00128).

<sup>1523</sup> Exhibit 6, Tab 317, Second inquest into the death of Scott Russell Johnson – Findings of Deputy State Coroner Forbes, 27 June 2012, 2 (SCOI.11115.00128).

<sup>1524</sup> Transcript of the Inquiry, 20 February 2023, T1646.3–6 (TRA.00023.00001).

<sup>1525</sup> Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [7] (SCOI.82369.00001).

<sup>1526</sup> Transcript of the Inquiry, 20 February 2023, T1623.32–34 (TRA.00023.00001); Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [9] (SCOI.82369.00001).

<sup>1527</sup> Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [78] (SCOI.82369.00001); Transcript of the Inquiry, 20 February 2023, T1628.16–24 (TRA.00023.00001).

<sup>1528</sup> Transcript of the Inquiry, 20 February 2023, T1638.21–43 (TRA.00023.00001); Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [42] (SCOI.82369.00001).

- 11.23. As at late 2012, Mr Lehmann and Ms Young, then Detective Chief Inspectors, were the two Investigation Coordinators for the UHT.<sup>1529</sup> Ms Young transferred to the UHT in November 2012.<sup>1530</sup>
- 11.24. According to Mr Willing, at any given time during his tenure as Homicide Commander, these investigation response teams had “carriage of between 60-80 active investigations”.<sup>1531</sup> There were “over 700 unsolved cases on [the] UHT database”.<sup>1532</sup> He described his role as Homicide Commander as being “to lead, manage and oversee the activities of the squad and its members”.<sup>1533</sup> In relation to particular strike force investigations, his involvement was “to ensure they were adequately resourced, that investigators were adequately supported, and generally reviewing progress of investigations...”.<sup>1534</sup>

## The 2012 UHT review

### The nature of the review

- 11.25. In late 2012, after the second inquest, the UHT conducted an internal review of Scott Johnson’s death. The precise nature and form of that review was the subject of evidence from a number of witnesses.<sup>1535</sup>
- 11.26. Eventually, it was established that there were two relevant documents: a Case Screening Form and a Review Prioritisation Form.<sup>1536</sup> The case screening process would be carried out first by a review officer, and the “prioritisation” exercise would then follow, by more senior officers.<sup>1537</sup>
- 11.27. The Case Screening Form, completed by Detective Sergeant Alicia Taylor, then a Detective Senior Constable, in about late October 2012, canvassed the history of the first two inquests and the evidence which had been obtained to date. It concluded by observing that “[w]ithout developing further lines of inquiry there is no reasonable prospect of determining if the death of Scott Johnson was suicide or homicide”.<sup>1538</sup>

<sup>1529</sup> Transcript of the Inquiry, 20 February 2023, T1638.24–33 (TRA.00023.00001).

<sup>1530</sup> Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, [20] (SCOI.85816).

<sup>1531</sup> Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [45] (SCOI.82369.00001).

<sup>1532</sup> Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [45] (SCOI.82369.00001).

<sup>1533</sup> Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [41] (SCOI.82369.00001).

<sup>1534</sup> Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [46] (SCOI.82369.00001).

<sup>1535</sup> See Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [31] (SCOI.82369.00001); Transcript of the Inquiry, 20 February 2023, T1647.2–12 (TRA.00023.00001); Transcript of the Inquiry, 25 September 2023, T5896.29–40, 5913.29–47, 5918.46–5919.2; Transcript of the Inquiry, 26 September 2023, T5054.35–6055.16 (TRA.00090.00001).

<sup>1536</sup> Exhibit 6, Tab 399A, NSWPF Review of an Unsolved Homicide Case Screening Form – Scott Johnson, Undated (SCOI.85777); Exhibit 6, Tab 399, NSWPF Review Prioritisation Form – Scott Johnson, 2 November 2012 (NPL.0209.0001.0087).

<sup>1537</sup> Transcript of the Inquiry, 25 September 2023, T6054.35–6055.16 (TRA.00090.00001).

<sup>1538</sup> Exhibit 6, Tab 399A, NSWPF Review of an Unsolved Homicide Case Screening Form – Scott Johnson, Undated, 15 (SCOI.85777).

- 11.28. Detective Sergeant Taylor also made recommendations, with which Detective Sergeant Brown agreed,<sup>1539</sup> including that consideration be given to offering a monetary reward and to undertaking:<sup>1540</sup>

*an investigation targeting known persons of interest who have been charged with offences against homosexuals in the Northern Beaches area over the period of Scott Johnson's death which may produce further lines of inquiry and enable covert opportunities to gather information.*

- 11.29. Notwithstanding this recommendation, in the Review Prioritisation Form dated 2 November 2012, completed by Mr Lehmann and three other officers including Detective Sergeant Brown, the Scott Johnson case was assigned “nil priority”.<sup>1541</sup>
- 11.30. The form called for a given case to be given a “score” by reference to certain factors, including “availability of brief/witnesses/physical evidence”; “identification and availability of suspect”, and “existence of new technology”.<sup>1542</sup>
- 11.31. The case was scored as 14 out of a possible 60 points.<sup>1543</sup> According to the form, a score of 15 or less equated to “nil priority”, a rating which was described on the form as leading to the consequence of “close or suspend case”.<sup>1544</sup>

### The approach of the 2012 UHT review

- 11.32. As Mr Lehmann accepted, the structure of the Review Prioritisation Form was such that where there was not already a known suspect, and where there was no physical evidence which might be susceptible to the utilisation of new technology, the scores for both those parts of the form would necessarily be zero (out of a total of a possible 30). In such a case—of which Scott Johnson’s was one—it was impossible for the case to achieve an overall priority score higher than 30 (out of 60), and hence the priority rating for such a case would be unlikely to be better than “low”.<sup>1545</sup>
- 11.33. As Mr Lehmann and the NSWPF both acknowledged, Counsel Assisting did not submit that the “nil priority” rating was wrong, in the sense of not being a “fair and accurate reflection of the status of the evidence and investigation file at that time”.<sup>1546</sup> There is no indication in the evidence that the Review Prioritisation Form was completed other than “correctly”, however far that takes matters.

<sup>1539</sup> Transcript of the Inquiry, 3 October 2023, T6478.3–30 (TRA.00095.00001).

<sup>1540</sup> Exhibit 6, Tab 399A, NSWPF Review of an Unsolved Homicide Case Screening Form – Scott Johnson, Undated, 15 (SCOI.85777).

<sup>1541</sup> Exhibit 6, Tab 399, NSWPF Review Prioritisation Form – Scott Johnson, 2 November 2012, 4 (NPL.0209.0001.0087).

<sup>1542</sup> Exhibit 6, Tab 399, NSWPF Review Prioritisation Form – Scott Johnson, 2 November 2012, 4 (NPL.0209.0001.0087).

<sup>1543</sup> Exhibit 6, Tab 399, NSWPF Review Prioritisation Form – Scott Johnson, 2 November 2012, 4 (NPL.0209.0001.0087).

<sup>1544</sup> Exhibit 6, Tab 399, NSWPF Review Prioritisation Form – Scott Johnson, 2 November 2012, 4 (NPL.0209.0001.0087).

<sup>1545</sup> Transcript of the Inquiry, 26 September 2023, T6060.4–6061.39 (TRA.00091.00001).

<sup>1546</sup> Submissions of John Lehmann, 23 October 2023, [6] (SCOI.86376); Supplementary Submissions of NSWPF, 23 October 2023, [139] (SCOI.86378).



- 11.34. However, assuming that to be so, the resultant outcome raises questions about the utility of this form as a basis for the UHT’s resource allocation in unsolved homicides. I note that I have received evidence, in the Investigative Practices Hearing, concerning the new process utilised by the UHT to allocate priority between matters.<sup>1547</sup>
- 11.35. I am concerned that the absence of any known suspect or retained physical exhibits necessarily limited the total score (and thus “priority”) which could be given to a case such as the Scott Johnson case. Those are the very circumstances which may exist where there has been an initial failure by investigating police either to undertake a thorough investigation, or to obtain, retain and manage exhibits. For those initial investigative failures or omissions (and the resulting absence of known suspects and/or exhibits) to bear *adversely* on the level of priority assigned to such a case, compared to other unsolved homicides, seems unsatisfactory.
- 11.36. This type of prioritisation form, which I understand is no longer utilised, had the unfortunate outcome that a less than rigorous initial investigation into a case would inexorably lead to its being afforded lower priority upon review by the UHT. This raises an obvious problem in cases such as this one, where Detective Sergeant Taylor had actually recommended a course of action which might “produce further lines of inquiry” and “enable covert opportunities to gather information”.<sup>1548</sup>
- 11.37. As matters turned out, that precise course of action was adopted during Strike Force Macnamir. However, that only came about because of factors extraneous to the review process, as outlined below.

### The consequence of the 2012 UHT review

- 11.38. In December 2012, Mr Lehmann informed the Johnson family that the Scott Johnson case was deemed to have “zero solvability”.<sup>1549</sup>
- 11.39. In fact, the categorisation of the case by the UHT in November 2012 was not “zero solvability” but rather, “nil priority”. Plainly the two expressions do not have an identical meaning. However, the evidence of both Mr Lehmann<sup>1550</sup> and Ms Young<sup>1551</sup> was to the effect that in practice they were regarded as substantially similar.

<sup>1547</sup> See **Chapter 8**.

<sup>1548</sup> Exhibit 6, Tab 399A, NSWPF Review of an Unsolved Homicide Case Screening Form – Scott Johnson, Undated, 15 (SCOI.85777).

<sup>1549</sup> Exhibit 6, Tab 312, Email correspondence between Christopher Olen, Peter Cotter, Pamela Young and Michael Willing, 7 February 2013, 2 (NPL.3000.0016.0014); Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [33] (SCOI.82369.00001).

<sup>1550</sup> Transcript of the Inquiry, 26 September 2023, T6059.34–6060.2 (TRA.00091.00001).

<sup>1551</sup> Transcript of the Inquiry, 5 October 2023, T6643.37–6644.3 (TRA.00097.00001).

- 11.40. As to whether a “nil priority” ranking meant that a case would be “closed or suspended” (as the form indicated), each of Mr Lehmann,<sup>1552</sup> Detective Sergeant Brown,<sup>1553</sup> and Ms Young<sup>1554</sup> gave evidence that “unsolved” cases were never literally “closed”.
- 11.41. Mr Lehmann said that “closed” was “a poor word choice”, and that the reality was that the case “would become an inactive case and probably wouldn’t be proactively investigated any time soon”.<sup>1555</sup> Ms Young said that if a case was categorised as “nil priority”, it would be suspended, which she agreed meant that no work would be done on it unless and until a new piece of information was obtained.<sup>1556</sup>
- 11.42. Mr Willing accepted that the 2012 designation of Scott Johnson’s case as having zero solvability meant in effect that, as at late 2012, the UHT was declining to investigate the matter further.<sup>1557</sup>

## February 2013: *Australian Story*, and the establishment of Strike Force Macnamir

### The lead-up to *Australian Story*

- 11.43. On 9 January 2013, Steve Johnson wrote to Mr Lehmann to express concern at the “zero solvability” rating which had been given to Scott Johnson’s case.<sup>1558</sup> At that time, Mr Willing was on annual leave, temporarily relieved as Homicide Commander by then Detective Acting Superintendent Christopher Olen (hereafter referred to as Mr Olen).<sup>1559</sup> Mr Willing said he did not become aware of this email until some time later.<sup>1560</sup>
- 11.44. On 7 February 2013, Mr Olen sent an email to Peter Cotter, copied to Mr Willing and Ms Young, in which he proposed a response to Steve Johnson’s letter. He described the Johnson family’s stated aim in sending it as being “to give publicity to the case” and “to motivate police to do something”.<sup>1561</sup>

<sup>1552</sup> Transcript of the Inquiry, 26 September 2023, T6057.29–30 (TRA.00091.00001).

<sup>1553</sup> Transcript of the Inquiry, 3 October 2023, T6479.22–6480.10 (TRA.00095.00001).

<sup>1554</sup> Transcript of the Inquiry, 5 October 2023, T6644.20 (TRA.00097.00001).

<sup>1555</sup> Transcript of the Inquiry, 26 September 2023, T6057.3–43 (TRA.00091.00001).

<sup>1556</sup> Transcript of the Inquiry, 5 October 2023, T6644.17–31 (TRA.00097.00001).

<sup>1557</sup> Transcript of the Inquiry, 20 February 2023, T1648.24–28 (TRA.00023.00001).

<sup>1558</sup> Exhibit 6, Tab 312, Email correspondence between Christopher Olen, Peter Cotter, Pamela Young and Michael Willing, 7 February 2013, 2 (NPL.3000.0016.0014); Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [33] (SCOI.82369.00001).

<sup>1559</sup> Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [33] (SCOI.82369.00001).

<sup>1560</sup> Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [32] (SCOI.82369.00001).

<sup>1561</sup> Exhibit 6, Tab 312, Email correspondence between Christopher Olen, Peter Cotter, Pamela Young and Michael Willing, 7 February 2013, 2 (NPL.3000.0016.0014).

- 11.45. In the same email, Mr Olen also noted that Mr Lehmann “had participated in an ABC Australian Story to air this Monday night 11 February 2013 in respect of the case”, which he expected would be “highly critical of the original investigation”, including by demonstrating that the location of Scott Johnson’s death was a known beat, contrary to the NSWPF’s view advanced in both the first and second inquests.<sup>1562</sup>
- 11.46. Mr Olen further said that whilst the Johnson family’s claims contained a “lot of theory and very little if any factual material or evidence produced to police”, he felt that the family “may have the UHT in a corner”. His proposal, said to have been devised “in consultation with Mick Willing”, was to allocate two officers at the UHT to investigate the matters raised by the Johnson family.<sup>1563</sup>
- 11.47. Ms Young replied to Mr Olen’s email the same day, saying that she wanted to “put on the record” that “the decision not to proceed with further active investigation was based on two reviews conducted by the likes of Mick Ashwood, Gary Jubelin and Glen Richardson in addition to John Lehmann” (emphasis added).<sup>1564</sup>
- 11.48. Mr Olen’s response, also on 7 February 2013, included the following:<sup>1565</sup>
- Pam,*
- I sense your frustration and anger with this and don’t disagree regarding your observations in respect to the weight of real evidence upon which the investigators can move forward.*
- However I disagree that I have made any ‘easy decision’ and capitulated to the ‘hype’.*
- What are you going to say to the Minister and the family next week after John Lehmann in his soon to be broadcast National and (International USA) interview in which he has indicated ‘the case is open and a team is working on it’.*
- To be fair to John (after reading the notes of the interview taken by Siobhan) I think he did very well in his responses to questions directed at him along the lines of ‘Are you doing more than simply reviewing the case’.*
- 11.49. According to Mr Olen’s email, a decision had by then been made, by the NSWPF, “to investigate the issues raised by the Johnson family”.

<sup>1562</sup> Exhibit 6, Tab 312, Email correspondence between Christopher Olen, Peter Cotter, Pamela Young and Michael Willing, 7 February 2013, 2–3 (NPL.3000.0016.0014).

<sup>1563</sup> Exhibit 6, Tab 312, Email correspondence between Christopher Olen, Peter Cotter, Pamela Young and Michael Willing, 7 February 2013, 3 (NPL.3000.0016.0014).

<sup>1564</sup> Exhibit 6, Tab 312, Email correspondence between Christopher Olen, Peter Cotter, Pamela Young and Michael Willing, 7 February 2013, 1 (NPL.3000.0016.0014).

<sup>1565</sup> Exhibit 6, Tab 312, Email correspondence between Christopher Olen, Peter Cotter, Pamela Young and Michael Willing, 7 February 2013, 1 (NPL.3000.0016.0014).

## 11 February 2013: Strike Force Macnamir, and *Australian Story*

- 11.50. On 11 February 2013, at 12:26pm, evidently in accordance with that decision, Strike Force Macnamir was created by the NSWPF.<sup>1566</sup> Its Terms of Reference were “[t]o review and reinvestigate the circumstances of the death of Scott Johnson”.<sup>1567</sup> Ms Young was named as Investigation Supervisor, and Detective Sergeant Brown as OIC.<sup>1568</sup>
- 11.51. Later that day, in the evening of 11 February 2013, the *Australian Story* program concerning Scott Johnson’s death went to air.<sup>1569</sup> Steve Johnson was critical of the NSWPF for its handling of his brother’s case. He and others working with him drew parallels with the Bondi cases and referred to evidence of “gay hate” violence having also occurred on the northern beaches of Sydney.
- 11.52. The program also included parts of a pre-recorded interview given by Mr Lehmann, evidently the interview referred to Mr Olen in his 7 February 2013 email.
- 11.53. In the course of that interview, as broadcast, Mr Lehmann said: “I won’t comment on what stage the investigation is at. Certainly we haven’t closed the books on this case, it’s an open case.”<sup>1570</sup>
- 11.54. In my view, this statement is not consistent with the UHT’s decision not to investigate the case further, and was apt to mislead a viewer into believing that investigative steps were being taken. While, no doubt Mr Lehmann felt under considerable pressure given the media attention at that time, in my view his statement was not an accurate reflection of the UHT’s internal assessment of the Scott Johnson case.
- 11.55. The words Mr Lehmann used on *Australian Story* were literally true; the case was “open” and “with the Unsolved Homicide Team”. However, for Mr Lehmann to say that he “won’t comment” on “what stage the investigation is at” fell some way short of acquainting viewers with the reality, which was that the UHT had decided “not to proceed with further active investigation”.<sup>1571</sup> Nevertheless, I do not consider that Mr Lehmann was being deliberately misleading when he made the statement.

<sup>1566</sup> Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, [31] (SCOI.85816).

<sup>1567</sup> Exhibit 6, Tab 8, Strike Force Macnamir, Terms of Reference (Version 2), 2 April 2013, 1 (SCOI.75758).

<sup>1568</sup> Exhibit 6, Tab 8, Strike Force Macnamir, Terms of Reference (Version 2), 2 April 2013, 1 (SCOI.75758).

<sup>1569</sup> Exhibit 6, Tab 319, Transcript of ‘On the Precipice’, *Australian Story*, 11 February 2013 (SCOI.82485).

<sup>1570</sup> Exhibit 6, Tab 319, Transcript of ‘On the Precipice’, *Australian Story*, 11 February 2013, 8 (SCOI.82485). See the relevant evidence and submissions at Transcript of the Inquiry, 20 February 2023, T1651.3–1653.27 (TRA.00023.00001) (Mr Willing); Transcript of the Inquiry, 21 February 2023, T1753.26–1754.5 (TRA.00024.00001) (Mr Willing); Transcript of the Inquiry, 26 September 2023, T6071.19–6074.41 (TRA.00091.00001) (Mr Lehmann); Submissions of Counsel Assisting, 7 June 2023, [327]–[328] (SCOI.84380); Supplementary Submissions of Counsel Assisting, 16 October 2023, [149] (SCOI.86243); Supplementary Submissions of NSWPF, 23 October 2023, [151]–[153] (SCOI.86378); Submissions of John Lehmann, 23 October 2023, [7]–[15] (SCOI.86376).

<sup>1571</sup> Exhibit 6, Tab 312, Email correspondence between Christopher Olen, Peter Cotter, Pamela Young and Michael Willing, 7 February 2013, 1 (NPL.3000.0016.0014).

- 11.56. The relevance of this evidence to the task before the Inquiry is that it shows that senior NSWPF officers, including Mr Olen, Mr Lehmann and Ms Young, were alive to the tension between on the one hand the need to respond to public pressure to reinvestigate the Scott Johnson case, and on the other hand the views actually held by NSWPF officers, both that such a reinvestigation was unlikely to reach any conclusion different from the initial finding of suicide and that there were 700 other cases no less deserving of such priority.
- 11.57. Mr Willing accepted that, but for “intense lobbying by members of the Johnson family”, Strike Force Macnamir would not have been established, given the outcome of the UHT’s review in late 2012.<sup>1572</sup>

## 12 February 2013: the meeting with the Minister

- 11.58. The following day, on 12 February 2013 at 5:00pm, there was a meeting between the Minister for Police (Michael Gallacher), the Johnson family, Mr Olen and Ms Young.<sup>1573</sup> Mr Willing had been requested to attend by the Minister’s Chief of Staff, but was on leave and arranged for Mr Olen to attend in his place.<sup>1574</sup>
- 11.59. In an account of that meeting that Ms Young gave by email six months later, on 18 September 2013, to Mr Kaldas, then Deputy Commissioner, (and copied to Mr Willing), she stated, *inter alia*, that:<sup>1575</sup>
- a. “no clarification or substantiation” was sought by the Minister of the “concerns/complaints” raised by the Johnson family;
  - b. She (Ms Young) had commented that she “hoped the family understood that the UHT have over 700 cases, each with families with the same hopes as the Johnson family, and that any additional allocation of staff had to be in balance with this”;
  - c. This was “the only interaction at the meeting by [Mr] Olen and [her]”; and
  - d. The meeting was “humiliating and disrespectful”, and it was her “belief that the manner in which the Minister conducted the meeting and his offices’ [sic] continued and direct interest in the progress of the matter is, at least in part, to emphasise a special status with which this family is to be regarded”.
- 11.60. During that meeting, the Minister signed an application (which had been made by the UHT in November 2012) for a monetary reward to be offered for any information about Scott Johnson’s death.<sup>1576</sup>

<sup>1572</sup> Transcript of the Inquiry, 20 February 2023, T1683.32–34 (TRA.00023.00001).

<sup>1573</sup> Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [38] (SCOI.82369.00001); Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, [32], and Annexures PY5, PY7 (SCOI.85816).

<sup>1574</sup> Transcript of the Inquiry, 20 February 2023, T1719.19–31 (TRA.00023.00001); Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [37] (SCOI.82369.00001).

<sup>1575</sup> Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, Annexure PY7 (SCOI.85816).

<sup>1576</sup> Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, [35] (SCOI.85816).

## 2013–2014: Strike Force Macnamir’s investigations

- 11.61. By November 2013, Ms Young had prepared a statement of some 445 pages, which outlined the investigations undertaken by Strike Force Macnamir to that point (**Young Coronial Statement**). The version of the statement received into evidence before the Inquiry was dated 20 November 2013 and signed on 13 July 2014.<sup>1577</sup>
- 11.62. The first 430 pages of the Young Coronial Statement (2874 paragraphs) dealt with the evidence available at the conclusion of the investigative and other work carried out by Strike Force Macnamir. At page 430, [2875], appears a heading, “Opinion”. The final 15 pages (to [2978]) constituted the opinions of Ms Young arising from that evidence.
- 11.63. Mr Willing called the Young Coronial Statement a “comprehensive overview” of the work undertaken by Strike Force Macnamir.<sup>1578</sup>
- 11.64. On 4 October 2013, Mr Willing requested that the NSW Crime Commission review Strike Force Macnamir’s investigative activities. He said he did so because he “felt that an independent review of those investigation activities might help provide a level of comfort to the Johnson family ... that the reinvestigation into the death of Scott Johnson was thorough and objective”.<sup>1579</sup>
- 11.65. On 18 February 2014, at a time when the Young Coronial Statement had been finalised, the NSW Crime Commission expressed the view that Strike Force Macnamir had been “comprehensive and thorough and has not identified any line of inquiry not already undertaken”.<sup>1580</sup>

### The “suicide theory” in the Young Coronial Statement

- 11.66. In her statement, Ms Young identified three possible hypotheses as to the manner of Scott Johnson’s death: suicide, homicide, and misadventure.
- 11.67. In their oral evidence, Ms Young and Detective Sergeant Brown maintained that Strike Force Macnamir, and in particular the Young Coronial Statement, merely assembled the available evidence in relation to all three possibilities (suicide, homicide or misadventure), rather than favouring the suicide theory or indicating that suicide was more likely.<sup>1581</sup> Detective Sergeant Brown reiterated this position in the Brown Submissions.<sup>1582</sup>

<sup>1577</sup> Exhibit 6, Tab 252F, Statement of Detective Chief Inspector Pamela Young re: Death of Scott Johnson, 20 November 2013 (SCOI.83088).

<sup>1578</sup> Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [63] (SCOI.82369.00001).

<sup>1579</sup> Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023, [49] (SCOI.82369.00001); Exhibit 6, Tab 350A, Document titled ‘DCoP Briefing Note 090415’, April 2015, 3 (NPL.3000.0014.0195).

<sup>1580</sup> Exhibit 6, Tab 350A, Document titled ‘DCoP Briefing Note 090415’, April 2015, 3 (NPL.3000.0014.0195).

<sup>1581</sup> Transcript of the Inquiry, 5 October 2023, T6663.17–41 (TRA.00097.00001) (Ms Young); Transcript of the Inquiry, 3 October 2023, T6484.15–27 (TRA.00095.00001) (Detective Sergeant Brown).

<sup>1582</sup> Submissions of Detective Sergeant Penelope Brown, 24 October 2023, [12] (SCOI.86380).

- 11.68. Mr Willing at first denied,<sup>1583</sup> but ultimately accepted,<sup>1584</sup> that the Young Coronial Statement conveyed the view that suicide was “distinctly likely”, with “solid evidence supporting that theory”. He agreed that it also conveyed the view that homicide was “distinctly unlikely” and that the evidence for that theory was “weak to non-existent”; and that while misadventure was “possible”, the Statement did not devote much attention to that possibility.<sup>1585</sup>
- 11.69. Mr Willing also accepted that in the “Opinion” paragraphs, Ms Young:<sup>1586</sup>
- a. Identified factors that tended to support a homicide hypothesis, and then refuted each of those factors; and on the other hand, by contrast; and
  - b. Identified factors which militated against the suicide hypothesis, and then refuted each of those factors.
- 11.70. He accepted that in so doing, Ms Young was plainly saying that the homicide hypothesis was “unlikely to be right”, and that the suicide hypothesis was “more likely to be right than the others”.<sup>1587</sup>
- 11.71. As for his own view about whether suicide was the most likely explanation for Scott Johnson’s death Mr Willing said his own view “changed at various points”.<sup>1588</sup> He went on:<sup>1589</sup>

*I thought at some parts of the inquiry, at some points I thought that suicide was much more likely; other times I thought no, depending on my own analysis of what I was being told at the time. But I thought overall that suicide was a likely possibility – likely explanation for what occurred with Scott.*

- 11.72. In an interview with the NSWPF’s solicitors on 24 April 2015, Mr Willing had said:<sup>1590</sup>

*I think he [Scott Johnson] has probably gone up there to engage in casual sex and either fallen asleep and fallen over or committed suicide. My theory is that he was enamoured with Alan Turing’s story – talking about it and leading up to death.*

<sup>1583</sup> Transcript of the Inquiry, 20 February 2023, T1625.8–39 (TRA.00023.00001).

<sup>1584</sup> Transcript of the Inquiry, 15 May 2023, T3722.30–3723.7 (TRA.00051.00001).

<sup>1585</sup> Transcript of the Inquiry, 15 May 2023, T3722.43–3723.7 (TRA.00051.00001).

<sup>1586</sup> Transcript of the Inquiry, 15 May 2023, T3723.22–3724.35 (TRA.00051.00001).

<sup>1587</sup> Transcript of the Inquiry, 15 May 2023, T3723.15–39 (TRA.00051.00001).

<sup>1588</sup> Transcript of the Inquiry, 15 May 2023, T3725.42 (TRA.00051.00001).

<sup>1589</sup> Transcript of the Inquiry, 15 May 2023, T3725.42–3726.2 (TRA.00051.00001).

<sup>1590</sup> Exhibit 6, Tab 382, Record of interview with Michael Willing, 24 April 2015, 3 (NPL.0147.0001.0005).



- 11.73. When asked whether this response as given in April 2015 remained his view thereafter, Mr Willing stated:<sup>1591</sup>

*It did chop and change a bit. You'll see in the next line I mention Alan Turing, as a mathematician, similar sort of circumstances, a homosexual man who was concerned over the style of mathematics that Turing engaged in, and I thought that that was a likely scenario at the time, but it did change. There was another - you know, it was before the Coroner for a considerable period of time after that and I thought ultimately that you couldn't determine one way or the other.*

### Application for a third inquest

- 11.74. On 19 March 2014, Mr Willing, as Homicide Commander, wrote to State Coroner Barnes, to “formally request that your office conduct a further examination of the circumstances surrounding the death of Scott Johnson following the finalisation of current investigation”.<sup>1592</sup>
- 11.75. Mr Willing said that this was not a request for a fresh inquest *per se*, but only for such a “further examination”; it would be a matter for the Coroner to decide whether to conduct a third inquest.<sup>1593</sup> His evidence was that he personally believed a third inquest would be appropriate, as it would address the “breakdown in the relationship with the Johnson family” and provide “some confidence to the Johnson family and the wider public”.<sup>1594</sup>
- 11.76. The State Coroner agreed to such a “further examination”.
- 11.77. In due course, a directions hearing was listed by the State Coroner for 13 April 2015. As Mr Willing accepted, the two principal matters to be determined at that hearing were first, whether a third inquest was to be ordered, and secondly, whether the Young Coronial Statement would be made the subject of a non-publication order, or allowed to be published (in part or whole).<sup>1595</sup>
- 11.78. Written submissions were filed by Counsel Assisting the Coroner, and on behalf both the NSWPF and the Johnson family.
- 11.79. Counsel Assisting the Coroner submitted that it would be appropriate to order that a fresh inquest be held.<sup>1596</sup> Counsel for the Johnson family, who had brought the application for a third inquest, positively urged that a third inquest be ordered.<sup>1597</sup>

<sup>1591</sup> Transcript of the Inquiry, 15 May 2023, T3727.12–20 (TRA.00051.00001).

<sup>1592</sup> Exhibit 6, Tab 252C, Letter from Detective Superintendent Commander Michael Willing to Magistrate Michael Barnes, 19 March 2014 (SCOI.82369.00004).

<sup>1593</sup> Transcript of the Inquiry, 20 February 2023, T1697.1–7 (TRA.00023.00001).

<sup>1594</sup> Transcript of the Inquiry, 20 April 2023, T3444.37–47 (TRA.00044.00001).

<sup>1595</sup> Transcript of the Inquiry, 15 May 2023, T3736.6–28 (TRA.00051.00001).

<sup>1596</sup> Exhibit 6, Tab 328, Submissions of Counsel Assisting, Undated (served 18 March 2015) (SCOI.11062.00005).

<sup>1597</sup> Exhibit 6, Tab 330, Outline of Submissions of the family of Scott Johnson, 10 April 2015 (SCOI.11062.00014).



- 11.80. Counsel for the NSWPF contended that:<sup>1598</sup>
- a. It may be premature even to consider whether or not to hold a third inquest, having regard to “resource implications”, without prior consideration of whether and what extent the material in the Young Coronial Statement was “new evidence or facts” (at [7] and [8]);
  - b. If that question were to be determined now, then one “further consideration” bearing on the exercise of the Coroner’s discretion was the “desirability” of “allocating limited public resources to a third inquest” (at [12]);
  - c. Accepting that there had been “suspicions, rumours, doubts or concerns in some parts of the community about gay-hate related crimes in the Northern Beaches area of Sydney in the 1980s and about the attitudes of police in relation to such crimes”, it would be open to the State Coroner to form the view that a fresh inquest could “allay those suspicions, rumours, doubts or concerns” (at [11]);
  - d. Counsel had been instructed by Ms Young that the “new evidence or facts” available were not such as would produce a different result from the open finding made by Coroner Forbes in 2012 (at [13]); and
  - e. Non-publication orders should be made over the Young Coronial Statement (at [17]).
- 11.81. In oral submissions on 13 April 2015, counsel for the NSWPF said that the Commissioner “would certainly not resist a fresh inquest being held” but reiterated that “the Commissioner and [Ms] Young” do not consider “that an inquest would result in any findings being made that would produce a different result from the open finding made by Deputy State Coroner Forbes on 26 July 2012”.<sup>1599</sup>
- 11.82. On Monday 13 April 2015, State Coroner Barnes did order a third inquest, as discussed below.
- 11.83. On Friday 10 April 2015, Ms Young was asked by Ms Alberici of the ABC: “What’s changed since the last coronial inquest that would warrant another one?”. Her answer included (emphasis added): “We have put to the test some of the findings of Operation Taradale – which was – did identify or reinvestigate some gay-hate crimes in Bondi, and two were found to be possible homicides” (emphasis added).<sup>1600</sup>

<sup>1598</sup> Exhibit 6, Tab 329, Submissions of the Commissioner of Police, 1 April 2015 (SCOI.11062.00007).

<sup>1599</sup> Exhibit 6, Tab 331, Transcript of Coronial Proceedings re application for the granting of a fresh inquest into the death of Scott Johnson, 13 April 2015, T7.14–43 (SCOI.82870).

<sup>1600</sup> Exhibit 6, Tab 342, Transcript of recorded interview between Emma Alberici and Detective Chief Inspector Pamela Young in the Lateline Studio, 10 April 2015, T20.37–45 (NPL.2017.0004.0549).

- 11.84. The findings made in the Milledge Inquest, had actually been positive findings that the deaths of Mr Russell and Mr Warren near Bondi in 1989 were homicides. She had also expressed the view that the evidence strongly supported the probability that both those men had met their deaths at the hands of “gay-hate assailants”.
- 11.85. As I have recounted above, those findings, and those views, and the work of Operation Taradale, had influenced Deputy State Coroner Forbes in bringing in an open finding in June 2012, in place of the original 1989 suicide finding, in relation to the death of Scott Johnson near North Head.
- 11.86. The evidence before me did not extend to the detail of what Strike Force Macnamir did in order to “put to the test” either the work of Operation Taradale or the findings of Senior Deputy State Coroner Milledge. However, that language chosen by Ms Young both anticipates, and reflects, the sceptical and critical approach adopted by Strike Force Neiwand towards the work of Operation Taradale, and the findings of Senior Deputy State Coroner Milledge, between late 2015 and late 2017. Those matters are discussed in **Chapter 12**.

### The “*Lateline*” issues

- 11.87. An area of dispute which arose during Public Hearing 2 was what came to be known as the “*Lateline* issues”. In short, these issues concerned whether Ms Young’s participation in a sit-down studio interview with Ms Alberici on the ABC *Lateline* program on the evening of 13 April 2015, occurred with the authorisation and/or knowledge of NSWPF personnel, and whether the sentiments expressed by Ms Young on *Lateline*, including that the Minister for Police had been “kowtowing” to the Johnson family in the meeting of 12 February 2013, were shared by other senior NSWPF personnel.

### Relevance of the *Lateline* issues to the work of the Inquiry

- 11.88. The NSWPF and Mr Willing contended that the *Lateline* issues had nothing to do with the proper work of the Inquiry. The NSWPF submitted it has “no bearing on the Inquiry’s central purpose”.<sup>1601</sup> Mr Willing submitted it had nothing to do with “gay hate”.<sup>1602</sup> Indeed, each advanced an objection to the Inquiry’s jurisdiction partly on the ground that this subject fell outside the Inquiry’s Terms of Reference. As I explained in **Chapter 1**, I rejected the contention that this subject fell outside the Inquiry’s Terms of Reference.
- 11.89. As I explained at the commencement of this Chapter, however, the question whether a matter is within the Inquiry’s Terms of Reference is separate from the issue of what is to be made of the evidence received through the process of inquiry.

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<sup>1601</sup> Supplementary Submissions of NSWPF, 23 October 2023, [291] (SCOI.86378).

<sup>1602</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [456]–[459] (SCOI.86377).

- 11.90. I considered that the evidence concerning *Lateline* might be an instructive piece of the mosaic of evidence directed to the ongoing attitude of the NSWPF to investigations and reinvestigations of deaths involving suspected LGBTIQ bias. In this way, it could assist me in my consideration of the NSWPF investigations in deaths falling within Categories A and B of the Inquiry's Terms of Reference.
- 11.91. As events transpired, I consider that this evidence does have some, albeit limited, utility in this context. However, the circumstances of the Scott Johnson case are, in some respects, unique. There were significant factual conflicts in the evidence of various key witnesses as to the detail involved in the *Lateline* issues. Some, or even many, of those conflicts may be explicable, at least in part, by the passage of time. I did not receive evidence from some of the senior NSWPF officers who were party to correspondence or conversations. For the purposes of this Inquiry, it has not been necessary to resolve most of these evidentiary conflicts, or most of the conflicting submissions concerning the credibility and reliability of those witnesses who did give evidence on the *Lateline* issues.
- 11.92. I considered it important to explore the attitude of the UHT, and the NSWPF more generally, to the Scott Johnson case, to assist me in considering whether there was a tendency for officers to adopt "tunnel vision" in historical homicide cases where an LGBTIQ bias motivation was suggested. In a number of the cases falling within Category A or B of the Inquiry's Terms of Reference, Counsel Assisting have made submissions concerning signs of LGBTIQ bias motivation that may have been overlooked or dismissed. It is useful for me to understand whether these attitudes continued after 2010.
- 11.93. This is relevant both to my understanding of the attitudes during the period covered by the Terms of Reference, and consequently to my consideration of the Categories A and B cases.

### The *Lateline* interview

- 11.94. Having regard to what I have set out above, it is only necessary to summarise the key aspects of the evidence concerning *Lateline*. They have been addressed extensively in submissions, to some of which I return below.

### A short chronology

#### THE LEAD-UP TO *LATELINE*

- 11.95. In the months leading up to the directions hearing on 13 April 2015, a NSWPF media strategy was formulated in relation to the possibility that a third inquest would be ordered and that the Young Coronial Statement would be made public (in whole or in part). Various witnesses had very different perceptions of the precise terms and effect of this strategy.

- 11.96. Ms Young’s evidence was that she formed the idea of developing this strategy,<sup>1603</sup> because she anticipated that the Johnson family would make comments in the media which would be critical of the NSWPF and their investigative efforts on the Scott Johnson case; and she wanted the NSWPF to be prepared to put its side of the story to the press.<sup>1604</sup>
- 11.97. Ms Young said that her strategy involved NSWPF “talking to the media” and “being asked questions by the media”, on the record.<sup>1605</sup> She said that she raised this with Mr Willing in about late 2014 or early 2015, and that he had responded by saying that he liked the idea.<sup>1606</sup> Ms Young said that once she knew Mr Willing was open to the idea, Ms Young discussed the subject with Detective Sergeant Brown.<sup>1607</sup>
- 11.98. On 30 January 2015, Ms Young met with Ms Alberici for the first time, with Detective Sergeant Brown.<sup>1608</sup>
- 11.99. In mid-February 2015, Ms Young provided a copy of the Young Coronial Statement to Ms Alberici.<sup>1609</sup> There was conflicting evidence about whether and when Mr Willing knew that she had done so,<sup>1610</sup> and it is not necessary for me to resolve that conflict.
- 11.100. Although Ms Young and Mr Willing were talking about a proposed media strategy from about January 2015, the first documented record of involvement of the Police Media Unit in the strategy was not until 1 April 2015.<sup>1611</sup>
- 11.101. On that date, there was a discussion involving Ms Young, Mr Willing and Ms Wells of the NSWPF Media Unit. It was agreed that “backgrounders” would be arranged with two journalists, Dan Box of *The Australian* and Lorna Knowles at the ABC.<sup>1612</sup>

<sup>1603</sup> Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, [93] (SCOI.85816); Transcript of the Inquiry, 5 October 2023, T6680.1–38 (TRA.00097.00001).

<sup>1604</sup> Transcript of the Inquiry, 5 October 2023, T6680.34–6681.4 (TRA.00097.00001).

<sup>1605</sup> Transcript of the Inquiry, 5 October 2023, T6681.24–32 (TRA.00097.00001).

<sup>1606</sup> Transcript of the Inquiry, 5 October 2023, T6681.44–45 (TRA.00097.00001).

<sup>1607</sup> Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, [95] (SCOI.85816).

<sup>1608</sup> Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, [95] (SCOI.85816); Transcript of the Inquiry, 6 October 2023, T6789.35–6790.36 (TRA.00098.00001).

<sup>1609</sup> Exhibit 6, Tab 354, Email correspondence from Emma Alberici to Bruce Belsham, 11 April 2015 (SCOI.82991); see also Exhibit 6, Tab 348, Email correspondence between Emma Alberici and Lisa Whitby, 8 April 2015 (SCOI.82992); and Exhibit 6, Tab 346, Email from Penelope Brown to Pamela Young, 17 February 2015 (NPL.0138.0001.0072).

<sup>1610</sup> Transcript of the Inquiry, 15 May 2023, T3740.21–34, 3744.11 (TRA.00051.00001) (Mr Willing); cf Transcript of the Inquiry, 3 October 2023, T6490.35–46, 6492.19–6493.45 (TRA.00095.00001) (Detective Sergeant Brown); and Transcript of the Inquiry, 5 October 2023, T6684.7–40 (TRA.00097.00001) (Ms Young).

<sup>1611</sup> Exhibit 6, Tab 372, Email from Georgina Wells to Strath Gordon, 14 April 2015 (NPL.0138.0002.3306); Exhibit 6, Tab 382, Record of interview with Michael Willing, 24 April 2015, 1–2 (NPL.0147.0001.0005); Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, Undated, 1 (NPL.2017.0001.0029).

<sup>1612</sup> Transcript of the Inquiry, 15 May 2023, T3737.29–33 (TRA.00051.00001); Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [10] (NPL.9000.0027.0001).

- 11.102. On about 7 April 2015, Ms Young indicated to Ms Wells that she would prefer to speak to Ms Alberici at the ABC rather than Lorna Knowles.<sup>1613</sup> Mr Willing accepted that he briefly discussed this with Ms Wells and agreed to this course of action.<sup>1614</sup>
- 11.103. The document which ultimately set out the media strategy was an email of 7 April 2015 from Ms Wells to then Detective Chief Superintendent John Kerlatec and then Acting Assistant Commissioner Kenneth Finch. It relevantly provided (emphasis added):<sup>1615</sup>

*... [W]e would like to provide a background briefing to the ABC and The Australian prior to Monday so they can take a look at the report [ie the 445-page Young coronial statement] and have a chat to police about what's in it. The briefing would be for background information only and off the record. ...*

*If and when the statement is made public, we would be happy to go on the record then, plus address any media requests from all media ...*

*Additionally, Det Supt Mick Willing intends to advise the Coroner that we will be backgrounding a number of reporters on the statement as a courtesy.*

*I have discussed this strategy with Strath and he supports and approves it from a PAB perspective.*

- 11.104. On 8 April 2015, the media strategy as formulated in the 7 April 2015 email was approved by Mr Kerlatec and Mr Kaldas.<sup>1616</sup> As is apparent from the terms of the 7 April 2015 email, it had already been approved by Mr Gordon, the Director of Public Affairs, at some time earlier.<sup>1617</sup>
- 11.105. Ms Young regarded the terms of the 7 April 2015 email as confirming what she understood to have already been agreed with Mr Willing, namely that if, on 13 April 2015 the State Coroner did not make a non-publication order over her statement, she was authorised to give an on-the-record studio interview to Ms Alberici.<sup>1618</sup> In her understanding, no further approval was required.

<sup>1613</sup> Exhibit 6, Tab 367, Email correspondence between Kenneth Finch, Strath Gordon, John Kerlatec and Georgina Wells, 13–14 April 2015 (NPL.0138.0002.2771); see also Exhibit 6, Tab 351, Email from Georgina Wells to Siobhan McMahon, 9 April 2015 (NPL.0138.0002.2959).

<sup>1614</sup> Transcript of the Inquiry, 15 May 2023, T3751.23–40 (TRA.00051.00001).

<sup>1615</sup> Exhibit 6, Tab 347, Email from Georgina Wells to John Kerlatec and Kenneth Finch, 7 April 2015 (NPL.0138.0001.0037).

<sup>1616</sup> Exhibit 6, Tab 380, Handwritten diary entries, April 2015, 91 (NPL.0138.0009.0185); Exhibit 6, Tab 382A, Document titled 'Mick Willing notes', Undated, 2 (NPL.2017.0001.0029).

<sup>1617</sup> Exhibit 6, Tab 347, Email from Georgina Wells to John Kerlatec and Kenneth Finch, 7 April 2015 (NPL.0138.0001.0037); see also Exhibit 6, Tab 374, Email from Strath Gordon to Strath Gordon, 21 April 2015 (NPL.0138.0004.5545).

<sup>1618</sup> Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, [102] (SCOI.85816); Transcript of the Inquiry, 5 October 2023, T6743.43–6744.23 (TRA.00097.00001).

11.106. By contrast, the evidence of Mr Willing and all three relevant Police Media personnel (Ms Wells, Ms McMahon, and Mr Gordon) was that that was not so; rather, according to each of them, before any such on the record interview there would have had to be further authorisation procedures.<sup>1619</sup>

11.107. However, as Mr Willing acknowledged, the 7 April 2015 email itself contained no such qualification.<sup>1620</sup>

11.108. The NSWPF Media Policy, in force as at 13 April 2015, provided at section 3.2.3:<sup>1621</sup>

*Participation in live interviews on current affairs style shows and major news bulletins is restricted to the Commissioner, Deputy Commissioners, Corporate Spokespeople, Assistant Commissioners, and personnel authorised and appropriately trained for that environment.*

11.109. Section 3.2.5 on “Government Policy” also provided:<sup>1622</sup>

*Do not criticise:*

- *existing or proposed police policy or wider Government policy or legislation*
- *Parliament*
- *a court decision*
- *any other government department or agency.*

11.110. Part 5 of Schedule 1 to the Policy provided, in relation to coronial matters:<sup>1623</sup>

*During investigations involving deaths, no public comment should be made without the authorisation of the relevant Region Commander or specialist Commander equivalent and the Coroner, following consultation with the Police Media Unit.*

...

*... Police media statements should never speculate about cause of death. It is legally a matter for the Coroner to determine and media inquiries should be referred to the Coroner’s Office.*

...

*Public speculation or commentary about matters before the Coroner could jeopardise coronial proceedings.*

<sup>1619</sup> Exhibit 6, Tab 511, Statement of Georgina Wells, 4 September 2023, [18]–[20] (NPL.9000.0027.0001); Exhibit 6, Tab 512, Statement of Strath Gordon, 5 September 2023, [17]–[21] (NPL.9000.0028.0001); Exhibit 6, Tab 510, Statement of Siobhan McMahon, 1 September 2023, [24] (NPL.9000.0025.0009); Transcript of the Inquiry, 6 October 2023, T6801.15–27 (Mr Willing) (TRA.00098.00001).

<sup>1620</sup> Transcript of the Inquiry, 6 October 2023, T6786.2–6 (TRA.00098.00001).

<sup>1621</sup> Exhibit 6, Tab 527, NSWPF Media Policy, May 2013, 13 [3.2.3] (NPL.0226.0001.0001).

<sup>1622</sup> Exhibit 6, Tab 527, NSWPF Media Policy, May 2013, 14 [3.2.5] (NPL.0226.0001.0001).

<sup>1623</sup> Exhibit 6, Tab 527, NSWPF Media Policy, May 2013, 47–48 (NPL.0226.0001.0001).

- 11.111. Ms Young did not remember whether she had seen the Media Policy in the first half of 2015.<sup>1624</sup> However, she considered that she was “personnel authorised and appropriately trained” for the purpose of section 3.2.3 of the Media Policy: she had been authorised by Mr Willing by the 7 April 2015 email, and she was trained for that environment because “[she] knew the case better than anybody else”.<sup>1625</sup>
- 11.112. According to Senior Counsel for Mr Willing, Ms Young’s understanding that the term “environment” referred to her knowledge of the Scott Johnson case, as opposed to the relevant media environment (i.e., a live studio interview), was “illogical and self-serving”.<sup>1626</sup>
- 11.113. Ms Young accepted that the Media Policy did require her to get permission to go on the record and do an in-studio interview on national television. However, her view was that she had “deferred ... whatever permissions or authority was required to Mick Willing”, who had “sent it up the line to everyone, including the Deputy Commissioner, and then Georgina Wells looked after the Public Affairs Branch permission side”.<sup>1627</sup>
- 11.114. Senior Counsel for Mr Willing submitted that the 7 April 2015 email had to be read subject to the NSWPF Media Policy, so that anything proposed in that email had to undergo the authorisation process prescribed by the policy.<sup>1628</sup> He further suggested that Ms Young’s attitude and views about the Johnson case “made her exactly the person who would not have been permitted by [the NSWPF Media Unit] to be interviewed” if this policy had been followed.<sup>1629</sup>
- 11.115. Ms Alberici gave evidence that her understanding was, from her first meeting with Ms Young onwards, that Ms Young:<sup>1630</sup>

*was not there to be a ‘leaker’. She wanted to be a whistle blower on behalf of her colleagues ... She thought of herself as protecting the legitimacy of the police conduct in this matter, against the convenient blame-shifting by politicians. Not only had she not ‘gone rogue’ [a description which had been used by Senior Counsel for Mr Willing about Ms Young], she was defending the police, and the correctness of its conduct on behalf of victims.*

- 11.116. Ms Alberici’s evidence was that prior to 13 April 2015, she:<sup>1631</sup>

*had minor dealings with Police media who called me to check that I had everything I needed to conduct the interview with Pamela Young for Lateline.*

<sup>1624</sup> Transcript of the Inquiry, 5 October 2023, T6671.47 (TRA.00097.00001).

<sup>1625</sup> Transcript of the Inquiry, 5 October 2023, T6674.7–18 (TRA.00097.00001).

<sup>1626</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [107] (SCOI.86377).

<sup>1627</sup> Transcript of the Inquiry, 5 October 2023, T6733.34–47 (TRA.00097.00001).

<sup>1628</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [76] (SCOI.86377).

<sup>1629</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [109] (SCOI.86377).

<sup>1630</sup> Exhibit 6, Tab 524, Statement of Emma Alberici, 25 September 2023, 3 (answer to question 3) (SCOI.85817).

<sup>1631</sup> Exhibit 6, Tab 524, Statement of Emma Alberici, 25 September 2023, 3 (answer to question 4) (SCOI.85817).

- 11.117. In an email sent to ABC colleagues on 8 April 2015, Ms Alberici stated:<sup>1632</sup>
- Police have asked me if its OK for The Australian to be given an interview Monday [13 April 2015] with Pamela Young also. I have spent the last hour in conversation with them all....*
- 11.118. Ms Alberici’s evidence was that “them all” was a reference to police media personnel and also to “the superiors – probably Mick Willing”.<sup>1633</sup>
- 11.119. Conversely, the evidence of Ms Wells, Ms McMahon and Mr Gordon was that they knew nothing of a studio interview with *Lateline* until the evening of 13 April 2015 at the earliest.<sup>1634</sup>
- 11.120. On 10 April 2015, Ms Young had a “backgrounding” discussion with Mr Box. Prior to doing so, she asked Ms McMahon (as Media Liaison Officer (**MLO**)) not to attend.<sup>1635</sup> Mr Willing and Mr Gordon were aware of and approved this course of action in advance.<sup>1636</sup> The reasons given by Ms Young for this request, as recorded in Ms McMahon’s email of that day to Mr Gordon and Ms Wells, were that “a free and frank discussion with Mr Box about the investigation” would be “hindered by the presence of an MLO”, and also that her (Ms Young’s) “decision” was “designed to protect [Ms McMahon] (or any MLO)” from “possible repercussions over her comments”.<sup>1637</sup>
- 11.121. Mr Willing’s evidence was that Ms Young’s comments that she did not want a MLO present caused him concern, because it “wasn’t usual”, but that he “trusted that Pam would do the right thing and it was backgrounding only”.<sup>1638</sup> He said he “discussed it with Strath [Gordon] and [they] both came to [the] conclusion that [they] trusted Pam would know what to say”.<sup>1639</sup> He did not consider it necessary to speak to Ms Young to remind her not to say anything controversial, because he “trusted that she had the experience and know-how” not to do so.<sup>1640</sup>

<sup>1632</sup> Exhibit 6, Tab 348, Email correspondence between Emma Alberici and Lisa Whitby, 8 April 2015, 1 (SCOI.82992). In oral evidence, Ms Alberici’s evidence was that “them all” was a reference to police media personnel; and added that it was also “the superiors – probably Mick Willing, just on and off the phone”: Transcript of the Inquiry, 28 September 2023, T6239.28–31 (TRA.00093.00001).

<sup>1633</sup> Transcript of the Inquiry, 28 September 2023, T6239.28–31 (TRA.00093.00001).

<sup>1634</sup> Exhibit 6, Tab 511, Statement of Georgina Wells, 4 September 2023, [18] (NPL.9000.0027.0001); Exhibit 6, Tab 512, Statement of Strath Gordon, 5 September 2023, [15] (NPL.9000.0028.0001); Exhibit 6, Tab 510, Statement of Siobhan McMahon, 1 September 2023, [23] (NPL.9000.0025.0009).

<sup>1635</sup> Exhibit 6, Tab 352, Email from Siobhan McMahon to Blake Clifton, 10 April 2015 (NPL.0138.0004.7178).

<sup>1636</sup> Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, Undated, 2 (NPL.2017.0001.0029). Transcript of the Inquiry, 15 May 2023, T3757.3–3758.30 (TRA.00051.00001).

<sup>1637</sup> Exhibit 6, Tab 352, Email from Siobhan McMahon to Blake Clifton, 10 April 2015 (NPL.0138.0004.7178).

<sup>1638</sup> Transcript of the Inquiry, 15 May 2023, T3757.12–26 (TRA.00051.00001).

<sup>1639</sup> Transcript of the Inquiry, 15 May 2023, T3757.38–41 (TRA.00051.00001).

<sup>1640</sup> See also Exhibit 6, Tab 374, Email from Strath Gordon to Strath Gordon, 21 April 2015 (NPL.0138.0004.5545); Exhibit 6, Tab 375, Email from Strath Gordon to Strath Gordon, 22 April 2015 (NPL.0138.0004.7119).



- 11.122. On 10 April 2015, Ms Young also participated in a recorded interview with Ms Alberici at the ABC studios (none of which ultimately went to air).<sup>1641</sup> In that interview Ms Young clearly indicated, among other things, that her personal view was that Scott Johnson’s death was a suicide.<sup>1642</sup>
- 11.123. Mr Willing was aware that Ms Young went to the ABC on 10 April 2015. Ms Young telephoned him on her way there.<sup>1643</sup>

#### THE EVENTS OF 13 APRIL 2015

- 11.124. On the morning of 13 April 2015, the directions hearing was held. At about noon or a little earlier, State Coroner Barnes did order a third inquest. He also ordered that a version of the Young Coronial Statement, with some redactions, be made public.<sup>1644</sup>
- 11.125. Soon after the directions hearing, Ms Young participated in a “doorstop” interview with an ABC journalist outside the Coroners Court.<sup>1645</sup> Part of that filmed interview was later shown during the ABC 7:00pm news bulletin that night.<sup>1646</sup>
- 11.126. However, Ms Young expressly told both Mr Willing and Ms Wells that she had *not* participated in any doorstep interview because there were “no media left outside” the Coroners Court.<sup>1647</sup> Mr Willing said that that was okay as a media release would go out.<sup>1648</sup>
- 11.127. At around 1:00pm a NSWPF media release was issued, welcoming the inquest.<sup>1649</sup> Mr Willing accepted that its terms were “bland” and “uncontroversial”.<sup>1650</sup>

<sup>1641</sup> Exhibit 6, Tab 342, Transcript of recorded interview between Emma Alberici and Detective Chief Inspector Pamela Young in the Lateline Studio, 10 April 2015 (NPL.2017.0004.0549).

<sup>1642</sup> Exhibit 6, Tab 342, Transcript of recorded interview between Emma Alberici and Detective Chief Inspector Pamela Young in the Lateline Studio, 10 April 2015, 2–3 (NPL.2017.0004.0549).

<sup>1643</sup> Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, Undated (NPL.2017.0001.0029).

<sup>1644</sup> Exhibit 6, Tab 331, Transcript of Coronial Proceedings re application for the granting of a fresh inquest into the death of Scott Johnson, 13 April 2015, 5 (SCOL82870).

<sup>1645</sup> Exhibit 6, Tab 343, Transcript of interview with Detective Chief Inspector Pamela Young outside NSW Coroners Court Glebe, 13 April 2015 (NPL.2017.0004.0588).

<sup>1646</sup> Exhibit 6, Tab 362A, Video footage of ABC News NSW 7pm news program, 13 April 2015 (SCOL47474); Exhibit 6, Tab 362B, Transcript of ABC News segment re inquest into the death of Scott Johnson, 13 April 2015 (SCOL47473).

<sup>1647</sup> Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, Undated, 3 (NPL.2017.0001.0029); Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, 3 (NPL.0147.0001.0001); Transcript of the Inquiry, 29 September 2023, T6323.6–10 (Ms Wells) (TRA.00094.00001).

<sup>1648</sup> Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, Undated, 3 (NPL.2017.0001.0029).

<sup>1649</sup> Exhibit 6, Tab 356, Email correspondence between Georgina Wells, Michael Willing, Pamela Young and others, 13 April 2015 (NPL.0138.0004.7162)

<sup>1650</sup> Transcript of the Inquiry, 15 May 2023, T3770.5–9 (TRA.00051.00001).

11.128. At 4:35pm, Ms Wells emailed a daily “media update” to various NSWPF personnel within State Crime Command and the Police Media Unit, including Mr Kerlatec and Mr Finch, but not including Mr Willing. That update stated:<sup>1651</sup>

*Last week, backgrounders were facilitated by DCI Pam Young with Dan Box (Australian) and Emma Alberici (ABC TV) about the contents of the [Young Coronial Statement].*

11.129. At around 5:00pm, Mr Willing received a phone call from Ms Young. Ms Young was in a car, with Detective Sergeant Brown, on her way to the ABC to be interviewed on the record by Ms Alberici for *Lateline* that night.

11.130. Mr Willing was on loudspeaker, and so Detective Sergeant Brown could hear what was said by both Ms Young and Mr Willing. She made a note of the conversation in her Duty Book, either later that day or shortly thereafter.<sup>1652</sup>

11.131. The accounts of Ms Young,<sup>1653</sup> and Detective Sergeant Brown,<sup>1654</sup> and the contents of the note in Detective Sergeant Brown’s Duty Book, as to what was said in this conversation, were substantially similar. Mr Willing gave three different accounts of the conversation, on three separate appearances in the witness box.<sup>1655</sup> I received detailed submissions from Counsel Assisting, the NSWPF, Ms Young, Detective Sergeant Brown and Mr Willing concerning what factual findings should be made in relation to this telephone conversation and what flowed from it.<sup>1656</sup>

11.132. Except as to the following matters, it is not necessary for me to resolve all of the competing evidence and submissions.

11.133. The evidence of both Ms Young and Detective Sergeant Brown was essentially: that Ms Young told Mr Willing she was on the way to the ABC to do the interview with Ms Alberici; and that if asked she might use the word “kowtowing” when describing the former Police Minister.

11.134. Ms Young said that Mr Willing’s response to the latter remark was to laugh,<sup>1657</sup> which she interpreted as encouragement.<sup>1658</sup>

<sup>1651</sup> Exhibit 6, Tab 361, Email from Georgina Wells to Kenneth Finch and John Kerlatec, 13 April 2015 (NPL.0138.0002.2947).

<sup>1652</sup> Exhibit 6, Tab 519, Statement of Detective Sergeant Penelope Brown, 20 September 2023, 12 (SCOI.85747).

<sup>1653</sup> Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, [119] (SCOI.85816); Transcript of the Inquiry, 5 October 2023, T6698.7–6700.32 (TRA.00097.00001).

<sup>1654</sup> Exhibit 6, Tab 519, Statement of Detective Sergeant Penelope Brown, 20 September 2023, 12 (SCOI.85747); see also Transcript of the Inquiry, 3 October 2023, T6502.37–6503.12 (TRA.00095.00001).

<sup>1655</sup> See Transcript of the Inquiry, 20 February 2023, T1720.28–1721.19 (TRA.00023.00001); cf Transcript of the Inquiry, 15 May 2023, T3776.17–25 (TRA.00051.00001) and Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, Undated, 2 (NPL.2017.0001.0029); and cf Transcript of the Inquiry, 6 October 2023, T6792.35–6793.8 (TRA.00098.00001).

<sup>1656</sup> See Supplementary Submissions of Counsel Assisting, 16 October 2023, [229] (SCOI.86243); Supplementary Submissions of NSWPF, 23 October 2023, [244]–[248] (SCOI.86378); Submissions of Pamela Young, 23 October 2023, [180] (SCOI.86379); Submissions of Detective Sergeant Penelope Brown, 24 October 2023, [25] (SCOI.86380); Supplementary Submissions of Michael Willing, 23 October 2023, [241], [265]–[276], [282]–[288], [305]–[332], [402]–[408] (SCOI.86377).

<sup>1657</sup> Transcript of the Inquiry, 5 October 2023, T6699.36 (TRA.00097.00001).

<sup>1658</sup> Transcript of the Inquiry, 5 October 2023, T6699.40 (TRA.00097.00001).

- 11.135. The evidence of Detective Sergeant Brown included that Mr Willing knew Ms Young was going to *Lateline* that day to give an interview, because they (Ms Young and Mr Willing) had spoken about it, in conversations in the hallway when she (Detective Sergeant Brown) had been present.<sup>1659</sup>
- 11.136. While I have reservations about the reliability of the evidence of both Ms Young and Mr Willing in a number of respects, I have no such reservations about that of Detective Sergeant Brown.
- 11.137. Two of Mr Willing’s three versions included acceptance that Ms Young had said, or may well have said, all of the things recounted by Ms Young and Detective Sergeant Brown as to the 5:00pm phone conversation, and that his response to the “kowtowing” reference might have been to laugh.<sup>1660</sup>
- 11.138. In all those circumstances, I consider that it is highly probable that all of those things were indeed said. That being so:
- a. Mr Willing knew, by the end of that phone conversation, that Ms Young had travelled to the ABC twice, once on Friday, 10 April 2015 and again on the afternoon of Monday, 13 April 2015;
  - b. He also knew that on the second occasion (hours after State Coroner Barnes had ordered that the Young Coronial Statement could be made public), Ms Young had told him she was on her way to the ABC to “do the interview” with Ms Alberici;
  - c. Mr Willing (and Ms Wells) had been told by Ms Young that she had not done a doorstep interview outside the court earlier in the day: see [11.126] above.
- 11.139. Accordingly, I do not accept Mr Willing’s evidence, as initially given in February 2023, that it came as a “shock and surprise” when he saw Ms Young on television later that evening.<sup>1661</sup> Nor am I convinced by Mr Willing’s explanation that he had been mistaken when giving this evidence.<sup>1662</sup> As discussed further below, I consider that this was one of several matters in respect of which Mr Willing showed himself to be an unreliable historian.
- 11.140. After this phone call, Mr Willing rang Ms Wells and told her of it. Whatever Mr Willing said to Ms Wells, her understanding from him was that Ms Young would be on *Lateline* that night.<sup>1663</sup>

<sup>1659</sup> Transcript of the Inquiry, 3 October 2023, T6501.2–27 (TRA.00095.00001).

<sup>1660</sup> Transcript of the Inquiry, 20 February 2023, T1720–1721.20 (TRA.00023.00001); Transcript of the Inquiry, 6 October 2023, T6792.35–6793.8 (TRA.00098.00001).

<sup>1661</sup> Transcript of the Inquiry, 20 February 2023, T1712.13–20 (TRA.00023.00001).

<sup>1662</sup> Transcript of the Inquiry, 15 May 2023, T3812.12–40 (TRA.00051.00001).

<sup>1663</sup> Exhibit 6, Tab 384, Record of interview with Georgina Wells, 27 April 2015, 3 (NPL.0147.0001.0001).

- 11.141. Thereafter, accordingly, at 6:18pm, Ms Wells circulated a “late addition” to her earlier 4:35pm update, which stated:<sup>1664</sup>

*In addition to the media update re SF Macnamir, Det Cb Insp Pam Young spoke to Emma Alberici from ABC Lateline on camera today. The reporter also spoke with Steve Johnson. Both are to appear on tonight’s Lateline.*

- 11.142. Ms Alberici’s evidence was that she had conversations with Mr Willing, both before and after Ms Young’s *Lateline* interview. She said:<sup>1665</sup>

*He encouraged Ms Young to do the interview, and he presumably liaised with Police Media. I spoke to him in preparation for the interviews both before and after.*

- 11.143. Her evidence was that as a result of her conversations with Mr Willing prior to the broadcast, she believed that he knew “that there was going to be a sit-down interview which would go to air”, and that her discussions with him were on that basis.<sup>1666</sup> She said he never said anything to the effect that Ms Young was only authorised to give a background briefing off the record, or that she was not authorised to give a public interview.<sup>1667</sup>

- 11.144. At 7:00pm, the ABC evening news was broadcast.<sup>1668</sup> It included footage of both Steve Johnson and Ms Young outside the Coroners Court earlier that day. The newsreader concluded the news item as follows:<sup>1669</sup>

*And you can see an exclusive interview with the lead detective in that case on Lateline tonight at about 10.30 here on ABC TV.*

- 11.145. Sometime before 7:30pm, Ms Young sent a text message to Mr Willing and Ms Wells, noting that the ABC newsreader had referred to there being “an exclusive tonight on *Lateline*”.<sup>1670</sup>

- 11.146. At 8:11pm, Mr Willing sent a text message to State Coroner Barnes, which included:<sup>1671</sup>

*Pam has been interviewed by the ABC and the Australian concerning SF Macnamir. She will most likely be on Lateline tonight. ... This was something that we discussed up to our Deputy Commissioner and head of [sic] public affairs and we all agreed that we needed to do it for a number of reasons.*

<sup>1664</sup> Exhibit 6, Tab 362, Email from Georgina Wells to Kenneth Finch and John Kerlatec, 13 April 2015 (NPL.0138.0002.3238).

<sup>1665</sup> Exhibit 6, Tab 524, Statement of Emma Alberici, 25 September 2023, 4 (answer to question 8) (SCOI.85817).

<sup>1666</sup> Transcript of the Inquiry, 28 September 2023, T6232.15–23 (TRA.00093.00001).

<sup>1667</sup> Transcript of the Inquiry, 28 September 2023, T6232.25–29 (TRA.00093.00001).

<sup>1668</sup> Exhibit 6, Tab 362B, Transcript of ABC News segment re inquest into the death of Scott Johnson, 13 April 2015 (SCOI.47473).

<sup>1669</sup> Exhibit 6, Tab 362B, Transcript of ABC News segment re inquest into the death of Scott Johnson, 13 April 2015, 2 (SCOI.47473).

<sup>1670</sup> Exhibit 6, Tab 364, Email from Pamela Young to Pamela Young, 13 April 2015 (NPL.0138.0001.0042).

<sup>1671</sup> Exhibit 6, Tab 366, Text message sent from Michael Willing to State Coroner Michael Barnes, 13 April 2015 (SCOI.47469).

- 11.147. In my view, it is difficult to understand why Mr Willing would have felt the need to send this message if he were only informing State Coroner Barnes about a routine doorstep, rather than something more substantial like a studio interview.
- 11.148. I do not accept the NSWPF’s submission that it was “entirely unsurprising” that he would have sought to inform the State Coroner of a doorstep, because his doing so had been adverted to in the 7 April 2015 email.<sup>1672</sup> According to Mr Willing’s own evidence, what had been discussed “up to our Deputy Commissioner and head of [sic] public affairs” and recorded in that email was not that Ms Young would be “interviewed”, nor that she would be “on *Lateline*”; rather, those discussions had concerned “backgrounding” of two journalists, “off the record”.<sup>1673</sup> Thus, I accept Counsel Assisting’s submission that Mr Willing’s references to an “interview” and “*Lateline*”—even if not specifically to a studio interview<sup>1674</sup>—support the probability that Mr Willing was aware of the real nature of the *Lateline* interview.<sup>1675</sup>
- 11.149. During the interview as broadcast on *Lateline*, Ms Young:<sup>1676</sup>
- a. Said she did not accept (“not at all”) that the initial investigation into Scott Johnson’s death was “flawed”; rather it was “to the standard of the day”;
  - b. Immediately volunteered that “there’s still evidence and information that Scott may have suicided”;
  - c. Said that it was “very important” to mention the Golden Gate Bridge and compare it to North Head;
  - d. Accused Steve Johnson of using “influence... on the government, to make the death of Scott a priority in my office over other jobs that we had”; and
  - e. Accused the former Minister for Police (Mr Gallacher) of “kowtowing” to Steve Johnson.
- 11.150. Mr Willing watched part of the *Lateline* program that night. When he turned on the television, Ms Young was already on the screen. He did not contact Ms Young or any other NSWPF officers that night after the broadcast.<sup>1677</sup>

## THE AFTERMATH

- 11.151. On the following day, 14 April 2015, there was a range of different responses within the NSWPF concerning the interview.<sup>1678</sup>

<sup>1672</sup> Supplementary Submissions of NSWPF, 23 October 2023, [254(b)] (SCOI.86378).

<sup>1673</sup> Transcript of the Inquiry, 15 May 2023, T3793.5–3794.12 (TRA.00051.00001).

<sup>1674</sup> Supplementary Submissions of NSWPF, 23 October 2023, [254(b)] (SCOI.86378).

<sup>1675</sup> Supplementary Submissions of Counsel Assisting, 16 October 2023, [229(b)] (SCOI.86243).

<sup>1676</sup> Exhibit 6, Tab 318, Transcript of interview with Pamela Young and Emma Alberici on ‘A third inquest ordered into cliff fall death of young man’, *Lateline* (ABC News, 13 April 2015) (SCOI.82483).

<sup>1677</sup> Transcript of the Inquiry, 15 May 2023, T3807.26–3808.9 (TRA.00051.00001).

<sup>1678</sup> Transcript of the Inquiry, 15 May 2023, T3799.34–47, 3817.24–39 (TRA.00051.00001); Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, Undated, 2–4 (NPL.2017.0001.0029); Transcript of the Inquiry, 15 May 2023, T3814.14–47 (TRA.00051.00001).

- 11.152. At about 9:00am on 14 April 2015, Mr Willing telephoned Ms Young. He said that then Commissioner of Police Andrew Scipione was “fairly relaxed” about the interview, and also said that he himself (Mr Willing) thought the interview was “good”, and that her participation in the interview was “good”.<sup>1679</sup>
- 11.153. Initially, on the basis that the Commissioner of Police was “relaxed”, some “lines” were drafted by Mr Willing, Ms Wells and Mr Olen, for a potential public statement. These “lines” were generally supportive of Ms Young.<sup>1680</sup> One such “line” was that the “majority of points [Ms Young] raised [on Lateline] are contained within her statement provided to the Coroner”.<sup>1681</sup> As Mr Willing acknowledged, that was not true.<sup>1682</sup> Neither Ms Young’s accusations against Steve Johnson, nor her accusation that the former Minister had “kowtowed”, were in that statement.
- 11.154. However, later in the day Mr Willing telephoned Ms Young again and said that the “media worm had turned ... the worm was not in the place they had hoped”.<sup>1683</sup> Mr Willing accordingly drafted another proposed statement, in very different terms. This time Ms Young’s comments were to be described as “inopportune”.<sup>1684</sup> Ms Young was upset by this.<sup>1685</sup>
- 11.155. A statement was released at around 3:20pm in the following terms:<sup>1686</sup>

*Detective Chief Inspector Pamela Young is an experienced officer who, along with her team, has worked hard on this case and conducted an outstanding investigation.*

*Perhaps some of her comments (on Lateline) were inopportune in light of the Coroner’s decision yesterday to hold a third inquest, a decision that is fully supported by the NSW Police Force.*

*In light of that decision yesterday it would be inappropriate to make further comment.*

<sup>1679</sup> Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, [124] (SCOI.85816); Transcript of the Inquiry, 5 October 2023, T6702.47–6703.30 (TRA.00097.00001); Transcript of the Inquiry, 6 October 2023, T6796.43–6798.20 (TRA.00098.00001).

<sup>1680</sup> Exhibit 6, Tab 368, Email from Michael Willing to Zdenka Vaughan (sent by Georgina Wells), 14 April 2015 (NPL.3000.0009.0669).

<sup>1681</sup> Exhibit 6, Tab 368, Email from Michael Willing to Zdenka Vaughan (sent by Georgina Wells), 14 April 2015 (NPL.3000.0009.0669).

<sup>1682</sup> Transcript of the Inquiry, 15 May 2023, T3806.15–33; T3816.4–3817.20 (TRA.00051.00001).

<sup>1683</sup> Transcript of the Inquiry, 5 October 2023, T6703.38–42 (TRA.00097.00001).

<sup>1684</sup> Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, Undated, 4 (NPL.2017.0001.0029); Exhibit 6, Tab 370, Email correspondence between Michael Willing, Zdenka Vaughan, Strath Gordon and Georgina Wells, 14 April 2015 (NPL.0138.0002.6715).

<sup>1685</sup> Transcript of the Inquiry, 15 May 2023, T3823.25–33 (TRA.00051.00001).

<sup>1686</sup> Exhibit 6, Tab 371, Email from Georgina Wells to Rick Feneley, 14 April 2015 (NPL.0138.0002.6717).

- 11.156. On 14 April 2015, Ms Young and Mr Willing also exchanged text messages. Ms Young expressed frustration at what she regarded as a lack of support for her in relation to the broadcast. Their exchange included:<sup>1687</sup>

*Young: Mick & Ken — I believe you have tried on my behalf but [if] my own organization again puts me in a position where the Johnson family can criticize & humiliate me & all our efforts I will not take it well. I made [us] all — especially our command — look good last night. I am one of those silly idealists who are of little value these days when popularity rules. I'll wait & see.*

*Willing: I know Pam. I have felt this crap too and you know that I support you. I want all the hard work you have done to come out in court for what it is and show the Johnsons for what they are. We need to let that happen and can't jeopardise that now by letting them win. This is for Penny and [sic] well and all of the other people who have helped. We/I need you on this one.*

*Young: Mick — I will not let them win — that is not in my DNA ...*

*Willing: OK I understand. We will work through it and we will come out on top.*

- 11.157. When asked about those texts, Mr Willing accepted that it was obvious that Ms Young wanted to defeat the Johnson family, and that a defeat, for the Johnson family, would be no finding of homicide.<sup>1688</sup> He agreed that by his responses he was effectively saying, “I agree, we will defeat the Johnsons, we will win”.<sup>1689</sup> However, he claimed that he only said those things because he was “attempting to appease her, because she was very upset at the time”.<sup>1690</sup>
- 11.158. Ms Young, however, denied that the language in these text exchanges reflected a desire to defeat the Johnson family.<sup>1691</sup>
- 11.159. Counsel Assisting submitted that the evidence of Mr Willing and Ms Young on this subject should be rejected; and that both of them sought, as stated in the text messages, to ‘defeat’ the Johnson family by opposing a finding of homicide.<sup>1692</sup>

<sup>1687</sup> Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, Undated, 4 (NPL.2017.0001.0029).

<sup>1688</sup> Transcript of the Inquiry, 15 May 2023, T3728.10–18 (TRA.00051.00001).

<sup>1689</sup> Transcript of the Inquiry, 15 May 2023, T3729.37–3730.19 (TRA.00051.00001).

<sup>1690</sup> Transcript of the Inquiry, 15 May 2023, T3729.26–35, T3730.21–24 (TRA.00051.00001).

<sup>1691</sup> Transcript of the Inquiry, 5 October 2023, T6661.30–6662.21 (TRA.00097.00001).

<sup>1692</sup> Submissions of Counsel Assisting, 7 June 2023, [355]–[359] (SCOI.84380); Supplementary Submissions of Counsel Assisting, 16 October 2023, [155]–[159] (SCOI.86243).

- 11.160. The NSWPF submitted that Mr Willing’s text messages were “an attempt to appease DCI Young” at a time when she was very upset;<sup>1693</sup> that it was “appropriate [that] he be concerned for her welfare” because he was her supervisor;<sup>1694</sup> and that he expressly disavowed that he had ever sought to ‘defeat’ the Johnson family.<sup>1695</sup> It was further suggested by the NSWPF,<sup>1696</sup> and by Mr Willing,<sup>1697</sup> that Counsel Assisting was in effect contending that Mr Willing had sought to pervert the course of justice, for which there was no evidence.
- 11.161. Senior Counsel for Mr Willing also submitted that the messages merely reflected Mr Willing’s attempt to “calm her down and support her” and to “protect his team when he could, particularly those who were at risk of going off sick”.<sup>1698</sup> It was said to be “to Mr Willing’s great credit that he did not deny telling her that day that the interview was good”.<sup>1699</sup> He “could not tell her the truth – she was not ready for it and would never have accepted it”.<sup>1700</sup>
- 11.162. I do not accept these characterisations of these text messages, by either the NSWPF or Mr Willing. I do not consider that Mr Willing was merely seeking to “appease” or support Ms Young in sending them.
- 11.163. I consider that it is clear on the evidence that Ms Young viewed a potential finding of homicide at the third inquest as a “defeat” for the NSWPF, that for her part she wanted to “defeat” the Johnsons, and that Mr Willing was at least sympathetic to that approach. I consider that it is apparent from the Young Coronial Statement that Ms Young was strongly of the opinion that Scott Johnson’s death was a suicide. In my opinion, these text messages demonstrate that Mr Willing was sympathetic to and supportive of Ms Young’s views in that regard as well.
- 11.164. By 23 April 2015, Ms Young had been removed as the Investigation Supervisor of Strike Force Macnamir. Following her removal, Detective Sergeant Brown (the incumbent OIC) assumed control over Strike Force Macnamir, with Detective Chief Inspector Jason Dickinson serving as Investigation Supervisor. Both reported directly to Mr Willing.

<sup>1693</sup> Submissions of NSWPF, 28 June 2023, [146(a)], [228]–[229] (SCOI.84211).

<sup>1694</sup> Submissions of NSWPF, 28 June 2023, [228(f)] (SCOI.84211).

<sup>1695</sup> Submissions of NSWPF, 28 June 2023, [146(e)], [230] (SCOI.84211); Transcript of the Inquiry, 15 May 2023, T3727.32–3730.27 (TRA.00051.00001).

<sup>1696</sup> Submissions of NSWPF, 28 June 2023, [147], [230] (SCOI.84211); Supplementary Submissions of NSWPF, 23 October 2023, [69] (SCOI.86378).

<sup>1697</sup> Submissions of Michael Willing, 28 June 2023, [91] (SCOI.84210).

<sup>1698</sup> Submissions of Michael Willing, 28 June 2023, [90] (SCOI.84210).

<sup>1699</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [377] (SCOI.86377).

<sup>1700</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [377] (SCOI.86377).



## Responses to *Lateline* received by Ms Young

11.165. On 14 April 2015, and in the days following, Ms Young received numerous text messages and emails from NSWPF officers, including senior officers, in support of her *Lateline* interview.<sup>1701</sup> Among those senior officers were Mr Kaldas and Mr Finch.

11.166. Mr Finch wrote to Ms Young, “Don’t let this get on top of you. You have a lot of support and that has not diminished”.<sup>1702</sup>

11.167. A text message exchange between Ms Young and Mr Kaldas on the evening of 14 April 2015, included the following:<sup>1703</sup>

*Ms Young: The Johnson family have written to the CoP asking that I be taken off the case due to a comment I made on Lateline last night (Mon) that the former police minister gave them priority over other victim families.*

*Mr Kaldas: Pam, you have my support 150%” ... Love your work. Do not back down, you are in the right, you’re entitled to support. Pls let me know if they attempt to move you out. This happened because of the cowardice of Cath Burn, AS and Jenko [referring to Deputy Commissioner Catherine Burn, Commissioner Andrew Scipione, and Assistant Commissioner (State Crime Command) Mark Jenkins] not going with u or supporting u as they should have. Gallacher has no morals whatsoever.*

11.168. Ms Young responded by an email early on 15 April, in which she said:<sup>1704</sup>

*To be honest they have already backed away from me (Mick Willing to CoP) with a public statement that my comments (all of them) were “inopportune” while in private they tell me they support me.*

11.169. Ms Young gave evidence that in referring to “they”, she meant Mr Willing, Mr Finch and “perhaps” Mr Kerlatec.<sup>1705</sup>

<sup>1701</sup> See, e.g., Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, [128]–[135], Annexure PY17, Annexure PY18 (SCOI.85816); Exhibit 6, Tab 389, Email correspondence between Jane Hansford and Pamela Young, 18 April 2015 (NPL.0138.0001.0015); Exhibit 6, Tab 390, Email from Pamela Young to Pamela Young re: text Sharon Smithes, 17 April 2015 (NPL.0138.0001.0039); Exhibit 6, Tab 391, Email from Pamela Young to Pamela Young re: Text, 17 April 2015 (NPL.0138.0001.0041); Exhibit 6, Tab 392, Email from Pamela Young to Pamela Young re: Texts Trent Power, 17 April 2015 (NPL.0138.0001.0043); Exhibit 6, Tab 393, Email from Pamela Young to Pamela Young re: Texts from NK, 17 April 2015 (NPL.0138.0001.0044); Exhibit 6, Tab 394, Email from Grant Slade to Pamela Young, 14 April 2015 (NPL.0138.0001.0104); Exhibit 6, Tab 395, Email from Pamela Young to Naguib Kaldas, 15 April 2015 (NPL.0138.0001.0129); Exhibit 6, Tab 396, Email correspondence between Michael Plotecki and Pamela Young, 15 April 2015 (NPL.0138.0001.0166); Exhibit 6, Tab 397, Email correspondence between Paul Jacob and Pamela Young, 23 April 2015 (NPL.0138.0001.0184); Exhibit 6, Tab 398, Email correspondence between Deborah Wallace and Pamela Young, 15 April 2015 (NPL.0138.0001.0193).

<sup>1702</sup> Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, Annexure PY17 (SCOI.85816).

<sup>1703</sup> Exhibit 6, Tab 393, Email from Pamela Young to Pamela Young re: Texts from NK, 17 April 2015 (NPL.0138.0001.0044).

<sup>1704</sup> Exhibit 6, Tab 395, Email from Pamela Young to Naguib Kaldas, 15 April 2015 (NPL.0138.0001.0129).

<sup>1705</sup> Transcript of the Inquiry, 5 October 2023, T6705.39–41 (TRA.00097.00001).

- 11.170. The views of Mr Kaldas about Mr Gallacher are unmistakably clear, both from the text message cited above, and from a subsequent email of 8 August 2014, sent by Mr Kaldas to recipients including Mr Willing and Assistant Commissioner (State Crime Command) Mark Jenkins, in which he said (referring to the 12 February 2015 meeting involving Mr Gallacher):<sup>1706</sup>

*Mick, Mark, please keep me posted regarding this issue. It sounds like it is on track with the Coroner finally assuming responsibility, but I want to monitor what happens next, and ensure that we never go back to the inappropriate behaviour condoned and encouraged by previous minister. Ever.*

- 11.171. Ms Young said that she considered that the “inappropriate behaviour” cited by Mr Kaldas related directly to the meeting with Mr Gallacher and the Johnson family.<sup>1707</sup>

### **An alleged conspiracy**

- 11.172. During their oral evidence, Ms Young and Detective Sergeant Brown were asked for their responses to allegations made by Mr Willing, that they had deceptively conspired to conceal, from the NSWPF, Ms Young’s participation in the *Lateline* broadcast. Each of them denied such allegations outright.<sup>1708</sup>
- 11.173. Ms Alberici, for her part, also flatly rejected allegations made on behalf of Mr Willing that she had been in any way privy to any such concealment or deception.<sup>1709</sup> Her evidence was that Mr Willing was fully aware at all times that there was to be a broadcast studio interview.<sup>1710</sup>
- 11.174. I reject the submission that there was any conspiracy between Ms Young, Detective Sergeant Brown and Ms Alberici to conceal from Mr Willing, and the NSWPF, the fact of Ms Young’s participation in *Lateline*. I return to Mr Willing’s submissions about this matter below.

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<sup>1706</sup> Exhibit 6, Tab 521, Annexure PY11 to the Second statement of Pamela Young, 22 September 2023, 68 (SCOI.85816).

<sup>1707</sup> Transcript of the Inquiry, 5 October 2023, T6652.42–T6653.1 (TRA.00097.00001).

<sup>1708</sup> Transcript of the Inquiry, 3 October 2023, T6506.11–6509.41 (Detective Sergeant Brown) (TRA.00095.00001); Transcript of the Inquiry, 5 October 2023, T6707.3–6708.47 (Ms Young) (TRA.00097.00001).

<sup>1709</sup> Transcript of the Inquiry, 28 September 2023, T6255.9–14, 6256.29–6257.7 (TRA.00093.00001).

<sup>1710</sup> Transcript of the Inquiry, 28 September 2023, T6239.36–6240.3, T6254.35–42 (TRA.00093.00001).

## 2017: The conclusion of Strike Force Macnamir

### The State Coroner's finding

11.175. On 30 November 2017, State Coroner Barnes delivered his findings in the third inquest. His Honour concluded that that Scott Johnson had fallen from the cliff top at Blue Fish Point, North Head “as a result of actual or threatened violence by unidentified persons who attacked him because they perceived him to be homosexual”.<sup>1711</sup> He considered it was unlikely that either misadventure or suicide was the cause of death.<sup>1712</sup>

### The reaction of Detective Sergeant Brown and Officer A to the Coroner's finding

11.176. In an email sent one day after the State Coroner's findings were delivered, Mr Olen described Detective Sergeant Brown and Officer A, with whom he had attended the hearing the day before, as having been “understandably ... pretty upset” at hearing the State Coroner's finding.<sup>1713</sup>

11.177. Detective Sergeant Brown gave evidence that Mr Olen's perception was incorrect.<sup>1714</sup> Detective Sergeant Brown said, in substance, that she was not upset but rather “physically and mentally exhausted”,<sup>1715</sup> or “perplexed”.<sup>1716</sup>

11.178. Officer A said that she was “upset”, but that part of the reason for that was the “combination of the emotional toll of the culmination of hard work on the matter” and the “specificity of the finding that it was a “gay hate” crime involving two or more people”. She thought there was “no evidence to support such a specific finding”.<sup>1717</sup> According to Officer A, she “would have been upset to some degree regardless of the determination made” because of the nature of the investigation, and that she was “not hoping for any particular outcome”.<sup>1718</sup>

<sup>1711</sup> Exhibit 6, Tab 232, Findings of State Coroner Michael Barnes, Third Inquest into the death of Scott Russell Johnson, 30 November 2017 (SCOI.11064.00018).

<sup>1712</sup> Exhibit 6, Tab 232, Findings of State Coroner Michael Barnes, Third Inquest into the death of Scott Russell Johnson, 30 November 2017, [247], [258] (SCOI.11064.00018).

<sup>1713</sup> Exhibit 6, Tab 311, Email correspondence between Christopher Olen, Jason Dickinson and Scott Cook, 1 December 2017 (NPL.0115.0002.8325).

<sup>1714</sup> Exhibit 6, Tab 519, Statement of DS Penelope Brown, 20 September 2023, [34]–[36] (SCOI.85747); Transcript of the Inquiry, 3 October 2023, T6488.32–6489.1 (TRA.00095.00001).

<sup>1715</sup> Exhibit 6, Tab 519, Statement of DS Penelope Brown, 20 September 2023, [33] (SCOI.85747).

<sup>1716</sup> Exhibit 6, Tab 519, Statement of DS Penelope Brown, 20 September 2023, [32] (SCOI.85747); Transcript of the Inquiry, 3 October 2023, T6489.3–10 (TRA.00095.00001).

<sup>1717</sup> Exhibit 6, Tab 516, Statement of Officer A, 15 September 2023, [32] (NPL.9000.0031.0001).

<sup>1718</sup> Exhibit 6, Tab 516, Statement of Officer A, 15 September 2023, [34] (NPL.9000.0031.0001).

## Strike Force Welsford

- 11.179. In 2018, following the State Coroner’s finding of homicide, Strike Force Welsford was established to investigate Scott Johnson’s death. That strike force was initiated under Mr Willing’s successor as Homicide Commander, under a new Commissioner of Police, and led by an officer who was not in the UHT or indeed in the Homicide Squad.<sup>1719</sup>
- 11.180. The work of Strike Force Welsford resulted in the apprehension of a suspect, Scott White, who on 12 May 2020 was arrested and charged for the alleged murder of Scott Johnson. Mr White ultimately pleaded guilty to a charge of manslaughter in February 2023 and was sentenced in June 2023.<sup>1720</sup>

## Submissions about the *Lateline* issues

### Procedural matters

- 11.181. Before I turn to the substantive submissions concerning the *Lateline* issues, it is necessary to deal briefly with some procedural matters raised by the NSWPF and Mr Willing.
- 11.182. First, the NSWPF and Mr Willing each expressed concern that two statements of Ms Young—an evidentiary statement dated 2 August 2019<sup>1721</sup> which she prepared in personal injury proceedings against the State; and the April 2023 Young Statement<sup>1722</sup> which she provided, unsolicited, to the Inquiry—were not served on them prior to September 2023 (when the September 2023 Young Statement was served).<sup>1723</sup>
- 11.183. The *Lateline* issues evolved in unexpected ways, due in part to the unanticipated submissions of Mr Willing concerning a supposed conspiracy between Ms Young, Detective Sergeant Brown and Ms Alberici. The NSWPF and Mr Willing have not submitted, nor could they, that they were not given a sufficient opportunity to test Ms Young’s evidence.
- 11.184. The NSWPF also contended that the fact that Ms Young was not called to give evidence at any time before the June CAS were served on 7 June 2023 was “inexplicable”.<sup>1724</sup> Again, the NSWPF could not and did not complain of any practical injustice arising from when Ms Young was called.

<sup>1719</sup> Transcript of the Inquiry, 20 February 2023, T1706.17–1707.8, 1708.45–1709.13 (TRA.00023.00001).

<sup>1720</sup> See *R v White* [2023] NSWSC 611.

<sup>1721</sup> Exhibit 5, Tab 512B, Evidentiary Statement of Pamela Young, 2 August 2019 (SCOI.85912).

<sup>1722</sup> Exhibit 6, Tab 521A, Statement of Pamela Young, 17 April 2023 (SCOI.85815).

<sup>1723</sup> Supplementary Submissions of NSWPF, 23 October 2023, [56]–[57] (SCOI.86378); Supplementary Submissions of Michael Willing, 23 October 2023, [4] (SCOI.86377).

<sup>1724</sup> Supplementary Submissions of NSWPF, 23 October 2023, [161] (SCOI.86378).

- 11.185. I do not accept the contention of Senior Counsel for Mr Willing that he “was not given time to complete his questions of Ms Alberici”.<sup>1725</sup>
- 11.186. Ms Alberici first gave evidence on 28 September 2023. Because Senior Counsel for Mr Willing, Mr Thangaraj, was unable to be present on that day for personal reasons,<sup>1726</sup> I arranged for Ms Alberici to be available a second time, for examination by him, by audio-visual link on 3 October 2023.<sup>1727</sup> Mr Thangaraj questioned Ms Alberici for two hours (substantially longer than either Senior Counsel Assisting or Senior Counsel for the NSWPF). There is absolutely no basis for the suggestion that Mr Willing was prejudiced or denied a fair opportunity to ask questions.
- 11.187. I also reject the submission that Ms Alberici was “unfairly contaminated in advance of giving evidence”.<sup>1728</sup> This submission was based on Ms Alberici’s having understood from the Inquiry (correctly) that Mr Willing had taken the position that Ms Young had “gone rogue”.<sup>1729</sup>
- 11.188. There was no prejudice to Mr Willing from the word “rogue” being used when conveying Mr Willing’s position to Ms Alberici. That position had been advanced by Senior Counsel for Mr Willing, in a public hearing which was live-streamed, and in any event Mr Willing was given ample opportunity to test any aspect of Ms Alberici’s evidence, including as to what may have been her understanding of his position.
- 11.189. Senior Counsel for Mr Willing went so far as to contend that Ms Young, Detective Sergeant Brown and Ms Alberici all gave evidence in circumstances where “contamination was unavoidable”.<sup>1730</sup> I do not agree. This Inquiry, and its hearings, are not adversarial but investigative. Senior Counsel representing Mr Willing had ample opportunity to test the evidence of all these witnesses. In addition, this is a matter that could readily have been raised in the course of the hearings and was not.

### Knowledge and/or approval of the *Lateline* interview

- 11.190. I received submissions from Counsel Assisting, the NSWPF, Mr Willing, Ms Young and Detective Sergeant Brown concerning the knowledge and/or approval of Ms Young’s interview on *Lateline*. As observed above, I considered that the evidence on this matter may have further elucidated the attitudes of senior officers concerning the Scott Johnson case and, more broadly, historical homicides alleged to be LGBTIQ bias crimes. It was also potentially of assistance to me in assessing the reliability of the evidence, generally, of certain witnesses including Mr Willing.

<sup>1725</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [61] (SCOI.86377).

<sup>1726</sup> Exhibit 6, Tab 476G, Email correspondence between Enzo Camporeale and Jonathan Milner, 27 September 2023, 1 (SCOI.85898).

<sup>1727</sup> Transcript of the Inquiry, 28 September 2023, T6223.23–26 (TRA.00093.00001).

<sup>1728</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [134] (SCOI.86377).

<sup>1729</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [134] (SCOI.86377).

<sup>1730</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [6] (SCOI.86377).

- 11.191. After the further evidence received in the September/October 2023 hearings, Counsel Assisting made the following submissions:<sup>1731</sup>

*The recollections of the various witnesses about the events leading up to the Lateline broadcast on 13 April 2015 display many disagreements and conflicts. Some of those may not be able to be resolved on the available evidence.*

*However, having regard to the matters outlined above and in [the CA June Submissions], the following submissions are made:*

- a. While it may be that prior to 13 April 2015 the NSWPF media personnel did not know, or did not realise, that a studio interview with Lateline was envisaged, the evidence of DS Brown, Ms Alberici and Ms Young points to the overwhelming likelihood that Mr Willing did know that.*
- b. It is highly likely that officers senior to Mr Willing, including Mr Kaldas, also knew.*
- c. As to the state of Mr Willing's knowledge about the proposed studio interview, both he and Ms Young have adopted entrenched opposing public positions for years. The evidence of both of them, it is submitted, is in many respects unreliable. However, those factors do not apply to the evidence of DS Brown. Her evidence, which it is submitted was, in general, frank and straightforward, is damning of Mr Willing's position.*
- d. Ms Alberici's evidence should for the most part be accepted. Regard needs to be had to her candidly favourable, indeed laudatory, views of Ms Young and DS Brown. And in some respects (especially as to dates and times) her evidence may be unreliable. However, she also gave her evidence directly and non-evasively, and she impressed overall as a witness of truth.*
- e. Ms Young and DS Brown did not, as alleged on behalf of Mr Willing, deliberately deceive Mr Willing or the NSWPF, or conceal Ms Young's intention to give a Lateline interview, for broadcast, if the Young coronial statement was released.*

- 11.192. I accept those submissions, with the exception of [248(b)] excerpted above. As for that submission, I am conscious that I did not hear from Mr Kerlatec, Mr Finch or Mr Kaldas, and do not consider that I have sufficient evidence to positively find that any of those officers knew in advance of Ms Young's *Lateline* interview.

<sup>1731</sup> Supplementary Submissions of Counsel Assisting, 16 October 2023, [247]–[248] (SCOI.86243).

- 11.193. I emphasise that, in accepting those submissions, I do not make any finding that Mr Willing lied or deliberately misled the Inquiry. As I outlined in **Chapter 1**, there is a distinction between the rejection in whole or in part of a witness' evidence (for example on the basis that, in the face of inconsistent evidence from other sources, I regard their evidence to be unreliable), and a finding that that witness has been untruthful. I simply reject his account as unreliable in all the circumstances.
- 11.194. The NSWPF submitted that on the question of authorisation (as distinct from knowledge), Mr Willing could not himself authorise, in the manner required by the NSWPF Media Policy, the sort of interview in which Ms Young participated; and that Mr Kerlatec, Mr Finch and the State Coroner would have had to formally approve it too.<sup>1732</sup> Senior Counsel for Mr Willing joined in this submission.<sup>1733</sup>
- 11.195. The evidence before me does not establish that the interview was authorised in the precise manner contemplated by the NSWPF Media Policy. However, with respect to Mr Willing, I consider that his conduct gave the impression to Ms Young that the interview was authorised *de facto*. In this regard I accept that Ms Young genuinely believed that she was authorised to speak to Ms Alberici in an interview which would be aired. I do not accept that she was intent on implementing a secret plan to conceal her involvement in *Lateline* from Mr Willing and the NSWPF.
- 11.196. In this regard, I draw attention to the following matters, as established above, which support this understanding:
- a. That it is overwhelmingly likely that Mr Willing knew Ms Young would be appearing in a studio interview on *Lateline* prior to it being broadcast;
  - b. That Mr Willing had himself been consulted and had given permission to Ms Young to attend her “backgrounding” discussion with Mr Box on 10 April 2015 without the presence of a MLO;<sup>1734</sup>
  - c. That Mr Willing did not contact or raise concerns about the interview with anybody in the evening of 13 April 2015 after the show had aired;<sup>1735</sup> and
  - d. That, in a telephone call the following morning, he told Ms Young that he thought the interview was “good”.<sup>1736</sup>
- 11.197. I reject the submission on behalf of Mr Willing that Ms Young, with the assistance of Detective Sergeant Brown, devised a “covert and sophisticated plan” by which she could “publicly air her grievances” about the Johnson family’s preferential treatment through a sit-down studio interview with *Lateline*.<sup>1737</sup>

<sup>1732</sup> Supplementary Submissions of NSWPF, 23 October 2023, [275]–[277] (SCOI.86378).

<sup>1733</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [16]–[17] (SCOI.86377).

<sup>1734</sup> Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, Undated, 2 (NPL.2017.0001.0029). Transcript of the Inquiry, 15 May 2023, T3757.3–3758.30 (TRA.00051.00001).

<sup>1735</sup> Transcript of the Inquiry, 15 May 2023, T3807.26–3808.9 (TRA.00051.00001).

<sup>1736</sup> Exhibit 6, Tab 521, Second Statement of Pamela Young, 22 September 2023, [124] (SCOI.85816); Transcript of the Inquiry, 5 October 2023, T6702.47–6703.30 (TRA.00097.00001); Transcript of the Inquiry, 6 October 2023, T6796.43–6798.20 (TRA.00098.00001).

<sup>1737</sup> Submissions of Michael Willing, 28 June 2023, [5], [45] (SCOI.84210).



- 11.198. Furthermore, I accept that, irrespective of the motivations of Ms Young, Detective Sergeant Brown was acting in good faith in her knowledge of and participation in Ms Young's actions.

### Support for Ms Young's comments on *Lateline*

- 11.199. Counsel Assisting initially submitted that, in circumstances where Mr Willing was on notice of Ms Young's interview before it aired, his failure to remonstrate with her, and his initial inaction and nonchalance even after seeing her on the program on 13 April, provided a basis for an inference that Mr Willing personally supported what Ms Young had said on the program or at least did not disagree with it.<sup>1738</sup> Counsel Assisting also submitted that "perhaps others in State Crime Command" also personally supported what Ms Young had said, or at least did not disagree with it.<sup>1739</sup>
- 11.200. Counsel Assisting also pointed Mr Willing telling Ms Young at 9:00am the next morning, 14 April, that he thought the interview was good. I consider that Mr Willing's support for Ms Young, and his sympathy for her views, is also evident in his text message exchange with Ms Young on 14 April 2015 (addressed above). I do not accept the submission that he was merely appeasing her. His words are plain and forthright, and speak for themselves: "... you know that I support you"; "We will work through it and we will come out on top"; "we/I need you on this one".
- 11.201. The personal support of other members of the NSWPF, including Mr Kaldas, is also apparent in the text messages which Ms Young received on and after 14 April 2015.

## Conclusions of the Inquiry

### Creation of Strike Force Macnamir

- 11.202. Counsel Assisting submitted that the creation of Strike Force Macnamir was regarded, at least by Ms Young, as a politicised and unfair decision, made by the Minister for Police at the behest of the influential Johnson family and in response to media pressure which had come to a head with the *Australian Story* episode on 11 February 2013.<sup>1740</sup>
- 11.203. Counsel for Ms Young contended that in the relevant context it was an "inescapable" inference that the creation of Strike Force Macnamir was the result of "some pressure or political inference...being brought to bear".<sup>1741</sup>

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<sup>1738</sup> Submissions of Counsel Assisting, 7 June 2023, [503] (SCOI.84380).

<sup>1739</sup> Submissions of Counsel Assisting, 7 June 2023, [503] (SCOI.84380).

<sup>1740</sup> Submissions of Counsel Assisting, 7 June 2023, [500] (SCOI.84380).

<sup>1741</sup> Submissions of Pamela Young, 23 October 2023, [114] (SCOI.86379).



- 11.204. However, as I have outlined above, the decision to establish Strike Force Macnamir was made by the NSWPF, not by the Minister, and was made prior to the Minister’s meeting with the Johnsons.
- 11.205. Nevertheless, I do consider that Strike Force Macnamir was regarded by Ms Young in this light. I consider that it is likely that this influenced the attitude of Ms Young to the third inquest, as I discuss below.

## Attitude of Strike Force Macnamir towards Scott Johnson’s death

### The Third Inquest

- 11.206. Counsel Assisting submitted that both Ms Young and her successors at Strike Force Macnamir (as well as Mr Willing) believed that a third inquest was unnecessary and would not result in any different finding from the open finding by Deputy State Coroner Forbes in 2012.<sup>1742</sup>
- 11.207. Counsel Assisting directed attention to the submissions filed on behalf of the NSWPF in relation to the third inquest (addressed above). It was submitted that, in warning of a diversion of UHT resources away from other cases, and in noting Ms Young’s instructions that a different result was unlikely, those submissions supported the inference that a view was held amongst those who were instructing counsel (including Ms Young and Detective Sergeant Brown) that a further inquest into Scott Johnson’s death was unjustified and profligate.<sup>1743</sup>
- 11.208. The NSWPF contended that the submissions to the State Coroner on behalf of the NSWPF merely meant that it “may be appropriate to *defer* the determination of whether third inquest should be held pending receipt of detailed written submissions from the parties” (emphasis in original).<sup>1744</sup> The crucial point, in the NSWPF’s submission, was that Senior Counsel for the NSWPF at the time had not resisted a third inquest on any basis, either in its written submissions or orally.<sup>1745</sup> This was said to have the consequence it was not open to me to find that those at the NSWPF instructing counsel believed that a further inquest was “unjustified and profligate”.
- 11.209. Senior Counsel for Ms Young contended that whilst Ms Young’s preferred outcome would “seem to have been an open verdict”, it was “clear she was not at any stage attempting to pre-empt the Coroner”.<sup>1746</sup> It was also said that Ms Young “welcomed a third inquest”.<sup>1747</sup>

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<sup>1742</sup> Submissions of Counsel Assisting, 7 June 2023, [501] (SCOI.84380).

<sup>1743</sup> Submissions of Counsel Assisting, 7 June 2023, [393] (SCOI.84380).

<sup>1744</sup> Submissions of NSWPF, 28 June 2023, [175] (SCOI.84211).

<sup>1745</sup> Submissions of NSWPF, 28 June 2023, [175], [176] (SCOI.84211).

<sup>1746</sup> Submissions of Pamela Young, 23 October 2023, [28] (SCOI.86379).

<sup>1747</sup> Submissions of Pamela Young, 23 October 2023, [43] (SCOI.86379).

- 11.210. Senior Counsel for Mr Willing also contended that as at April 2015, there was “no evidence to suggest homicide” but “some evidence which suggested other possible causes of death”. Accordingly, the submissions made by Counsel Assisting the Coroner at the inquest “reflect[ed] the state of the evidence as it then stood”.<sup>1748</sup>
- 11.211. I do not accept the submission that Ms Young “welcomed” the third inquest. However, it is important to acknowledge the distinction between a view that a person may hold and the influence that view has on their professional conduct. It is an expectation inherent in many professions that persons will be capable of putting aside their personal views, including about whether particular work is warranted or justified, and conduct themselves professionally or competently. In the observations that follow, I distinguish between Ms Young’s (and Mr Willing’s) personal views, and the operation of Strike Force Macnamir.

### **Attitude of Strike force Macnamir**

- 11.212. Having considered the totality of the evidence, I do not make a positive finding that Strike Force Macnamir did not adopt an open-minded approach to the reinvestigation of Scott Johnson’s death. Both Ms Young and Detective Sergeant Brown gave evidence that that was not so, and although the Young Coronial Statement, in my view, unmistakably favours the view that the death was a suicide and not a homicide, there is not sufficient evidence before me, about the whole of the work of Strike Force Macnamir, to permit the making of such a finding.
- 11.213. The NSWPF submitted that there was “nothing to give rise to even the faintest possibility that Ms Young, or any other officer involved in Strike Force Macnamir, harboured any kind of LGBTIQ bias, or that they failed to carefully investigate the possibility that Mr Johnson died as a result of a hate crime”.<sup>1749</sup> I do not disagree, but I note that no such submission was advanced by Counsel Assisting. It was said that Strike Force Macnamir conducted very detailed investigations concerning the possible involvement of one or more persons in the death of Scott Johnson.<sup>1750</sup> That is also true. However, that is not the end of the matter.

### **The Young Coronial Statement**

- 11.214. The NSWPF, as I understand its submissions, did not appear to oppose a finding that the Young Coronial Statement expressed a view that suicide was the most likely cause of Scott Johnson’s death.<sup>1751</sup> In my view, it plainly did.

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<sup>1748</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [443] (SCOI.86377).

<sup>1749</sup> Supplementary Submissions of NSWPF, 23 October 2023, [288] (SCOI.86378).

<sup>1750</sup> Supplementary Submissions of NSWPF, 23 October 2023, [288] (SCOI.86378).

<sup>1751</sup> See Submissions of NSWPF, 28 June 2023, [160]–[163] (SCOI.84211).

- 11.215. However, the NSWPF contended that Ms Young’s opinion was of little consequence because it “did not in any way circumscribe what can only be described as a comprehensive and through investigation, including into all matters raised by the Johnson family”.<sup>1752</sup> In that regard it relied on the view to that effect expressed by the NSW Crime Commission on 18 February 2014 as to Strike Force Macnamir’s investigations.
- 11.216. The NSWPF also contended that “self-evidently” the NSWPF’s position in the third inquest that an open finding remained appropriate “does not reflect what Counsel Assisting describes as the ‘unchanging’ view of Detective Chief Inspector Young and Strike Force Macnamir that Mr Johnson died by suicide”.<sup>1753</sup>
- 11.217. Senior Counsel for Ms Young contended that it was “wrong and unfair” to suggest that she was committed to the ‘suicide’ theory in her investigation of Scott Johnson’s death.<sup>1754</sup> Ms Young maintained that she had “employed all available aids in her investigation in Strike Force Macnamir”; and that to the extent she did express an opinion, it was “not inappropriate as long as it [did not] compromise the integrity of the process”.<sup>1755</sup> Counsel also drew attention to her professional record which was said to demonstrate a “reputation as a thorough and independent investigator”.<sup>1756</sup>
- 11.218. Senior Counsel for Ms Young maintained that the “Opinion” section provided a “balanced and careful assessment of the evidence that had been able to be collected”.<sup>1757</sup> Senior Counsel also contended that the evidence of Mr Willing on this topic was “disingenuous and mischievous and designed to protect his interests” at the expense of those serving under him, particularly Ms Young and Detective Sergeant Brown.<sup>1758</sup>
- 11.219. Senior Counsel for Ms Young also insisted that a distinction had been elided between “letting the Johnsons win” and “resisting a finding of homicide”.<sup>1759</sup> It was suggested that in circumstances where Strike Force Macnamir had been subjected to “improper pressures” from the Minister of Police,<sup>1760</sup> and was “impeded at every turn” and subjected to “continued harassment” by the Johnson family,<sup>1761</sup> it was unsurprising that she would have regarded the Johnson family as an impediment to the success of Strike Force Macnamir.<sup>1762</sup> But that was said not to have translated to her opposition to any particular finding.<sup>1763</sup>

<sup>1752</sup> Submissions of NSWPF, 28 June 2023, [170] (SCOI.84211) (see generally [164]–[170]).

<sup>1753</sup> Submissions of NSWPF, 28 June 2023, [173] (SCOI.84211).

<sup>1754</sup> Submissions of Pamela Young, 23 October 2023, [100] (SCOI.86379).

<sup>1755</sup> Submissions of Pamela Young, 23 October 2023, [23]–[24] (SCOI.86379).

<sup>1756</sup> Submissions of Pamela Young, 23 October 2023, [102]–[106] (SCOI.86379).

<sup>1757</sup> Submissions of Pamela Young, 23 October 2023, [188] (SCOI.86379).

<sup>1758</sup> Submissions of Pamela Young, 23 October 2023, [30] (SCOI.86379).

<sup>1759</sup> Submissions of Pamela Young, 23 October 2023, [138] (SCOI.86379).

<sup>1760</sup> Submissions of Pamela Young, 23 October 2023, [140]–[141] (SCOI.86379).

<sup>1761</sup> Submissions of Pamela Young, 23 October 2023, [141], [154] (SCOI.86379).

<sup>1762</sup> Submissions of Pamela Young, 23 October 2023, [154] (SCOI.86379).

<sup>1763</sup> Submissions of Pamela Young, 23 October 2023, [138]–[139] (SCOI.86379).

- 11.220. Counsel for Detective Sergeant Brown submitted that, whilst others may have held such a view, there was no evidence that Detective Sergeant Brown wished to “defeat” the Johnson family by resisting a finding of homicide or that she “was involved in any actions” to that end.<sup>1764</sup> Her view was said to be that Strike Force Macnamir was “thoroughly investigating” Scott Johnson’s death.<sup>1765</sup>
- 11.221. Senior Counsel for Mr Willing contended that the police view, that Scott Johnson’s death was not a homicide, was “the product of a thorough investigation”, which had received “no evidence of homicide” and “no evidence of gay hate”.<sup>1766</sup> Mr Willing also submitted that any suggestion that Ms Young wanted to “defeat” the Johnson family ought also be extended to Detective Sergeant Brown, as she was relevantly in the same position and gave the same evidence as Ms Young.<sup>1767</sup>
- 11.222. Ms Young clearly held the view that a further investigation of Scott Johnson’s death was not an appropriate use of the UHT’s resources, and she clearly favoured the view that his death was a suicide. I accept the submissions of Counsel Assisting as to those matters. In that regard I note that the theory that Scott Johnson died by suicide was described by Beech-Jones CJ at CL (as his Honour then was), when sentencing Scott White for the manslaughter of Scott Johnson in June 2023, as an “absurd suggestion”.<sup>1768</sup>
- 11.223. Moreover, as I have said, in my view Ms Young (and Mr Willing) did also have the attitude that a finding of homicide would be a “defeat” for the NSWPF and that the NSWPF should not let the Johnsons “win”.

### The attitude of Ms Young and Mr Willing to Scott Johnson’s death

- 11.224. I accept Counsel Assisting’s submission that the Young Coronial Statement unmistakably advances the view that suicide was the most likely cause of Scott Johnson’s death.
- 11.225. The NSW Crime Commission’s assessment of Strike Force Macnamir as “comprehensive” and “thorough” pertained to the investigation itself. The detail of the investigation is recorded in the first 430 pages (up to [2874]) of the Young Coronial Statement. However, the matters canvassed thereafter, in the “Opinion” paragraphs, reflect an obvious emphasis on the probability of suicide and the improbability of homicide.

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<sup>1764</sup> Submissions of Detective Sergeant Penelope Brown, 24 October 2023, [14], [16] (SCOI.86380).

<sup>1765</sup> Submissions of Detective Sergeant Penelope Brown, 24 October 2023, [14] (SCOI.86380).

<sup>1766</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [444] (SCOI.86377).

<sup>1767</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [394]–[401] (SCOI.86377).

<sup>1768</sup> *R v White* [2023] NSWSC 611, [45].

- 11.226. In the Young Coronial Statement, Ms Young expressed the opinion that “[n]o gay beat user or other victim has reported being verbally abused, harassed or intimidated at North Head in any regard”, and that there was “nothing about North Head or the gay beat operating there that explains why a victim or witness who had been confronted in that location would not report the matter to police as opposed to another location”.<sup>1769</sup>
- 11.227. This view was rejected in no uncertain terms by the State Coroner in the third inquest. His Honour referred to the evidence given by several users of the Blue Fish Point beat in the late 1980s who reported having suffered or observed violence there.<sup>1770</sup> That evidence led the State Coroner to conclude that violence did occur at that beat around the time of Scott Johnson’s death, notwithstanding the absence of any reports to police.<sup>1771</sup>
- 11.228. As noted above, the NSWPF submitted that the crucial point was that counsel for the NSWPF had not resisted a third inquest on any basis, either in its written submissions or orally.<sup>1772</sup> That is certainly true. However, noting the instructions given by the NSWPF to Senior Counsel appearing at the directions hearing, and the Young/Willing text messages on 14 April 2015, it is apparent that Ms Young perceived a third inquest as unnecessary and a finding of homicide as a “defeat”, and that Mr Willing was sympathetic to and supportive of Ms Young’s views.
- 11.229. In my opinion, it is both remarkable and unfortunate that such a senior officer within the UHT exhibited this dogged resistance to the possibility that Scott Johnson’s death was a homicide, and viewed the possibility of a third inquest culminating in such a finding as a defeat. Such resistance is evident throughout the “Opinion” section of Ms Young’s statement. I am also left with the impression that this resistance contributed to tension and animosity between Ms Young (as supported by Mr Willing) and the Johnson family of such a kind which is not productive in unsolved homicide investigations.
- 11.230. The views held by Ms Young, and the attitude of Mr Willing to them, are consistent with the institutional defensiveness I have remarked on elsewhere. Whether this attitude to the Scott Johnson case extended further into the UHT and the NSWPF is another matter, which I discuss in **Chapter 14**. However, this type of defensiveness—even where it is not actuated by any homophobia—can have the effect of obscuring historical hate crimes, where past investigations may well have been so influenced, or where additional information has come to light.

<sup>1769</sup> Exhibit 6, Tab 252F, Statement of Detective Chief Inspector Pamela Young, 20 November 2013, [2911], [2917] (SCOI.83088).

<sup>1770</sup> Exhibit 6, Tab 232, Findings of State Coroner Michael Barnes, Third Inquest into the death of Scott Russell Johnson, 30 November 2017, [92]–[112] (SCOI.11064.00018).

<sup>1771</sup> Exhibit 6, Tab 232, Findings of State Coroner Michael Barnes, Third Inquest into the death of Scott Russell Johnson, 30 November 2017, [116] (SCOI.11064.00018).

<sup>1772</sup> Submissions of NSWPF, 28 June 2023, [175], [176] (SCOI.84211).

## Credibility and reliability of witnesses

- 11.231. I received extensive submissions concerning the credibility and reliability of several of the witnesses who gave evidence concerning Strike Force Macnamir and, in particular, the *Lateline* issues.<sup>1773</sup> For the most part I do not need to make findings in relation to those matters.
- 11.232. However, as will have been apparent from the analysis above, I consider that Mr Willing was, at times, an unreliable historian. One significant example of a matter in relation to which I rejected Mr Willing’s evidence as unreliable, was his insistence that he did not know in advance that Ms Young was going to give a studio interview for broadcast on *Lateline*. Mr Willing’s evidence on that subject was internally inconsistent, particularly as it concerned the terms of his telephone conversation with Ms Young at around 5:00pm on 13 April 2015. His evidence was also inconsistent with the evidence of Ms Young, Ms Alberici and Detective Sergeant Brown (including, in particular, the contemporaneous record made in her Duty Book); and with inferences properly to be drawn from his conduct, including his text to the State Coroner at 8:11pm on 13 April 2015; his failure to remonstrate with Ms Young or to raise concerns with any other NSWPF officer that evening after having seen her on air; and his having told Ms Young the following morning during their initial phone call that the interview was “good”.
- 11.233. There is an important matter which I will address in no uncertain terms. Mr Willing instructed his Senior Counsel to make serious allegations of dishonesty, in a public forum, against Detective Sergeant Brown, Ms Young and Ms Alberici. Having regard to the evidence before me, I consider these allegations are not supported by the evidence as a whole.
- 11.234. I consider it telling that Senior Counsel representing Mr Willing did not directly put such an allegation of dishonesty to any of these witnesses during their oral testimony (save with respect to one limited aspect of Ms Alberici’s statement).<sup>1774</sup> Senior Counsel Assisting fairly put the propositions emerging from Mr Willing’s submissions to each of Detective Sergeant Brown, Ms Alberici and Ms Young.<sup>1775</sup> All three flatly denied them. Senior Counsel for Mr Willing did not seek to test those denials.

<sup>1773</sup> See, e.g., Supplementary Submissions of Counsel Assisting, 16 October 2023, [248] (SCOI.86243); Submissions of Detective Sergeant Penelope Brown, 24 October 2023, [18], [28] (SCOI.86380); Supplementary Submissions of NSWPF, 23 October 2023, [192], [227], [240] (SCOI.86378); Submissions of Michael Willing, 28 June 2023, [19] (SCOI.84210); Supplementary Submissions of Michael Willing, 23 October 2023, [6]–[10], [13], [56]–[59], [245]–[262], [280], [284], [349], [360], [364(e)], [378], [415] (SCOI.86377); Submissions of Pamela Young, 23 October 2023, [8], [53]–[54], [186] (SCOI.86379).

<sup>1774</sup> Transcript of the Inquiry, 3 October 2023, T6406.9–25 (TRA.00095.00001).

<sup>1775</sup> Transcript of the Inquiry, 3 October 2023, T6508.2–37 (TRA.00095.00001) (Detective Sergeant Brown); Transcript of the Inquiry, 5 October 2023, T6707.3–47 (TRA.00097.00001) (Ms Young); Transcript of the Inquiry, 28 September 2023, T6255.9–14, 6256.29–6257.733 (TRA.00093.00001) (Ms Alberici).

- 11.235. Perhaps Mr Willing genuinely believed that Ms Alberici, Ms Young and Detective Sergeant Brown were, or must have been, engaged in a conspiracy to deceive him and the NSWPF. However, as I have said, the evidence as a whole does not support such allegations. In particular, when there was no contemporaneous evidentiary support for such allegations, and Mr Willing's counsel did not, in the end, put those allegations to those witnesses.

## Conclusion

- 11.236. There is much that might be said concerning the actions of all those involved in the unusual sequence of events that culminated in the *Lateline* interview. Having regard to the Terms of Reference, it is not necessary for me to do so. Nor did I receive evidence that would allow me to evaluate the overall efficacy of the methodology employed by Strike Force Macnamir.
- 11.237. Strike Force Macnamir came about in a unique set of circumstances. It is apparent that Ms Young held a strong view that Scott Johnson's death was most likely a suicide, and that a reinvestigation of Scott Johnson's death was unnecessary and would not produce any different result.
- 11.238. It is also clear that Ms Young perceived the Johnson family in an adversarial light, and as having used their resources and political influence to receive priority treatment over other families of homicide victims. These views are apparent in the Young Coronial Statement, and in the comments she made during her interview on *Lateline* on 13 April 2015.
- 11.239. It is likewise apparent that Mr Willing sympathised with, and was supportive of, her views.
- 11.240. It is unfortunate that such senior officers exhibited this resistance to the possibility that Scott Johnson's death was a homicide, and viewed the possibility of a third inquest culminating in such a finding as a defeat. That attitude is consistent with the institutional defensiveness I have commented upon in other parts of this Report, and it is to be hoped that it will not recur in the future.



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# Chapter 12: Strike Force Neiwand

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## STRIKE FORCE NEIWAND

### Background leading to Strike Force Neiwand

12.1. Strike Force Neiwand was created in or around October 2015 and concluded in early January 2018.<sup>1776</sup> Strike Force Neiwand, like Strike Force Macnamir, was conducted by the UHT.<sup>1777</sup>

12.2. Strike Force Neiwand was established with the following terms of reference (emphasis added):<sup>1778</sup>

*To re-investigate the suspicious disappearance and death of Giles [sic] Mattaini from Bondi on 01/09/1985; the suspicious disappearance and death of Ross Warren from Bondi on 22/07/1989 and; the suspected murder of John Russell at Bondi on 23/11/1989.*

12.3. The deaths of Mr Mattaini, Mr Russell and Mr Warren had previously been examined by Operation Taradale in 2000–2002 and in the Milledge Inquest (an inquest before Senior Deputy State Coroner Milledge between 2003 and 2005).<sup>1779</sup>

### 1985–1989: The deaths of Ross Warren, John Russell and Gilles Mattaini

12.4. The factual backgrounds to the deaths of Mr Warren, Mr Russell and Mr Mattaini are outlined in **Chapters 2 and 5** of this Report. (These deaths are referred to, at times in this Report, as the **Taradale deaths**). The original NSWPF investigations of the disappearance of Mr Warren and the death of Mr Russell are also outlined in **Chapter 5** of this Report. There is no record of any report being made about Mr Mattaini's disappearance and there was no NSWPF investigation at that time. Mr Mattaini's disappearance in 1985 was not considered by a Coroner until the Milledge Inquest in the early 2000s.<sup>1780</sup>

### 1990–1991: Investigation by Detective Sergeant McCann

12.5. Any possible connection between the disappearance of Mr Warren and the death of Mr Russell does not appear to have been made until Detective Sergeant Stephen McCann, who was the lead investigator into the murders of Richard Johnson in January 1990 and Kritchikorn Rattanajurathaporn in July 1990, compiled a summary of connections and links he had uncovered, both in relation to the deaths of Mr Johnson and Mr Rattanajurathaporn and also in relation to other attacks on gay men, some of them also resulting in deaths, in various parts of Sydney up to that time.<sup>1781</sup>

<sup>1776</sup> Exhibit 6, Tab 17, Strike Force Neiwand, Terms of Reference, 30 June 2016, 1 (SCOI.74884).

<sup>1777</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [31]–[32] (SCOI.82472).

<sup>1778</sup> Exhibit 6, Tab 17, Strike Force Neiwand, Terms of Reference, 30 June 2016, 1 (SCOI.74884).

<sup>1779</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005 (SCOI.02751.00021).

<sup>1780</sup> Submissions of NSWPF, 28 June 2023, [244] (SCOI.84211).

<sup>1781</sup> Exhibit 6, Tab 233, Statement of former Detective Sergeant Stephen McCann, 10 November 2022, [11] (SCOI.77310).

- 12.6. The investigation conducted by Detective Sergeant McCann is outlined in **Chapter 5**. As the NSWPF acknowledged in submissions, it “is not clear from the evidence tendered before the Inquiry what, if anything, was done in response to the documents prepared by Detective Sergeant McCann”.<sup>1782</sup>

## 2000–2005: Taradale

### 2000–2002: Operation Taradale

- 12.7. Operation Taradale began, in 2000, as an investigation into the disappearance and suspected death of Mr Warren in July 1989, the death of Mr Russell in November 1989, and an assault on David McMahon in December 1989. All three of those events had occurred at Marks Park near Bondi. Mr Page (then a Detective Sergeant) was the Commander of Operation Taradale.<sup>1783</sup>
- 12.8. In about August 2002, in the wake of publicity concerning Operation Taradale, Jacques Musy, Mr Mattaini’s partner, reported the 1985 disappearance of Mr Mattaini to Mr Page.<sup>1784</sup> Thereafter, Operation Taradale was expanded to include the disappearance of Mr Mattaini.
- 12.9. The substantial scope of Operation Taradale, including its conduct and conclusions, is discussed in **Chapter 5**.
- 12.10. After Mr Page made himself known to the Inquiry, the Inquiry requested that Mr Page provide a statement in relation to Operation Taradale and Strike Force Neiwand. Mr Page gave evidence that Operation Taradale was conducted without any preconceptions regarding the likely manner and cause of death in relation to each case and “sought to explore all possible lines of inquiry in each case, including suicide, misadventure or foul play”.<sup>1785</sup>
- 12.11. Among other things, Operation Taradale conducted a thorough analysis of the local Bondi-Tamarama area, including by conducting a search for all known or reported assaults in that area, and interviewing many victims of possible “gay hate violence”,<sup>1786</sup> and also sought to learn about the personal background of each of Mr Russell, Mr Warren and Mr Mattaini.<sup>1787</sup>

<sup>1782</sup> Submissions of NSWPF, 28 June 2023, [246] (SCOI.84211).

<sup>1783</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [10] (SCOI.82472).

<sup>1784</sup> Exhibit 6, Tab 160, Statement of Detective Sergeant Stephen Page, 28 August 2002, [801]–[807] (SCOI.02744.00024).

<sup>1785</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [12] (SCOI.82472).

<sup>1786</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [13]–[14] (SCOI.82472).

<sup>1787</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [13]–[15] (SCOI.82472).

- 12.12. In oral evidence at the February–May 2023 hearings, Mr Page reiterated that as the Commander of Operation Taradale, he kept an open mind in relation to the likely manner and cause of death (or disappearance and suspected death) of each of Mr Russell, Mr Warren and Mr Mattaini.<sup>1788</sup> The approach of Operation Taradale included utilising victimology to understand Mr Russell, Mr Warren and Mr Mattaini. This included speaking to their families, friends, associates and workmates. This information was then used to form a view about the likely manner and cause of death (or disappearance and suspected death) in relation to each of the men.<sup>1789</sup>
- 12.13. Operation Taradale culminated in the Milledge Inquest. Mr Page prepared a brief of evidence for the Milledge Inquest which included a 258-page statement by him dated 25 July 2002, in relation to the disappearance and suspected death of Mr Warren and the death of Mr Russell (**Russell/Warren Statement**) and a 7-page statement dated 28 August 2002, in relation to the disappearance and suspected death of Mr Mattaini (**Mattaini Statement**).<sup>1790</sup> These statements annexed 276 further documents. The documentary material before her Honour consisted of six lever arch folders.<sup>1791</sup>
- 12.14. In the Russell/Warren Statement, Mr Page concluded that, in relation to Mr Warren, he believed him to be deceased and that it was likely that he died as a result of violence.<sup>1792</sup> In relation to Mr Russell, Mr Page believed that he also died as a result of violence.<sup>1793</sup> Mr Page was unable to offer an opinion as to the likely perpetrator of the violence against Mr Warren or Mr Russell.<sup>1794</sup>
- 12.15. In the Mattaini Statement, Mr Page concluded that although he was aware that Mr Mattaini had in the past attempted to take his own life, he did not believe that homicide could be excluded.<sup>1795</sup>
- 12.16. The Russell/Warren Statement was finalised in late July 2002, following some two years of investigations after Mr Page came into possession of a file in relation to the death of Mr Warren.<sup>1796</sup> By contrast, it was only in August 2002, after the Russell/Warren Statement had been finalised, that Operation Taradale was expanded to include the death of Mr Mattaini, after Mr Musy contacted Mr Page.<sup>1797</sup>

<sup>1788</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [15] (SCOI.82472).

<sup>1789</sup> Transcript of the Inquiry, 28 February 2023, T2339.43–2340.22 (TRA.00029.00001).

<sup>1790</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002 (SCOI.02744.00023); Exhibit 6, Tab 160, Statement of Detective Sergeant Stephen Page, 28 August 2002, [825] (SCOI.02744.00024); Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [16] (SCOI.82472).

<sup>1791</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 9 (SCOI.02751.00021).

<sup>1792</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [88] (SCOI.82472).

<sup>1793</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [108] (SCOI.82472).

<sup>1794</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002, [791]–[795] (SCOI.02744.00023).

<sup>1795</sup> Exhibit 6, Tab 160, Statement of Detective Sergeant Stephen Page, 28 August 2002, [825] (SCOI.02744.00024).

<sup>1796</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002, [3] (SCOI.02744.00023).

<sup>1797</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [11] (SCOI.82472).

- 12.17. As is obvious, it was not possible for Operation Taradale to investigate Mr Mattaini’s disappearance in the same detail as it had investigated the deaths of Mr Warren and Mr Russell, given the limited time available to it. No criticism of Operation Taradale should or could reasonably be made on that basis.

### 2003–2005: Taradale Inquest

- 12.18. As outlined in **Chapter 5**, the Milledge Inquest conducted hearings between 31 March 2003 and 10 September 2003, and closing submissions were heard on 23 December 2004.<sup>1798</sup> Operation Taradale was ongoing during the Milledge Inquest, and further statements were taken from witnesses as they became known.<sup>1799</sup> During the course of the Milledge Inquest, “dozens of witnesses, police officers, victims and perpetrators” gave evidence.<sup>1800</sup>
- 12.19. Senior Deputy State Coroner Milledge delivered findings and recommendations on 9 March 2005.<sup>1801</sup>
- 12.20. Throughout the Milledge Inquest, the NSWPF was represented by counsel and solicitors. The closing submissions by counsel for the NSWPF in December 2004, contained the following:<sup>1802</sup>

*[T]he climate which then existed [referring to the 1980s] ... was a climate I think that no one in society could really be proud of, and that is the culture of gay hate, a [sic] gay hate crime. The Police Service, whatever defects it may have suffered from during that period, was no more than a reflection of it was exhibiting the broader values and principles of the then society.*

- 12.21. And a little later in his submissions, counsel for the NSWPF said:<sup>1803</sup>

*...prior to 1990 police reaction to gay hate related crime could not be described generally as positive or pro-active. There was much hostility between the gay and lesbian community and the police, particularly taking into account that homosexuality was only decriminalised in 1984. This led to a situation for a number of years when police were viewed as the enemy of gay people.*

<sup>1798</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [18] (SCOI.82472).

<sup>1799</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 9 (SCOI.02751.00021).

<sup>1800</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 9 (SCOI.02751.00021).

<sup>1801</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [19] (SCOI.82472).

<sup>1802</sup> Exhibit 6, Tab 323, Extract of Transcript of Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and the death of John Russell, 23 December 2004, T16.49–55 (SCOI.02751.00159).

<sup>1803</sup> Exhibit 6, Tab 323, Extract of Transcript of Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and the death of John Russell, 23 December 2004, T17.30–37 (SCOI.02751.00159).

- 12.22. Senior Deputy State Coroner Milledge’s findings in relation to the manner and cause of death of Mr Warren, Mr Russell and Mr Mattaini were as follows:<sup>1804</sup>
- a. Mr Warren died in Sydney on or about 22 July 1989 as a victim of a homicide perpetrated by a person or persons unknown;
  - b. Mr Russell died between 22 and 23 November 1989 from multiple injuries sustained when he was thrown from the cliff onto rocks by a person or persons unknown; and
  - c. Mr Mattaini died on or about 15 September 1985, and the manner and cause of his death could not be determined.
- 12.23. Senior Deputy State Coroner Milledge said the evidence strongly supported the probability that both Mr Warren and Mr Russell met their deaths at the hands of what her Honour called “gay hate assailants”.<sup>1805</sup> In relation to Mr Mattaini, her Honour said that there was a “strong possibility” he died in similar circumstances to Mr Warren and Mr Russell.<sup>1806</sup>
- 12.24. Senior Deputy State Coroner Milledge also accepted, in the course of her Honour’s findings, that:
- a. Marks Park operated as a beat at night, and it was very busy and popular. However, during “the 1980’s and 1990’s [sic] police were aware of a number of gangs of youths that were systematically engaged in the assault and robbery of gay men in Marks Park and other areas”.<sup>1807</sup>
  - b. The initial police investigation into the death of Mr Warren in 1989 was “a grossly inadequate and shameful investigation. Indeed, to characterise is as an ‘investigation’ is to give it a label it does not deserve.”<sup>1808</sup> Her Honour described the fact that the original OIC, Mr Bowditch, had “effectively ‘closed’ any further investigation” within the week, and the failure of the NSWPF to produce the brief of evidence submitted to the Coroner in 1990 in relation to the initial inquest into Mr Warren’s death (or indeed any documents produced during the course of that investigation), as “appalling”, and a “state of affairs” that “defies belief”.<sup>1809</sup>

<sup>1804</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 14 (SCOI.02751.00021).

<sup>1805</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 14 (SCOI.02751.00021).

<sup>1806</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 14 (SCOI.02751.00021).

<sup>1807</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 3–4 (SCOI.02751.00021).

<sup>1808</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 6 (SCOI.02751.00021).

<sup>1809</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 5–6 (SCOI.02751.00021).

12.25. As to the investigation into the death of Mr Russell, her Honour concluded that:<sup>1810</sup>

*Had police paid careful attention to the crime scene and the vital evidence that presented to them, the perpetrator of that brutal act may have been identified or, at the very least, Mr Russell's death would have been seen differently and not simply as a result of 'misadventure'.*

12.26. Although a “better investigation was undertaken for Mr Russell” in that photographs were taken and consideration was given to the possibility of foul play, “it too was far from adequate”.<sup>1811</sup> Her Honour observed that “[w]hilst it was known that Marks Park was an area where homosexual men were bashed and robbed, little investigation regarding this type of activity was undertaken into Mr Russell’s death”.<sup>1812</sup> Her Honour described the loss of the hairs that had been found on Mr Russell’s hand and the absence of forensic testing as “[d]isgraceful” and considered that no satisfactory explanation was given as to the loss of the exhibit.<sup>1813</sup>

12.27. Her Honour went on to say:<sup>1814</sup>

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

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

*The earlier investigations into these men were inadequate and naïve.*

12.28. By contrast to the earlier investigations, Senior Deputy State Coroner Milledge considered that Operation Taradale had been “impeccable”:<sup>1815</sup>

*Not only was the investigation thorough, it was impeccable. Everything that could be done was done. Extremely sophisticated police techniques and*

<sup>1810</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 6 (SCOI.02751.00.021).

<sup>1811</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 6 (SCOI.02751.00.021).

<sup>1812</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 6 (SCOI.02751.00.021).

<sup>1813</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 6 (SCOI.02751.00.021).

<sup>1814</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 8 (SCOI.02751.00.021).

<sup>1815</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 8 (SCOI.02751.00.021).

*methodology were used. The Detective in charge of the investigation, Detective Sergeant Stephen Page was committed and was an abundantly talented investigator.*

- 12.29. Her Honour added that the information gathered by Mr Page and Operation Taradale would provide an excellent source of information for future investigations.<sup>1816</sup>
- 12.30. The NSWPF agreed, in the June NSWPF Submissions, that Operation Taradale was “very substantial” and that “Coroner Milledge quite properly described the investigation... as ‘impeccable’”.<sup>1817</sup> The NSWPF also described the investigation, insofar as it related to Mr Warren and Mr Russell as “exhaustive”.<sup>1818</sup>
- 12.31. As the NSWPF acknowledged in the June NSWPF Submissions, the investigation in relation to Mr Mattaini was “necessarily more limited”.<sup>1819</sup> According to the NSWPF:<sup>1820</sup>

*...the reality is, in the absence of further evidence from a member of the community, very little could practicably be done in relation to Mr Mattaini’s disappearance in 2005. The position was no different when [Strike Force] Neiwand came to consider the matter in 2015.*

- 12.32. The NSWPF also submitted that Senior Deputy State Coroner Milledge could have directed further investigations in relation to Mr Mattaini had her Honour considered that such steps might have been worthwhile.<sup>1821</sup>
- 12.33. As noted in **Chapter 2**, both Operation Taradale and the Milledge Inquest, and its findings, were widely publicised. Among that prominent coverage was the work of Greg Callaghan, who gave evidence before the Inquiry.<sup>1822</sup> In October 2003, Mr Callaghan wrote a feature story for *The Weekend Australian Magazine* on the investigation, titled “Bondi Badlands”,<sup>1823</sup> which received a significant amount of attention.<sup>1824</sup> Mr Callaghan subsequently wrote a book on the topic, *Bondi Badlands*, published in 2007.<sup>1825</sup>

<sup>1816</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 9 (SCOI.02751.00021).

<sup>1817</sup> Submissions of NSWPF, 28 June 2023, [247] (SCOI.84211).

<sup>1818</sup> Submissions of NSWPF, 28 June 2023, [251] (SCOI.84211).

<sup>1819</sup> Submissions of NSWPF, 28 June 2023, [249] (SCOI.84211).

<sup>1820</sup> Submissions of NSWPF, 28 June 2023, [249] (SCOI.84211).

<sup>1821</sup> Submissions of NSWPF, 28 June 2023, [249] (SCOI.84211).

<sup>1822</sup> Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022 (SCOI.77303).

<sup>1823</sup> Exhibit 6, Tab 206, Greg Callaghan, ‘Bondi Badlands’, *The Weekend Australian Magazine* (Sydney, 4 October 2003), 20–24 (SCOI.77290).

<sup>1824</sup> Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [32] (SCOI.77303).

<sup>1825</sup> Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [33] (SCOI.77303).

## 2005–2015: No reinvestigation

### Aftermath of the Milledge Inquest

- 12.34. In the submission of Counsel Assisting, it might have been supposed that the findings of the Milledge Inquest would have prompted a further or continued investigation of the deaths, particularly given the view of Senior Deputy State Coroner Milledge that the information gathered by Operation Taradale would provide an excellent source of information for any such investigation. Mr Willing acknowledged that it is fundamental to the role of the UHT to review matters referred to it by a Coroner.<sup>1826</sup>
- 12.35. No such reinvestigation occurred. On the evidence available to the Inquiry, the NSWPF did not review or otherwise make any use of the findings of the Milledge Inquest for many years.
- 12.36. The NSWPF submitted that, since Operation Taradale was both comprehensive and sophisticated, and yet still failed to “... identify any evidence to concretely link a potential Person of Interest... to any of the deaths”,<sup>1827</sup> the utility of any further investigation following the Milledge Inquest was questionable.
- 12.37. The NSWPF also submitted that the UHT was only formed in 2004, and was only structured in such a way that allowed it to conduct reinvestigations from 2008, and that these deaths needed to be considered together with “a very substantial number of deaths that fall within the purview of the UHT” and where the “scarce resources” of the UHT could best be deployed.<sup>1828</sup> Such an emphasis on the finite availability of resources was a recurring feature of many submissions by the NSWPF in this Inquiry.
- 12.38. In my view, while Operation Taradale was undoubtedly a thorough investigation,<sup>1829</sup> that should not necessarily have forestalled any further investigation or reinvestigation. I would expect that the NSWPF should review all unsolved deaths regularly and with care, no matter how detailed any previous investigation/s had been. My expectations concerning the review and management of unsolved homicides are dealt with in **Chapter 8**. In the case of the three Taradale deaths, a prompt reinvestigation could also have utilised the considerable public and media attention on these deaths to obtain further information and identify additional witnesses. Although the UHT itself may not have had the ability to commence a reinvestigation until 2008 (which I note was only one year after the publication of *Bondi Badlands*), there were certainly other means available to the NSWPF to facilitate the immediate reinvestigation of these cases at any time after March 2005.

<sup>1826</sup> Exhibit 6, Tab 252, Statement of former Deputy Commissioner Michael Willing, 30 January 2023, [89]–[94] (SCOI.82369.00001).

<sup>1827</sup> Submissions of NSWPF, 28 June 2023, [252]–[253] (SCOI.84211).

<sup>1828</sup> Submissions of NSWPF, 28 June 2023, [254] (SCOI.84211).

<sup>1829</sup> Submissions of NSWPF, 28 June 2023, [252] (SCOI.84211).



## 2012: UHT Review

- 12.39. In contrast, in 2012, the Coroners Court did make use of the findings of the Milledge Inquest.
- 12.40. In June 2012, Deputy State Coroner Forbes made an open finding at the conclusion of the second inquest into the death of Scott Johnson.<sup>1830</sup> As noted in **Chapter 11**, one reason for departing from the earlier finding of suicide was that “the information about the deaths at Bondi has, however, sown a seed of doubt as to the positive finding of suicide”.<sup>1831</sup> One of the possibilities, said Deputy State Coroner Forbes, was “that Mr Johnson was the victim of a ‘gay hate’ crime similar to those that occurred in Bondi.”<sup>1832</sup>
- 12.41. Later in 2012, the deaths of Mr Warren, Mr Russell and Mr Mattaini were examined by Detective Sergeant Taylor (then Detective Senior Constable) of the UHT.<sup>1833</sup> In a document titled ‘Review of an Unsolved Homicide Case Screening Form’ and dated 25 October 2012, Detective Sergeant Taylor noted that, “[t]he investigation into the death of Ross Warren, John Russell and Gilles Mattaini was meticulously undertaken by an experienced investigator, Detective Sergeant Stephen Page”.<sup>1834</sup>
- 12.42. In that same document, Detective Sergeant Taylor recommended that an opportunity existed, given the passage of time, to engage known POIs identified by Operation Taradale via an undercover operation in relation to the murders of Mr Russell and Mr Warren.<sup>1835</sup>
- 12.43. Eight months later, on 14 August 2013, Mr Lehmann, as “Coordinator”, certified, that he agreed with those recommendations of Detective Sergeant Taylor.<sup>1836</sup>
- 12.44. Nevertheless, on 14 and 15 August 2013, Mr Lehmann completed “Review Prioritisation Forms” for each of the three deaths. He assigned to them priority ratings of “low” (for Mr Mattaini and Mr Warren)<sup>1837</sup> and “medium” (for Mr Russell).<sup>1838</sup>

<sup>1830</sup> Exhibit 6, Tab 317, Findings of Deputy State Coroner Forbes, Second inquest into the death of Scott Russell Johnson, 27 June 2012 (SCOI.11115.00128).

<sup>1831</sup> Exhibit 6, Tab 317, Findings of Deputy State Coroner Forbes, Second inquest into the death of Scott Russell Johnson, 27 June 2012, 1 (SCOI.11115.00128).

<sup>1832</sup> Exhibit 6, Tab 317, Findings of Deputy State Coroner Forbes, Second inquest into the death of Scott Russell Johnson, 27 June 2012, 1 (SCOI.11115.00128).

<sup>1833</sup> Exhibit 6, Tab 162, Review of an Unsolved Homicide Case Screening Form – John Russell, Ross Warren and Gilles Mattaini, completed by Detective Senior Constable Alicia Taylor, 25 October 2012 (NPL.0113.0001.0001).

<sup>1834</sup> Exhibit 6, Tab 162, Review of an Unsolved Homicide Case Screening Form – John Russell, Ross Warren and Gilles Mattaini, completed by Detective Senior Constable Alicia Taylor, 25 October 2012, 33 (NPL.0113.0001.0001).

<sup>1835</sup> Exhibit 6, Tab 162, Review of an Unsolved Homicide Case Screening Form – John Russell, Ross Warren and Gilles Mattaini, completed by Detective Senior Constable Alicia Taylor, 25 October 2012 33–34 (NPL.0113.0001.0001).

<sup>1836</sup> Exhibit 6, Tab 162B, Review of an Unsolved Homicide Case Screening Form – John Russell, Ross Warren and Gilles Mattaini signed by Detective Senior Constable Alicia Taylor and Detective Chief Inspector John Lehmann, 14 August 2013, 34 (NPL.0135.0001.0001).

<sup>1837</sup> Exhibit 6, Tab 162C, Review Prioritisation Form – Gilles Mattaini, 15 August 2013, 4 (NPL.0131.0001.2190); Exhibit 6, Tab 162E, Review Prioritisation Form – Ross Warren, 14 August 2013 (NPL.0131.0001.2912).

<sup>1838</sup> Exhibit 6, Tab 162D, Review Prioritisation Form – John Russell, 14 August 2013 (NPL.0131.0001.2552\_E).

- 12.45. Those ratings, on all the evidence before the Inquiry, would ordinarily have had the consequence that none of the three cases were likely to be the subject of review or reinvestigation in the near future. Mr Lehmann’s evidence was substantially to that effect.<sup>1839</sup>
- 12.46. Yet, some two years later in October 2015, Mr Willing decided to establish Strike Force Neiwand.

### 2013: Media

- 12.47. On 11 February 2013, Strike Force Macnamir was established by the NSWPF.<sup>1840</sup> As explained in **Chapter 11**, this was in large part due to the media interest in the death of Scott Johnson and the “intense lobbying by members of the Johnson family”.<sup>1841</sup>
- 12.48. As I have outlined in **Chapter 11**, later that same day, an episode of *Australian Story* aired, concerning the death of Scott Johnson.<sup>1842</sup> On the following day, 12 February 2013, Mr Gallacher (then Minister for Police) held a meeting with Steve Johnson, Ms Young and Mr Olen.
- 12.49. Thereafter there was increased media interest in the Scott Johnson case and also in the subject of LGBTIQ bias deaths (particularly those of gay men) and violence more generally, including the list of 88 deaths.<sup>1843</sup> As outlined elsewhere in this Report, there was a series of powerful *Sydney Morning Herald* and *The Sun Herald* articles on the topic, including those by Paul Sheehan in March 2013 and by Rick Feneley in July and August 2013.
- 12.50. On 9 August 2013, one of Mr Feneley’s articles noted that NSW homicide detectives had appealed to the public for assistance identifying POIs in connection to the deaths of Mr Warren, Mr Russell and Mr Mattaini. The article quoted Mr Willing as saying: “I know I’ve been quiet until this point and there is a reason for that – and that’s because we’re quietly working away on it.”<sup>1844</sup>

<sup>1839</sup> Transcript of the Inquiry, 26 September 2023, T6057.3–43 (TRA.00091.00001).

<sup>1840</sup> Exhibit 6, Tab 8, Strike Force Macnamir, Terms of Reference (Version 2), 2 April 2013 (SCOI.75758); Exhibit 6, Tab 9, Email from Patrick Hodgetts to Kate Lockery, 16 September 2022 (SCOI.75072).

<sup>1841</sup> Transcript of the Inquiry, 20 February 2023, T1683.20–26 (TRA.00023.00001).

<sup>1842</sup> Exhibit 6, Tab 319, Transcript of ‘On the Precipice’, *Australian Story* (ABC News, 11 February 2013) (SCOI.82485).

<sup>1843</sup> Supplementary submissions of Counsel Assisting, 16 October 2023, [325]–[326] (SCOI.86243).

<sup>1844</sup> Exhibit 6, Tab 214, Rick Feneley, ‘Public Help Sought with Evidence of Gay-Hate Killings’, *The Sydney Morning Herald* (Sydney, 9 August 2013) (SCOI.82026).

- 12.51. Mr Willing was taken to this article in oral evidence. He said that the three Taradale cases were being “reviewed” at that time as part of Strike Force Macnamir.<sup>1845</sup> He conceded, however, that that “review” exercise “wasn’t in any way reinvestigating or reviewing the three Taradale deaths themselves”, that the “review” was looking at “whether there were similarities between the Bondi matters and what happened to Scott Johnson”, so as “[t]o see whether they shed any light on the Johnson case”, and that the cases were not being reviewed “to see who killed those three men”.<sup>1846</sup>
- 12.52. Mr Willing did not accept that his statement to Mr Feneley was “stretching the truth”.<sup>1847</sup> Nor did he accept that he “wanted the public to think that something was actually being done about these three cases, when in truth, it wasn’t.”<sup>1848</sup>
- 12.53. It was submitted by the NSWPF that “the text of the article makes it clear that the relevant cases were subject to a ‘review’ not a ‘reinvestigation’”.<sup>1849</sup> It was submitted that Mr Willing’s comment and Mr Feneley’s article were not confined to a consideration of the Taradale cases, but rather related to the broader array of potential “gay hate” related homicides, and that Mr Willing had not stated that the Taradale deaths were being reinvestigated.<sup>1850</sup> The NSWPF pointed to the “substantial amount of work” which was by then being conducted by Mr Lehmann (and Ms Young) in connection with the Issue Paper ultimately dated 25 September 2013 (**2013 Issue Paper**) (discussed further below) and the work of Operation Parrabell.<sup>1851</sup>
- 12.54. Somewhat inconsistently perhaps, the NSWPF submitted a few paragraphs later that the nature of the exercise by Mr Lehmann was “simply reviewing the then-available information for the purpose of reaching a preliminary determination as to whether each of the relevant deaths was a possible gay-hate crime”.<sup>1852</sup>
- 12.55. I accept that one purpose of Mr Willing’s newspaper interview may well have been a genuine attempt to elicit information about the three deaths, and that it also may have been (as the NSWPF submitted) an attempt at “community outreach” and rebuilding trust between the NSWPF and the LGBTIQ community.<sup>1853</sup> However, it is my view that Mr Willing’s statement to Mr Feneley that “we’re quietly working away on it” was not entirely accurate.<sup>1854</sup> It gave the impression that the Taradale cases were actually under investigation (which was not the case), and that they were under investigation for their own sake, which was also not the case.

<sup>1845</sup> Transcript of the Inquiry, 21 February 2023, T1767.29–1768.32 (TRA.00024.00001).

<sup>1846</sup> Transcript of the Inquiry, 21 February 2023, T1767.1–1768.36 (TRA.00024.00001).

<sup>1847</sup> Transcript of the Inquiry, 21 February 2023, T1768.6–12 (TRA.00024.00001).

<sup>1848</sup> Transcript of the Inquiry, 21 February 2023, T1768.38–1769.2 (TRA.00024.00001).

<sup>1849</sup> Submissions of NSWPF, 28 June 2023, [265] (SCOI.84211).

<sup>1850</sup> Submissions of NSWPF, 28 June 2023, [268] (SCOI.84211).

<sup>1851</sup> Submissions of NSWPF, 28 June 2023, [268] (SCOI.84211).

<sup>1852</sup> Submissions of NSWPF, 28 June 2023, [275] (SCOI.84211).

<sup>1853</sup> Submissions of NSWPF, 28 June 2023, [272], [346] (SCOI.84211).

<sup>1854</sup> Exhibit 6, Tab 214, Rick Feneley, ‘Public Help Sought with Evidence of Gay-Hate Killings’, *The Sydney Morning Herald* (Sydney, 9 August 2013) (SCOI.82026).

## 2013: Issue Paper

- 12.56. Over about two months, between July and September 2013, Mr Lehmann and Ms Young “conducted an assessment of the 30 ‘gay hate’ related unsolved homicide cases from the list provided by Ms Thompson” to “determine if any bias motivation existed”.<sup>1855</sup> They presented their conclusions in an Issue Paper dated 25 September 2013 as follows (emphasis in original):<sup>1856</sup>

*Only 8 cases from 30 were probable or possible ‘gay hate’ motivated murders and these are on file at the Unsolved Homicide Team with consideration for future investigation.*

*There is no doubt that anti gay hostility, particularly in the 1980’s and 1990’s resulted in a number of murders and serious crime of violence in NSW . In my opinion, the suggestion of 30 ‘gay hate’ related unsolved murders is a gross exaggeration. Certainly there was no consultation with this command prior to the Sydney Morning / Sunday Herald articles which I suggest is poor, irresponsible journalism bordering on sensationalism.*

- 12.57. The 2013 Issue Paper included the following conclusions as to the three Taradale deaths:
- a. Mr Warren: “[t]his case is probably a ‘gay hate’ motivated crime”;<sup>1857</sup>
  - b. Mr Russell: “[t]here are a number of suspects in a case that is probably ‘gay hate’ motivated”;<sup>1858</sup> and
  - c. Mr Mattaini: “[i]t is believed that Mattaini is a possible victim of ‘gay hate’ motivated crime.”<sup>1859</sup>
- 12.58. Again, Counsel Assisting submitted that it might be thought that this would have prompted a reinvestigation of the deaths. Again, this did not occur.

<sup>1855</sup> Exhibit 6, Tab 47, Detective Chief Inspector John Lehmann, “Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team to determine if any bias motivation existed” (Issue Paper, 25 September 2013), 1 (SCOI.74906); Submissions of Pamela Young, 23 October 2023, [85] (SCOI.86379).

<sup>1856</sup> Exhibit 6, Tab 47, Detective Chief Inspector John Lehmann, “Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team to determine if any bias motivation existed” (Issue Paper, 25 September 2013), 9 (SCOI.74906).

<sup>1857</sup> Exhibit 6, Tab 47, Detective Chief Inspector John Lehmann, “Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team to determine if any bias motivation existed” (Issue Paper, 25 September 2013), 5 (SCOI.74906).

<sup>1858</sup> Exhibit 6, Tab 47, Detective Chief Inspector John Lehmann, “Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team to determine if any bias motivation existed” (Issue Paper, 25 September 2013), 5–6 (SCOI.74906).

<sup>1859</sup> Exhibit 6, Tab 47, Detective Chief Inspector John Lehmann, “Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team to determine if any bias motivation existed” (Issue Paper, 25 September 2013), 3, 5–6 (SCOI.74906).

- 12.59. The NSWPF submitted that the suggestion that a reinvestigation might have been prompted by the 2013 Issue Paper “pays no heed to the competing obligations of, and resources available to, the UHT at the relevant time” and “does not account for the nature of the exercise” being conducted by Mr Lehmann, who was “simply reviewing the then-available information for the purposes of reaching a preliminary determination as to whether each of the relevant deaths was a possible gay-hate crime”.<sup>1860</sup>
- 12.60. The NSWPF further submitted that Mr Lehmann used Senior Deputy State Coroner Milledge’s findings to prepare the 2013 Issue Paper, and that there is “nothing to suggest that the review uncovered additional information that might have elevated the priority of the Taradale cases, as concerns a possible reinvestigation, identified possible avenues for reinvestigation, or enhanced the possibility that such a reinvestigation would be fruitful”.<sup>1861</sup>
- 12.61. These submissions are less than persuasive. Although it is true that Mr Lehmann and Ms Young were only reviewing existing information, that does not answer Counsel Assisting’s submission that, having done so, they formed the view that all three of these deaths were “probable” or “possible” “gay hate” crimes,<sup>1862</sup> that there were numerous known suspects in relation to two of those, and that this should have prompted a reinvestigation. Furthermore, these views were formed in a context where Detective Sergeant Taylor’s October 2012 review had recommended engaging with those known POIs by an undercover operation.
- 12.62. Further, although I accept that the UHT had numerous unsolved cases on its books, and finite resources, I do not consider this is an adequate explanation for the failure to reinvestigate the Taradale deaths at any of the junctures identified. This is particularly so in light of the considerable resources that were in fact dedicated not only to the preparation of the 2013 Issue Paper itself but also to Strike Force Neiwand in 2016–2017, which did not even attempt to investigate the Taradale cases as homicides and instead devoted its efforts to bolstering alternative theories of suicide and/or misadventure, criticising the work of Operation Taradale, and overturning the findings of the Milledge Inquest.

### 2015: *Lateline* Interview

- 12.63. On 13 April 2015, Ms Young gave the *Lateline* interview to Ms Alberici, which is discussed in **Chapter 11** of this Report.
- 12.64. On 10 April 2015, three days before the broadcast *Lateline* interview, Ms Young had the following exchange with Ms Alberici:<sup>1863</sup>

<sup>1860</sup> Submissions of NSWPF, 28 June 2023, [275] (SCOI.84211).

<sup>1861</sup> Submissions of NSWPF, 28 June 2023, [277] (SCOI.84211).

<sup>1862</sup> Submissions of Counsel Assisting, 7 June 2023, [562] (SCOI.84380).

<sup>1863</sup> Exhibit 6, Tab 342, Transcript of recorded interview between Emma Alberici and Detective Chief Inspector Pamela Young in the *Lateline* Studio, 10 April 2015, 20 (NPL.2017.0004.0549).

*Q. What's changed since the last coronial inquest that would warrant another one?*

*A. ... We have put to the test some of the findings of Operation Taradale, which was, — did identify or reinvestigate some gay-hate crimes in Bondi, and two were found to be possible homicides.*

12.65. Two observations may be made at this stage about that answer:

- a. First, this was far from an accurate reflection of the findings of the Milledge Inquest. Senior Deputy State Coroner Milledge had not found two of the deaths to be “possible homicides”; her Honour had found two of the three deaths (Mr Warren and Mr Russell) to be homicides in fact,<sup>1864</sup> and had added that the evidence “strongly supports the probability” that both those two deaths, and also Mr Mattaini, had met their deaths at the hands of “gay hate assailants”;<sup>1865</sup> and
- b. Secondly, it reveals that the perspective from which the UHT, *qua* Strike Force Macnamir, was approaching the three Taradale deaths was to challenge (“put to the test”) Senior Deputy State Coroner Milledge’s findings of homicide, which had so influenced the findings in the second Scott Johnson inquest in June 2012.<sup>1866</sup>

12.66. When Mr Willing was asked about Ms Young’s answer that the NSWPF had “put to the test some of the findings of Operation Taradale”, he agreed that if Ms Young wanted to combat the Johnson family’s view that Scott Johnson’s death was a homicide, a “possible pathway” was to undercut the findings of Operation Taradale.<sup>1867</sup> Mr Willing also agreed that Ms Young’s answer reads as if she wanted to test these findings, although he could not put it higher than the fact that Ms Young analysed the findings of Operation Taradale as part of Strike Force Macnamir.<sup>1868</sup>

12.67. The NSWPF submitted that Ms Young’s answer had to be considered in its full context, which was as follows:<sup>1869</sup>

*Well, again, that’s an ultimate question for the coroner to decide, whether one’s justified or not. We certainly have done a broader investigation. We’ve looked at a lot of crime reports — thousands of crime reports, actually, from that time — to see about patterns, to see about — with similarities. We’ve gone to more detail about the victimology — so that’s what Scott was like*

<sup>1864</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 28 August 2002, 14 (SCOI.02751.00021).

<sup>1865</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 28 August 2002, 14 (SCOI.02751.00021).

<sup>1866</sup> Submissions of Counsel Assisting, 7 June 2023, [118], [347(c)], [353], [567], [597], [600], [604]–[608] (SCOI.84380); Supplementary submissions of Counsel Assisting, 16 October 2023, [275] (SCOI.86243).

<sup>1867</sup> Transcript of the Inquiry, 15 May 2023, T3768.2–19 (TRA.00051.00001).

<sup>1868</sup> Transcript of the Inquiry, 15 May 2023, T3768.21–27 (TRA.00051.00001).

<sup>1869</sup> Submissions of NSWPF, 28 June 2023, [279]–[280] (SCOI.84211).

*and what people thought of Scott, including his brother. We have a lot of detail along that line.*

*We have put to the test some of the findings of Operation Taradale, which was – did identify or reinvestigate some gay-hate crimes in Bondi, and two were found to be possible homicides. So we’ve – we’ve provided a more analytical basis and a broader basis of the investigation, and we of course interviewed a lot of people, gathered more witness statements – not witnesses to Scott’s death; there are no eyewitnesses to Scott’s death. And we’ve also done some operations.*

- 12.68. Ms Young’s explanation for the language that she used (“put to the test”) was that by reviewing Operation Taradale and its methodology in the course of Strike Force Macnamir, she “wanted the body of the work, [she] wanted the facts, the information, the intelligence ... to learn about the gangs operating in Sydney in a coastal area similar to where Scott had been found”.<sup>1870</sup>
- 12.69. Counsel Assisting submitted that Ms Young’s evidence on this issue was not persuasive and should not be accepted, and that what Ms Young and Strike Force Macnamir sought to “put to the test” was indeed—as Ms Young actually said to Ms Alberici—the “findings” of Operation Taradale,<sup>1871</sup> that is, that the deaths of Mr Russell and Mr Warren were homicides, by “gay hate” assailants.
- 12.70. As Counsel Assisting pointed out, Strike Force Neiwand, in due course, pursued that very approach.
- 12.71. The NSWPF submitted that, if Ms Young had been seeking to undermine the suggestion that “gay hate” was involved in the Taradale deaths, she would “surely have indicated to Ms Alberici that there was reason to doubt the conclusion reached by [Senior] Deputy State Coroner Milledge”, which she did not do.<sup>1872</sup>
- 12.72. Ms Young submitted that the view expressed by Counsel Assisting was “clearly coloured by the real dissatisfaction raised by Ms Young about the influence being exerted by the Johnson family on the proper and exhaustive investigative processes being pursued by the UHT and in Strike Force Macnamir by herself and [Detective Sergeant] Brown”.<sup>1873</sup> Ms Young’s submission was that Counsel Assisting had misunderstood her use of the expression “put to the test” in relation to Operation Taradale. She also submitted that it was “dangerous” to rely on the evidence of Mr Willing.<sup>1874</sup>

<sup>1870</sup> Transcript of the Inquiry, 5 October 2023, T6667.36–42 (TRA.00097.00001).

<sup>1871</sup> Exhibit 6, Tab 342, Transcript of recorded interview between Emma Alberici and Detective Chief Inspector Pamela Young in the Lateline Studio, 10 April 2015, 20 (NPL.2017.0004.0549).

<sup>1872</sup> Supplementary submissions of NSWPF, 23 October 2023, [175] (SCOI.86378).

<sup>1873</sup> Submissions of Pamela Young, 23 October 2023, [21] (SCOI.86379).

<sup>1874</sup> Submissions of Pamela Young, 23 October 2023, [22] (SCOI.86379).

- 12.73. Ms Young also contended that the Young Coronial Statement analysed the findings of the Milledge Inquest “not from a dismissive or combative perspective but in the very context anticipated by [Senior Deputy State Coroner Milledge] who had said in her findings of the 9th of March 2005 that Taradale ‘...will provide an excellent source of evidence should other matters come to light’”.<sup>1875</sup> That Coronial Statement, it was said, evaluated a number of POIs identified during the Milledge Inquest in a way which was “entirely proper” and which generated a number of “generic characteristics of gay hate crimes” which could be taken into account in aid of Strike Force Macnamir.<sup>1876</sup>
- 12.74. As I have concluded in **Chapter 11**, Ms Young strongly held the view that Scott Johnson’s death was a suicide, and doggedly resisted the possibility that it was a homicide. In my opinion, what Ms Young said to Ms Alberici, about putting the findings of Operation Taradale to the test, in all probability reflected what she actually meant. The words she chose to use are consistent with a desire to cast doubt upon the view that the Taradale deaths were “gay hate” homicides, which would have the corollary that those three deaths did not—contrary to the views of Deputy State Coroner Forbes in June 2012—lend weight to the possibility that the death of Scott Johnson may also have been such a homicide.
- 12.75. The fact that (as appears from what follows in this Chapter) Strike Force Neiwand, by early 2016, was devoting most of its efforts to discrediting Operation Taradale and to pursuing theories of suicide or misadventure, rather than homicide, with respect to each of the three Taradale deaths, is also consistent with such a desire.

### 2015: Monetary reward

- 12.76. On 23 June 2015, the NSWPF announced rewards of \$100,000 for information leading to the conviction of person/s who may be responsible for the death of Mr Russell and the disappearance and suspected deaths of Mr Warren and Mr Mattaini. Mr Willing said that “the matters had been reviewed based on the Coroner’s findings that they were suspicious in nature and possibl[y] the result of gay-hate related crimes.”<sup>1877</sup>
- 12.77. As Mr Willing acknowledged, no “review” of the three Taradale deaths was actually underway at that time. However, as the NSWPF correctly submitted, prior to April 2015 there had been the UHT review in October 2012, the 2013 Issue Paper in September 2013, and the work of Strike Force Macnamir relating to the Taradale deaths.
- 12.78. On 30 August 2015, Strike Force Parrabell was established (see **Chapter 13**).

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<sup>1875</sup> Submissions of Pamela Young, 23 October 2023, [157] (SCOI.86379).

<sup>1876</sup> Submissions of Pamela Young, 23 October 2023, [158]–[169] (SCOI.86379).

<sup>1877</sup> Exhibit 6, Tab 163, NSWPF Media Release – Deaths of Gilles Mattaini, Ross Warren and John Russell, 23 June 2015, 1–2 (SCOI.76962.00014).



12.79. In October 2015, Strike Force Neiwand was established.<sup>1878</sup>

### Awareness of Strike Force Neiwand

- 12.80. Strike Force Neiwand first came to the attention of the Inquiry during the course of a private hearing held on 6 and 7 June 2022.<sup>1879</sup> Noting that Item D of the Inquiry’s Terms of Reference required it to “operate in a way that avoids prejudice to criminal investigations, and current or future criminal prosecutions, and any other contemporaneous inquiries”, a private hearing was held for the purpose of obtaining evidence from an appropriate senior officer of the NSWPF as to the present status of any NSWPF investigations (including whether there were any pending or anticipated criminal proceedings) in relation to deaths within Category A of the Inquiry’s Terms of Reference.<sup>1880</sup>
- 12.81. During the course of this private hearing, the NSWPF produced a summary document which contained multiple references to Strike Force Neiwand in relation to the deaths of Mr Warren, Mr Russell and Mr Mattaini. The Inquiry was not previously aware of the existence of Strike Force Neiwand.
- 12.82. On 25 August 2022, I issued a summons to the NSWPF requesting documents in relation to Strike Force Parrabell, Strike Force Macnamir and Strike Force Neiwand.<sup>1881</sup> With respect to Strike Force Neiwand, the summons requested: all documents evidencing or referring to the reasons for the establishment of Strike Force Neiwand; all Co-ordinating Instructions, Terms of Reference and Standard Operating Procedures; all documents evidencing or referring to the identity of the members of the Strike Force Neiwand team, and the criteria by which, and persons by whom, the team was chosen; all reports made by Strike Force Neiwand; and all documents evidencing the dates and extent of the dissemination of such reports.
- 12.83. In response to this summons, the NSWPF produced a total of six documents in relation to Strike Force Neiwand.
- 12.84. As I have outlined in **Chapter 9**, on 20 September 2022, the Inquiry requested, in relation to Strike Force Neiwand, a statement from Detective Sergeant Morgan (the Investigation Supervisor of Strike Force Neiwand) and/or Mr Chebl (the OIC of Strike Force Neiwand).

<sup>1878</sup> Exhibit 6, Tab 16, Strike Force Neiwand, Previous Terms of Reference, 26 October 2015 (SCOI.76962.00001); Exhibit 6, Tab 17, Strike Force Neiwand, Terms of Reference, 30 June 2016 (SCOI.74884); Exhibit 6, Tab 18, Strike Force Neiwand, Investigation Plan, undated, (SCOI.74880); Exhibit 6, Tab 19, Email from Patrick Hodgetts to Kate Lockery, 8 September 2022 (SCOI.82014); Exhibit 6, Tab 291, Detective Chief Inspector Christopher Olen, “Request for creation of Terms of Reference and allocation of WBS number in relation to Strike Force Neiwand” (Issue Paper, 4 May 2016) (NPL.0115.0001.0009\_E).

<sup>1879</sup> Transcript of the Inquiry, 6 June 2022, T83.4–44, 92.40–93.8 (SCOI.02691).

<sup>1880</sup> Exhibit 6, Tab 552, Letter from James Herrington to Patrick Hodgetts, 25 May 2022 (SCOI.86690).

<sup>1881</sup> Exhibit 6, Tab 551, Summons to NSWPF (NSWPF12), 25 August 2022 (SCOI.86691).

- 12.85. On 8 November 2022, I issued a summons to the NSWPF requesting the complete e@gle.i holdings in relation to Operation Taradale and Strike Force Neiwand.<sup>1882</sup> In total, approximately 6,500 documents were produced, of which approximately 2,100 documents made up the Strike Force Neiwand e@gle.i brief.
- 12.86. On 15 November 2022, I issued a further summons to the NSWPF, requesting further documents in relation to Strike Force Neiwand, including but not limited to; any Terms of Reference created or accepted prior to 30 June 2016, situation reports, all operational assessments, review reports, file notes, and correspondence. This was the primary summons issued in relation to the establishment and conduct of Strike Force Neiwand.<sup>1883</sup> In response to this summons, the NSWPF produced nine tranches of material between 30 November 2022 and 17 March 2023.
- 12.87. On 29 November 2022, I issued a further summons to the NSWPF, requesting various memorandums, progress reports and advice prepared in relation to Strike Force Neiwand.<sup>1884</sup> In response, the NSWPF produced approximately 10 documents.
- 12.88. On 16 August 2023, I issued another summons to NSWPF in relation to Strike Force Neiwand.<sup>1885</sup> That summons requested all documents in relation to the proposed and/or actual distribution of certain documents produced by Strike Force Neiwand and any correspondence and/or consideration given to contacting the Coroners Court in relation to findings of Strike Force Neiwand, and any correspondence and/or consideration given to providing these findings to the families of Mr Warren, Mr Russell and Mr Mattaini, and to Mr Page. On 31 October 2023, the NSWPF produced 18 documents responsive to this summons.
- 12.89. It is apparent from the above steps that were taken by the Inquiry, and given the dearth of publicly available information, that every attempt was made to identify those responsible for initiating Strike Force Neiwand, and to understand its scope and purpose. Further details about these endeavours are identified in the balance of this Chapter.

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<sup>1882</sup> Exhibit 6, Tab 553, Summons to NSWPF (NSWPF34), 8 November 2022 (SCOI.86692).

<sup>1883</sup> Exhibit 6, Tab 280A, Summons to NSWPF (NSWPF35), 15 November 2022 (SCOI.86183).

<sup>1884</sup> Exhibit 6, Tab 554, Summons to NSWPF (NSWPF37), 22 November 2022 (SCOI.86693).

<sup>1885</sup> Exhibit 6, Tab 555, Summons to NSWPF (NSWPF165), 16 August 2023 (SCOI.85658).

## 2015: The establishment of Strike Force Neiwand

- 12.90. Strike Force Neiwand was not established in 2005, after Senior Deputy State Coroner Milledge delivered her findings in the Milledge Inquest and expressed the expectation that the information would be of assistance to future investigators.<sup>1886</sup> It was not established in 2012, when the UHT recommended that opportunities existed for undercover operations.<sup>1887</sup> It was not established in August 2013 when Mr Willing told Mr Feneley that police were “quietly working away on it” (and when in fact Mr Lehmann categorised the priority for two of the cases as “low” and for the third as “medium”).<sup>1888</sup> It was not established in September 2013, when Mr Lehmann and Ms Young concluded that each of these three deaths was a “probable or possible” hate crime,<sup>1889</sup> or when the media release of 23 June 2015 claimed that the deaths “had been reviewed”.<sup>1890</sup>
- 12.91. The question squarely arises: what actually prompted the establishment of Strike Force Neiwand in or around October 2015?
- 12.92. As noted above, the Terms of Reference for Strike Force Neiwand were as follows (emphasis added):<sup>1891</sup>
- To re-investigate the suspicious disappearance and death of Giles [sic] Mattaini from Bondi on 01/09/1985; the suspicious disappearance and death of Ross Warren from Bondi on 22/07/1989 and; the suspected murder of John Russell at Bondi on 23/11/1989.*
- 12.93. In the Investigation Plan for Strike Force Neiwand (which is not dated but appears to have come into existence about a year later, between 6 September 2016 and late October 2016),<sup>1892</sup> the “MISSION” of Strike Force Neiwand was stated to be the reinvestigation of the three deaths.<sup>1893</sup>

<sup>1886</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005 (SCOI.02751.00021).

<sup>1887</sup> Exhibit 6, Tab 162, Strike Force Neiwand Review of an Unsolved Homicide Case Screening Form –John Russell, Ross Warren and Gilles Mattaini, completed by Detective Senior Constable Alicia Taylor, 25 October 2012, 33 (NPL.0113.0001.0001).

<sup>1888</sup> Exhibit 6, Tab 214, Rick Feneley, ‘Public Help Sought with Evidence of Gay-Hate Killings’, *The Sydney Morning Herald* (Sydney, 9 August 2013) (SCOI.82026); Exhibit 6, Tab 162D, Review Prioritisation Form – John Russell, 14 August 2013 (NPL.0131.0001.2552\_E).

<sup>1889</sup> Exhibit 6, Tab 47, Detective Chief Inspector John Lehmann, “Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team to determine if any bias motivation existed” (Issue Paper, 25 September 2013), 1 (SCOI.74906).

<sup>1890</sup> Exhibit 6, Tab 163, NSWPF Media Release — ‘Deaths of Gilles Mattaini, Ross Warren and John Russell’, 23 June 2015, 1–2 (SCOI.76962.00014).

<sup>1891</sup> Exhibit 6, Tab 17, Strike Force Neiwand, Terms of Reference, 30 June 2016, 1 (SCOI.74884).

<sup>1892</sup> Exhibit 6, Tab 18, Strike Force Neiwand, Investigation Plan, undated, 2 (SCOI.74880); Transcript of the Inquiry, 21 February 2023, T1778.12–40 (TRA.00024.00001).

<sup>1893</sup> Exhibit 6, Tab 18, Strike Force Neiwand, Investigation Plan, undated, 2 (SCOI.74880).

- 12.94. The Investigation Plan envisaged that part of Strike Force Neiwand’s “STRATEGIES” was a review of all archived material from Operation Taradale,<sup>1894</sup> and the production of a “detailed list of persons of interests [sic]” following an “extensive review of all material”.<sup>1895</sup>
- 12.95. According to the initial Terms of Reference of October 2015,<sup>1896</sup> the original Investigation Supervisor was Mr Lehmann (then Detective Chief Inspector), and the original OIC was Detective Sergeant Brown.
- 12.96. By February 2016 or soon thereafter, Detective Sergeant Morgan had become the Investigation Supervisor. Detective Sergeant Morgan became a sworn police officer in 1986 and joined the UHT as a Team Leader in 2008.<sup>1897</sup> When he first joined the UHT, Detective Sergeant Morgan was part of the “Southern Region” UHT.<sup>1898</sup> However, in February 2015 the regional teams were absorbed into the centralised UHT in Sydney.<sup>1899</sup> In order to work on Strike Force Neiwand, Detective Sergeant Morgan was “taken off the Review team” and put in an investigation team.<sup>1900</sup>
- 12.97. From around the same time, Mr Chebl (then Detective Senior Constable) was the OIC.<sup>1901</sup> The Inquiry went to significant lengths to obtain evidence from Mr Chebl. That commenced with a request to the NSWPF to provide a statement from him.<sup>1902</sup> After the NSWPF advised that it did not represent Mr Chebl,<sup>1903</sup> on 22 August 2023 I issued a summons to Mr Chebl directly, to attend to give evidence at the September/October 2023 hearings.<sup>1904</sup> On 8 September 2023, I issued a summons to the NSWPF to produce certain material concerning Mr Chebl’s employment by the NSWPF.<sup>1905</sup> After consideration of that material, and for reasons which were the subject of confidential documentary exhibits, I made a decision to excuse Mr Chebl from attendance.
- 12.98. Detective Sergeant Morgan and Mr Chebl remained in their respective roles until the conclusion of Strike Force Neiwand in early 2018.

<sup>1894</sup> Exhibit 6, Tab 18, Strike Force Neiwand, Investigation Plan, undated, 2–3 (SCOI.74880).

<sup>1895</sup> Exhibit 6, Tab 18, Strike Force Neiwand, Investigation Plan, undated, 3 (SCOI.74880).

<sup>1896</sup> Exhibit 6, Tab 16, Strike Force Neiwand, Previous Terms of Reference, 26 October 2015 (SCOI.76962.00001).

<sup>1897</sup> Exhibit 6, Tab 5, Statement of Detective Sergeant Steven Morgan, 31 October 2022, [3], [14] (SCOI.76962).

<sup>1898</sup> Exhibit 6, Tab 5, Statement of Detective Sergeant Steven Morgan, 31 October 2022, [14] (SCOI.76962); Transcript of the Inquiry, 22 February 2023, T1886.28–36 (TRA.00025.00001).

<sup>1899</sup> Transcript of the Inquiry, 22 February 2023, T1886.38–46 (TRA.00025.00001).

<sup>1900</sup> Transcript of the Inquiry, 22 February 2023, T1923.18–33 (TRA.00025.00001).

<sup>1901</sup> Exhibit 6, Tab 285, Email from Steve Morgan to Sebastian Herft, 26 February 2016 (NPL.0115.0004.3512).

<sup>1902</sup> Exhibit 6, Tab 424, Letter from Enzo Camporeale to Katherine Garaty, 10 August 2023, [79] (SCOI.85244).

<sup>1903</sup> Exhibit 6, Tab 425, Letter from Natalie Marsic to Enzo Camporeale, 17 August 2023 (SCOI.85253); Exhibit 6, Tab 427, Letter from Katherine Garaty to Enzo Camporeale, 18 August 2023 (SCOI.85257).

<sup>1904</sup> Exhibit 6, Tab 467A, Letter from Enzo Camporeale to Michael Chebl, 22 August 2023 (SCOI.85554).

<sup>1905</sup> Exhibit 6, Tab 556, Summons to NSWPF (Summons NSWPF181), 8 September 2023 (SCOI.85737).

## Mr Willing

- 12.99. The request to establish Strike Force Neiwand was made by Mr Willing.
- 12.100. Mr Willing’s evidence, in his initial witness statement, was that: “[a]s Commander of the Homicide Squad I was not directly involved in the establishment of Strike Force Neiwand but endorsed it occurring.”<sup>1906</sup>
- 12.101. However, an Issue Paper dated 4 May 2016 stated:<sup>1907</sup>
- a. “In October 2015, Detective Superintendent Willing requested the Unsolved Homicide Team to re-investigate [the suspicious deaths of Mr Warren, Mr Russell and Mr Mattaini]”; and
  - b. “In October 2015, Detective Chief Inspector Lehmann of Unsolved Homicide Team created Strike Force Neiwand to re-investigate the three deaths.”
- 12.102. When reminded of that document, Mr Willing maintained his contention that he had not been “directly involved” in the establishment of Strike Force Neiwand.<sup>1908</sup> He said that he had been involved only in relation to the “administrative process to establish the strike force” and not in “the actual resourcing of it and Terms of Reference and all those sorts of things”.<sup>1909</sup>
- 12.103. Mr Willing’s evidence left me with the impression that he did not readily take responsibility for the establishment or implementation of Strike Force Neiwand. However, this was a common theme in the evidence of all the witnesses who were involved in Strike Force Neiwand and gave evidence on the topic, all of whom attempted to disclaim as much responsibility as possible for it.
- 12.104. Mr Willing added that he would not have requested that a strike force be formed unilaterally and that, before a strike force was established, a discussion would occur with members of the UHT and consideration would be given to matters such as what was currently being investigated, what the UHT currently had “on their books” and what the priorities were.<sup>1910</sup>
- 12.105. Mr Willing confirmed that up to October 2015, notwithstanding (relevantly) the 2012 UHT review and recommendations by Detective Sergeant Taylor, there was no investigation under way at all, of the three Taradale deaths.<sup>1911</sup>

<sup>1906</sup> Exhibit 6, Tab 252, Statement of former Deputy Commissioner Michael Willing, 30 January 2023, [74] (SCOI.82369.00001).

<sup>1907</sup> Exhibit 6, Tab 291, Detective Chief Inspector Christopher Olen, “Request for creation of Terms of Reference and allocation of WBS number in relation to Strike Force Neiwand” (Issue Paper, 4 May 2016), 1 (NPL.0115.0001.0009\_E).

<sup>1908</sup> Transcript of the Inquiry, 20 February 2023, T1747.33–1748.15 (TRA.00023.00001).

<sup>1909</sup> Transcript of the Inquiry, 20 February 2023, T1748.17–29 (TRA.00023.00001).

<sup>1910</sup> Transcript of the Inquiry, 21 February 2023, T1761.12–45 (TRA.00024.00001).

<sup>1911</sup> Transcript of the Inquiry, 21 February 2023, T1757.3–30 (TRA.00024.00001).

12.106. In the Willing Statement, Mr Willing gave evidence that:<sup>1912</sup>

*From my recollection, Strike Force Neiwand was established to look at the available evidence and, if at all possible, to bring any person or persons who might have been involved in the deaths to justice.*

12.107. In his oral evidence, he said that the reason for setting up Strike Force Neiwand “was to try and effect an arrest and get fresh evidence”.<sup>1913</sup>

12.108. As to why Strike Force Neiwand was established at the time it was, in October 2015, Mr Willing nominated:<sup>1914</sup>

- a. The fact that Strike Force Macnamir had, for its purposes, looked at the Taradale deaths;
- b. The fact, according to Mr Willing, that Detective Sergeant Brown (OIC of Strike Force Macnamir) had the view that the Taradale deaths were worth pursuing; and
- c. The availability at that time of UHT resources, as a consequence of an arrest having recently been made in another case.

12.109. The first two of those reasons appear to be related to what Ms Young referred to as Strike Force Macnamir having “put to the test” the “findings of Operation Taradale”, as discussed above. This evidence of Mr Willing tends to reinforce the impression that I have formed that some senior NSWPF officers, including Ms Young and Mr Willing, wanted to cast doubt on the work of Operation Taradale and the findings of Senior Deputy State Coroner Milledge in the Milledge Inquest.

### Mr Lehmann

12.110. Mr Lehmann agreed that, as stated in the Issue Paper of 4 May 2016,<sup>1915</sup> he “created [Strike Force] Neiwand [in October 2015] to reinvestigate the three deaths”.<sup>1916</sup> Notwithstanding what was stated in the Terms of Reference, he said he was not ever the Investigation Supervisor, but rather the “Coordinator”, from October 2015 to October 2016.<sup>1917</sup>

12.111. Mr Lehmann said he could not remember why Strike Force Neiwand was set up. He did not know why Mr Willing made that decision at that time (October 2015).<sup>1918</sup>

<sup>1912</sup> Exhibit 6, Tab 252, Statement of former Deputy Commissioner Michael Willing, 30 January 2023, [73] (SCOI.82369.00001); See also Transcript of the Inquiry, 20 February 2023, T1710 (TRA.00023.00001); Transcript of the Inquiry, 21 February 2023, T1762, 1771 (TRA.00024.00001).

<sup>1913</sup> Transcript of the Inquiry, 21 February 2023, T1762.16–17 (TRA.00024.00001).

<sup>1914</sup> Transcript of the Inquiry, 21 February 2023, T1759.23–44, 1762.34–43 (TRA.00024.00001).

<sup>1915</sup> Exhibit 6, Tab 291, Detective Chief Inspector Christopher Olen, “Request for creation of Terms of Reference and allocation of WBS number in relation to Strike Force Neiwand” (Issue Paper, 4 May 2016), 1 (NPL.0115.0001.0009\_E).

<sup>1916</sup> Supplementary submissions of Counsel Assisting, 16 October 2023, [264] (SCOI.86243).

<sup>1917</sup> Transcript of the Inquiry, 26 September 2023, T6039.23–41, 6041.3-8, 6079.30–6080.15 (TRA.00091.00001).

<sup>1918</sup> Transcript of the Inquiry, 26 September 2023, T6082.11–21 (TRA.00091.00001).

12.112. In relation to the establishment of Strike Force Neiwand, Mr Lehmann said he would “certainly say that it was out of the norm. It wouldn’t have been a case that would have been high on the unit’s priority for selecting investigations”.<sup>1919</sup> He said:<sup>1920</sup>

*there wasn’t anything new or startling in relation to evidence or suspects or information that would have led to that establishment of that strike force. So I would think that was unusual ...*

12.113. Mr Lehmann gave evidence that he understood the purpose of Strike Force Neiwand to be to investigate and identify persons responsible for the deaths of Mr Russell, Mr Warren, and Mr Mattaini.<sup>1921</sup>

12.114. Like Detective Sergeant Brown (as to whom see below), Mr Lehmann said that it came as news to him that Strike Force Neiwand deliberately chose not to investigate the possibility that these men were murdered by “gay hate assailants”, and that the Strike Force did not actually investigate the known persons of interest at all.<sup>1922</sup>

12.115. Mr Lehmann went on sick leave in October 2016 and did not return to the NSWPF.<sup>1923</sup>

12.116. Mr Lehmann rejected any suggestion that one of the motivations of Strike Force Neiwand was directed to minimising the potential involvement of “gay hate”.<sup>1924</sup> Mr Lehmann stated that he neither promoted, nor ever encountered another officer seeking to promote, a “company line” that the number of “gay hate crimes [was] exaggerated.”<sup>1925</sup>

### Mr Leggat

12.117. Mr Leggat joined the UHT on 13 March 2017, some five months after Mr Lehmann had left, and was assigned to Strike Force Neiwand as a “co-ordinator”.<sup>1926</sup> He said he was not told why Strike Force Neiwand had been established.<sup>1927</sup>

<sup>1919</sup> Transcript of the Inquiry, 26 September 2023, T6081.42–45 (TRA.00091.00001).

<sup>1920</sup> Transcript of the Inquiry, 26 September 2023, T6082.3–7 (TRA.00091.00001).

<sup>1921</sup> Transcript of the Inquiry, 26 September 2023, T6039.31–41 (TRA.00091.00001).

<sup>1922</sup> Transcript of the Inquiry, 26 September 2023, T6040.3–43 (TRA.00091.00001).

<sup>1923</sup> Transcript of the Inquiry, 26 September 2023, T6007.38 (TRA.00091.00001); Exhibit 6, Tab 513, Statement of John Lehmann, 29 August 2023, [44] (SCOI.85495).

<sup>1924</sup> Transcript of the Inquiry, 26 September 2023, T6111.16–24 (TRA.00091.00001).

<sup>1925</sup> Transcript of the Inquiry, 26 September 2023, T6111.26–33 (TRA.00091.00001).

<sup>1926</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [21], [28] (SCOI.85707).

<sup>1927</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [27], [28] (SCOI.85707).



- 12.118. Mr Leggat said that Detective Sergeant Morgan and Mr Chebl “had been working on Strike Force Neiwand for some time prior to [his] arrival in the UHT”<sup>1928</sup> and that the investigation was “well underway”.<sup>1929</sup> Mr Leggat remained as Coordinator of Strike Force Neiwand until its conclusion in early 2018.<sup>1930</sup>
- 12.119. He agreed that a deliberate decision was made, that Strike Force Neiwand would focus on victimology and not “gay hate homicide”.<sup>1931</sup> He ultimately conceded that in relation to all three deaths, Strike Force Neiwand did not “investigate the possibility of homicide at the hands of gay hate assailants at all.”<sup>1932</sup>

### Detective Sergeant Brown

- 12.120. The original OIC of Strike Force Neiwand was Detective Sergeant Brown.<sup>1933</sup> According to the Brown Submissions, the reasons for this choice were:<sup>1934</sup>
- a. Detective Sergeant Brown’s involvement and knowledge of the reward application and subsequent reward media release; and
  - b. Detective Sergeant Brown’s knowledge of the circumstances surrounding the death of Mr Russell and the disappearances of Mr Warren and Mr Mattaini.
- 12.121. On 1 February 2016, Detective Sergeant Brown sent an email to various Strike Force Neiwand personnel, attaching a spreadsheet of 116 POIs who had been identified by Operation Taradale in the early 2000s and expressing hope for “a positive result for Strike Force Neiwand”.<sup>1935</sup> However, as the evidence in due course revealed, no attempt was actually made by Strike Force Neiwand to investigate those 116 POIs. Only one of them was spoken to, and that was not for an investigative purpose but to ascertain what that person was saying to the media.<sup>1936</sup>
- 12.122. As the NSWPF submitted, “beyond the involvement in the preparation and provision of the list of 116 POIs, it appears that Detective Sergeant Brown had almost no involvement in Strike Force Neiwand”.<sup>1937</sup>

<sup>1928</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [29] (SCOI.85707).

<sup>1929</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [34] (SCOI.85707).

<sup>1930</sup> See Exhibit 6, Tab 176, Strike Force Neiwand, Post Operational Assessment, 22 February 2018 (SCOI.76962.00007).

<sup>1931</sup> Transcript of the Inquiry, 25 September 2023, T5968.9–12 (TRA.00090.00001).

<sup>1932</sup> Transcript of the Inquiry, 25 September 2023, T5969.45–T5970.1 (TRA.00090.00001).

<sup>1933</sup> Exhibit 6, Tab 16, Strike Force Neiwand, Previous Terms of Reference, 26 October 2015 (SCOI.76962.00001).

<sup>1934</sup> Submissions of Detective Sergeant Penelope Brown, 24 October 2023, [32] (SCOI.86380); Exhibit 6, Tab 519A, Second Statement of Detective Sergeant Penelope Brown, 29 September 2023, [5] (SCOI.85950).

<sup>1935</sup> Exhibit 6, Tab 306, Email from Penelope Brown to Strike Force Neiwand Team, 1 February 2016 (NPL.3000.0001.0026).

<sup>1936</sup> Exhibit 6, Tab 168, Strike Force Neiwand, Investigator’s Note, ‘Contact with NP34’, 30 March 2017 (SCOI.10389.00081 and SCOI.10389.00082).

<sup>1937</sup> Supplementary Submissions of NSWPF, 23 October 2023, [365] (SCOI.86378); Exhibit 6, Tab 519A, Second Statement of Detective Sergeant Penelope Brown, 29 September 2023, [6] (SCOI.85950).



- 12.123. Detective Sergeant Brown said that it was only as a result of this Inquiry that she had become aware that in fact Strike Force Neiwand did not look at those POIs at all. That was surprising to her.<sup>1938</sup> She said, the decision not to focus on persons of interest was the type of decision that was up to the Investigation Supervisor (i.e., Detective Sergeant Morgan).<sup>1939</sup>
- 12.124. Detective Sergeant Brown, however, did have a recollection about why Strike Force Neiwand was set up. She said, when asked that question, “[t]here must have been some media around at the time. ... There was ... was it an SBS documentary?”<sup>1940</sup>
- 12.125. When reminded that an SBS documentary was indeed in the wind, and that it was understood in 2015 that it would probably be broadcast the next year (2016), Detective Sergeant Brown agreed that rang a bell with her.<sup>1941</sup> She agreed that Mr Willing “would have set it up so as to get ahead of the media curve”.<sup>1942</sup>
- 12.126. That evidence is consistent, in my view, with what appears in an email sent by Detective Sergeant Morgan on 26 February 2016, discussed below.

### Detective Sergeant Morgan

- 12.127. In the Morgan Statement, Detective Sergeant Morgan claimed that he had “no particular knowledge or involvement about the reasons for the establishment of Strike Force Neiwand.”<sup>1943</sup> He said that “former Deputy Commissioner Michael Willing... may be able to address the reasons for the establishment” of Strike Force Neiwand.<sup>1944</sup>
- 12.128. In his oral evidence, Detective Sergeant Morgan said on several occasions that he “did not know” why it was set up.<sup>1945</sup>
- 12.129. However, in an email on 26 February 2016, very early in Strike Force Neiwand, Detective Sergeant Morgan told colleagues that he had been “put with” Strike Force Neiwand. He went on, speaking of Strike Force Neiwand:<sup>1946</sup>

*Apparently it is going to be a political and media-driven hot potato later this year, and the Boss wants to be able to say that his squad are further investigating the matter.*

*Why would I be surprised ...*

<sup>1938</sup> Transcript of the Inquiry, 3 October 2023, T6519.17–26 (TRA.00095.00001).

<sup>1939</sup> Transcript of the Inquiry, 3 October 2023, T6519.29–6520.21 (TRA.00095.00001).

<sup>1940</sup> Transcript of the Inquiry, 3 October 2023, T6514.18–20 (TRA.00095.00001).

<sup>1941</sup> Transcript of the Inquiry, 3 October 2023, T6514.30–31 (TRA.00095.00001).

<sup>1942</sup> Transcript of the Inquiry, 3 October 2023, T6514.33–39 (TRA.00095.00001).

<sup>1943</sup> Exhibit 6, Tab 5, Statement of Detective Sergeant Steven Morgan, 31 October 2022, [25] (SCOI.76962).

<sup>1944</sup> Exhibit 6, Tab 5, Statement of Detective Sergeant Steven Morgan, 31 October 2022, [26] (SCOI.76962).

<sup>1945</sup> Transcript of the Inquiry, 22 February 2022, T1920.44, 1922.21, 1922.44 (TRA.00025.00001).

<sup>1946</sup> Exhibit 6, Tab 285, Email from Steven Morgan to Sebastian Herft, 26 February 2016, 2 (NPL.0115.0004.3512).

- 12.130. It was agreed by both Detective Sergeant Morgan and Mr Willing that the word “Boss” refers to Mr Willing.<sup>1947</sup>
- 12.131. When taken to this email, Detective Sergeant Morgan confirmed that he did hold the view he expressed there. At first he referred to this view as an “impression” that he had, but eventually his evidence was that a senior officer, either Mr Willing or Mr Lehmann, had told him that the SBS *Deep Water* programs were going to be on television later in the year and that Mr Willing wanted to be on the “front foot” in relation to the criticisms that were anticipated to be made by those programs.<sup>1948</sup>
- 12.132. Mr Willing steadfastly maintained that although this email might have reflected Detective Sergeant Morgan’s view and opinion, Strike Force Neiwand “was about identifying and seeing whether or not we could effect an arrest for those matters.”<sup>1949</sup> Mr Willing acknowledged there was a political element to these cases being considered by Strike Force Neiwand, but maintained that the “intent behind Neiwand was to investigate it, and again if there was a chance of uncovering evidence that led to an arrest or arrests, that was the desired outcome.”<sup>1950</sup>
- 12.133. Mr Willing denied that part of the reason for setting up Strike Force Neiwand was to “make a show” of not being homophobic. He said he “thought that would be demonstrable, but at the end of the day, the reason for it being set up was to try and effect an arrest and get fresh evidence.”<sup>1951</sup>

## Conclusion

- 12.134. According to Counsel Assisting, one conclusion which, on the evidence, it is safe to reach, is that a significant reason for the establishment of Strike Force Neiwand was to respond to the extensive and sustained media interest in matters involving suspected LGBTIQ bias crime deaths, and criticism of the police investigation of those deaths.<sup>1952</sup>
- 12.135. The NSWPF submitted that this possibility had “some intuitive appeal”, and that this “intuitive appeal” may have been “acting on” Detective Sergeant Brown when she gave the evidence referred to above, when asked why Strike Force Neiwand was established, that “[t]here must have been some media around that time”.<sup>1953</sup> In any event, the NSWPF submitted that it is entitled to take public concerns into account and reinvestigate matters of “significant public interest”.<sup>1954</sup>

<sup>1947</sup> Transcript of the Inquiry, 21 February 2023, T1760.23–24 (TRA.00024.00001); Transcript of the Inquiry, 22 February 2023, T1924.6–7 (TRA.00025.00001).

<sup>1948</sup> Transcript of the Inquiry, 22 February 2023, T1924.9–26 (TRA.00025.00001); Transcript of the Inquiry, 23 February 2023, T1936.3–47 (TRA.00026.00001).

<sup>1949</sup> Transcript of the Inquiry, 21 February 2023, T1760.27–29 (TRA.00024.00001).

<sup>1950</sup> Transcript of the Inquiry, 21 February 2023, T1760.31–44 (TRA.00024.00001).

<sup>1951</sup> Transcript of the Inquiry, 21 February 2023, T1762.12–17 (TRA.00024.00001).

<sup>1952</sup> Submissions of Counsel Assisting, 7 June 2023, [575] (SCOI.84380).

<sup>1953</sup> Submissions of NSWPF, 28 June 2023, [294] (SCOI.84211). See also Supplementary submissions of NSWPF, 23 October 2023, [293]–[294] (SCOI.86378); Transcript of the Inquiry, 3 October 2023, T6514.12–13 (TRA.00095.00001).

<sup>1954</sup> Submissions of NSWPF, 28 June 2023, [294] (SCOI.84211); Supplementary submissions of NSWPF, 23 October 2023, [293]–[294] (SCOI.86378).

- 12.136. However, the NSWPF submitted that what is “clear” is that the Taradale deaths were subject to a UHT review in 2012 by Detective Sergeant Taylor, that they were considered again as part of Strike Force Macnamir, and that after Strike Force Macnamir, Detective Sergeant Brown formed the view that the Taradale deaths might productively be the subject of reinvestigation, a view that was further enhanced by the fact “very significant” rewards had been made available in respect of each of the deaths.<sup>1955</sup> According to the NSWPF, the terms of the press release in June 2015, and the evidence of Mr Willing about the objectives of the strike force, made it plain that the possibility of a successful identification of persons responsible for the Taradale deaths was the driving force behind the establishment of Strike Force Neiwand.<sup>1956</sup>
- 12.137. I accept, of course, that the NSWPF is entitled to consider the public interest—including that interest as reflected in the media—in making decisions about what cases to reinvestigate. However, and as discussed further below, in my view the NSWPF has sought to downplay the extent to which Strike Force Neiwand was a reaction to the continued and sustained media interest in matters involving suspected LGBTIQ bias crime deaths; to criticism of the police investigation of those deaths; and to the significance which had been attributed to the Operation Taradale investigation, and the Milledge Inquest findings, in connection with the second and third inquests into the death of Scott Johnson.
- 12.138. In my view, the establishment of Strike Force Neiwand in October 2015 is simply not explicable based on the reasons offered by the NSWPF. The evidence (including that of Detective Sergeant Brown and of Detective Sergeant Morgan) has satisfied me that concerns about adverse media coverage (both in the past, and as anticipated) in relation to “gay hate homicides”, were at least prominent, if not decisive, in Mr Willing’s decision to establish Strike Force Neiwand when he did.
- 12.139. I accept the submission of Counsel Assisting in that regard.

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<sup>1955</sup> Submissions of NSWPF, 28 June 2023, [288] (SCOI.84211).

<sup>1956</sup> Submissions of NSWPF, 28 June 2023, [289] (SCOI.84211).

## The conduct of Strike Force Neiwand

- 12.140. According to Strike Force Neiwand’s Terms of Reference, and its Investigation Plan, Strike Force Neiwand was a “reinvestigation”.<sup>1957</sup>
- 12.141. Given the work of Operation Taradale, the findings in the Milledge Inquest, the 2012 UHT recommendations made by Detective Sergeant Taylor, the conclusions of the 2013 Issue Paper, and the offering of a monetary reward in 2015, one would have thought that Strike Force Neiwand would focus on investigating the Taradale deaths as homicides or suspected homicides, and would actively pursue some or all of the many POIs who had been identified and investigated by Operation Taradale in the early 2000s.
- 12.142. Indeed, each of Mr Willing, Detective Sergeant Brown and Mr Lehmann gave evidence that they did expect that Strike Force Neiwand would do just that.<sup>1958</sup> All three gave evidence that they were surprised to learn, in the course of this Inquiry, that Strike Force Neiwand had not investigated any of the 116 POIs identified in the spreadsheet circulated by Detective Sergeant Brown.<sup>1959</sup>
- 12.143. In fact, not only did Strike Force Neiwand make a deliberate decision not to reinvestigate any of those 116 POIs but, with minor exceptions, Strike Force Neiwand was not a “reinvestigation” at all. Rather, it was essentially a review, on the papers, of the work of Operation Taradale.
- 12.144. The NSWPF accepted in the June NSWPF Submissions that this was so.<sup>1960</sup> That acceptance was inevitable given the many aspects of the evidence which demonstrated this reality including the following:
- a. Mr Willing made various concessions to that effect;<sup>1961</sup>
  - b. Detective Sergeant Morgan acknowledged that the description of Strike Force Neiwand made by the Acting Commander Homicide, Detective Acting Superintendent Dickinson in September 2017, as “Cold Case. Evidentiary review” was accurate;<sup>1962</sup>
  - c. In his oral evidence, Assistant Commissioner Crandell indicated that his understanding had always been, prior to this Inquiry, that Strike Force Neiwand was a review rather than a reinvestigation,<sup>1963</sup> and

<sup>1957</sup> Exhibit 6, Tab 17, Strike Force Neiwand Terms of Reference, 30 June 2016 (SCOI.74884); Exhibit 6, Tab 18, Strike Force Neiwand, Investigation Plan, Undated, 2 (SCOI.74880).

<sup>1958</sup> Transcript of the Inquiry, 21 February 2023, T1760.31–44 (TRA.00024.00001); Transcript of the Inquiry, 26 September 2023, T6040.13–19 (TRA.00091.00001); Transcript of the Inquiry, 3 October 2023, T6518.44–6519.1 (TRA.00095.00001).

<sup>1959</sup> Transcript of the Inquiry, 21 February 2023, T1781.43–1782.1 (TRA.00024.00001); Transcript of the Inquiry, 26 September 2023, T6094.3–11 (TRA.00091.00001); Transcript of the Inquiry, 3 October 2023, T6519.18–27 (TRA.00095.00001).

<sup>1960</sup> Submissions of NSWPF, 28 June 2023, [362] (SCOI.84211).

<sup>1961</sup> Transcript of the Inquiry, 21 February 2023, T1777.13–32, 1780.6–1782.45, 1782.47–1784.32, 1787.18–1789.14, 1790.22–29 (TRA.00024.00001).

<sup>1962</sup> Transcript of the Inquiry, 23 February 2023, T2011.4–2012.32 (TRA.00026.00001).

<sup>1963</sup> Transcript of the Inquiry, 6 December 2022, T674.10–675.10 (TRA.00011.00001).

- d. At the conclusion of his oral evidence (following his questioning over several days by Senior Counsel Assisting), Detective Sergeant Morgan was invited by senior counsel for the NSWPF to make such a direct concession, and he then readily did so.<sup>1964</sup>
- 12.145. Instead, as the following analysis makes clear, the overwhelming focus of the work of Strike Force Neiwand, from early 2016, was to criticise Operation Taradale and Mr Page, and to devote its efforts to bolstering theories of suicide and/or misadventure, rather than “gay hate homicide”, in respect of each of the three deaths, contrary to the explicit findings of the Milledge Inquest.

### Personnel involved in Strike Force Neiwand

- 12.146. Upon the establishment of Strike Force Neiwand in or around October 2015, the Terms of Reference stated that Detective Sergeant Brown was the OIC and Mr Lehmann was the Investigations Supervisor.<sup>1965</sup> Both Detective Sergeant Brown and Mr Lehmann gave evidence to the Inquiry in the September/October 2023 hearings.
- 12.147. Detective Sergeant Brown was involved in the “beginning stages” of Strike Force Neiwand, but other commitments made it “not possible” for her to stay involved.<sup>1966</sup> On 1 February 2016, as noted above, Detective Sergeant Brown circulated a list of 116 POIs and expressed hope for “a positive result for [Strike Force] Neiwand”.<sup>1967</sup> Detective Sergeant Brown was replaced as the OIC in around February 2016,<sup>1968</sup> and had “no direct investigative role” in Strike Force Neiwand thereafter.<sup>1969</sup>
- 12.148. Mr Lehmann gave evidence that he was not the Investigation Supervisor, but rather was the Investigation Coordinator from October 2015 to October 2016.<sup>1970</sup> Mr Lehmann’s role as Investigation Coordinator was to manage the team.<sup>1971</sup>
- 12.149. From early 2016, Mr Chebl took over from Detective Sergeant Brown as the OIC of Strike Force Neiwand. He remained in this role until the conclusion of the strike force.<sup>1972</sup>

<sup>1964</sup> Transcript of the Inquiry, 27 February 2023, T2271.9–29 (TRA.00028.00001).

<sup>1965</sup> Exhibit 6, Tab 16, Strike Force Neiwand, Previous Terms of Reference, 26 October 2015, 1 (SCOI.76962.00001).

<sup>1966</sup> Exhibit 6, Tab 519, Statement of Detective Sergeant Penelope Brown, 19 September 2023, 2 (SCOI.85747); Exhibit 6, Tab 519A; Second statement of Detective Sergeant Penelope Brown, 29 September 2023, 1 (SCOI.85950); Submissions of Detective Sergeant Penelope Brown, 24 October 2023, [32]–[33] (SCOI.86380).

<sup>1967</sup> Exhibit 6, Tab 306, Email from Penelope Brown to Strike Force Neiwand Team, 1 February 2016 (NPL.3000.0001.0026).

<sup>1968</sup> Exhibit 6, Tab 285, Email from Steven Morgan to Sebastian Herft, 26 February 2016 (NPL.0115.0004.3512).

<sup>1969</sup> Exhibit 6, Tab 519A, Second Statement of Detective Sergeant Penelope Brown, 29 September 2023, [7] (SCOI.85950).

<sup>1970</sup> Transcript of the Inquiry, 26 September 2023, T6039.23–41, 6041.3–8, 6079.30–6080.15 (TRA.00091.00001).

<sup>1971</sup> Transcript of the Inquiry, 26 September 2023, T6080.2–7 (TRA.00091.00001).

<sup>1972</sup> Exhibit 6, Tab 285, Email from Steven Morgan to Sebastian Herft, 26 February 2016 (NPL.0115.0004.3512); Exhibit 6, Tab 17, Strike Force Neiwand, Terms of Reference, 30 June 2016, 1 (SCOI.74884).

- 12.150. Detective Sergeant Morgan joined Strike Force Neiwand in around February 2016 and shortly thereafter became Investigation Supervisor.<sup>1973</sup> He remained in that role until the conclusion of the strike force.
- 12.151. Mr Leggat joined Strike Force Neiwand as the Coordinator on 13 March 2017, when he joined the UHT as a Detective Inspector. Mr Leggat seems to have remained as Coordinator of Strike Force Neiwand until its conclusion in early 2018.<sup>1974</sup>
- 12.152. Strike Force Neiwand was also staffed by various other, more junior, NSWPF officers. These officers are identified, where required, in the course of this Chapter.

### What was not done?

- 12.153. In considering what Strike Force Neiwand did, in the first instance, it is important to have regard to what it did not do. In that regard, among other things:
- a. Strike Force Neiwand did not implement the recommendations made by Detective Sergeant Taylor in October 2012, namely (emphasis added):<sup>1975</sup>

*It is my recommendation, due to the passage of time, separation of alliances and social isolation of the suspects from each other there exists an opportunity to engage the persons of interest via an undercover operation in relation to the murder of Russell and Warren.*

...

*Consideration of a reward may provide further avenues to generate information in conjunction with an undercover operation.*
  - b. Strike Force Neiwand did not ‘investigate’ any of the 116 POIs listed in the spreadsheet circulated by Detective Sergeant Brown on 1 February 2016;<sup>1976</sup> and
  - c. Strike Force Neiwand did not pursue the possibility of homicide (with a partial exception in the case of Mr Warren, discussed below) and in particular did not pursue the “gay hate homicide” possibility, in any substantive way beyond what Operation Taradale had already done many years previously.

<sup>1973</sup> Transcript of the Inquiry, 22 February 2023, T1886.16–22 (TRA.00025.00001); Exhibit 6, Tab 5, Statement of Detective Sergeant Steven Morgan, 31 October 2022, [24] (SCOI.76962).

<sup>1974</sup> See Exhibit 6, Tab 176, Strike Force Neiwand, Post Operational Assessment, 22 February 2018, 15 (SCOI.76962.00007), which bears Mr Leggat’s signature.

<sup>1975</sup> Exhibit 6, Tab 162, Strike Force Neiwand Review of an Unsolved Homicide Case Screening Form – John Russell, Ross Warren and Gilles Mattaini, completed by Detective Senior Constable Alicia Taylor, 25 October 2012, 33–34 (NPL.0113.0001.0001).

<sup>1976</sup> Exhibit 6, Tab 306, Email from Penelope Brown to Strike Force Neiwand Team, 1 February 2016 (NPL.3000.0001.0026); Exhibit 6, Tab 306A, Excel spreadsheet titled ‘TARADALE’, Undated (NPL.3000.0001.0027).

- 12.154. When Detective Sergeant Morgan was shown the list of POIs circulated by Detective Sergeant Brown, he stated that one person (or perhaps two people) on that list was interviewed by Strike Force Neiwand.<sup>1977</sup> He then conceded that, apart from interviews, it was “quite likely” that none of those persons was the subject of any other means of investigation at all, whether overt or covert, by Strike Force Neiwand.<sup>1978</sup> No evidence was produced to the Inquiry to indicate that any such interviews or investigations took place, and I accept the submission of Counsel Assisting that the appropriate finding is that none in fact took place.
- 12.155. Later, Detective Sergeant Morgan could only identify, with certainty, one of the 116 POIs as someone interviewed by Strike Force Neiwand.<sup>1979</sup> However, even then this interview was only concerned with what that person might say, or might have said, to the makers of the SBS/Blackfella Films program *Deep Water*.<sup>1980</sup> In other words, it appears that the NSWPF was more concerned with adverse media coverage than with investigating any of the POIs circulated by Detective Sergeant Brown.
- 12.156. According to Mr Willing, the decision not to pursue POIs was not a choice made by him. He said it would have been made by the investigative team, and likely the OIC (namely, Detective Sergeant Brown or Mr Chebl).<sup>1981</sup> Counsel Assisting submitted that, in light of the email circulated by Detective Sergeant Brown in February 2016, which indicates that at least Detective Sergeant Brown had such investigations in mind, this decision was made by Mr Chebl as OIC and presumably approved by Detective Sergeant Morgan as Investigation Supervisor.
- 12.157. What Strike Force Neiwand did not do was also reflected in the principal documents produced by Strike Force Neiwand. These were:
- a. Nine Progress Reports, between July 2016 and November 2017;
  - b. Three “investigative summaries”, one in relation to each of the matters, said to have been created by Mr Chebl and reviewed by Detective Sergeant Morgan, as to the deaths of each of Mr Russell (**Russell Summary**), Mr Warren (**Warren Summary**) and Mr Mattaini (**Mattaini Summary**) (together, the **Neiwand Summaries**);<sup>1982</sup> and
  - c. A Post Operative Assessment (**POA**) which referred to all three cases.

<sup>1977</sup> Transcript of the Inquiry, 23 February 2023, T1953.36–39 (TRA.00026.00001).

<sup>1978</sup> Transcript of the Inquiry, 23 February 2023, T1954.15–22 (TRA.00026.00001).

<sup>1979</sup> Transcript of the Inquiry, 23 February 2023, T1952.15–17 (TRA.00026.00001).

<sup>1980</sup> Transcript of the Inquiry, 27 February 2023, T2220.2–17 (TRA.00028.00001); Exhibit 6, Tab 168, Strike Force Neiwand, Investigator’s Note, ‘Contact with NP34’, 30 March 2017 (SCOI.10389.00081).

<sup>1981</sup> Transcript of the Inquiry, 21 February 2023 T1790.22–1791.34 (TRA.00024.00001).

<sup>1982</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017 (SCOI.74881); Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018 (SCOI.74882); Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018 (SCOI.74883).



- 12.158. The Strike Force Neiwand Progress Reports, the Neiwand Summaries (referred to in more detail below) and the POA all make clear that Strike Force Neiwand made a deliberate choice not to pursue POIs. Detective Sergeant Morgan similarly agreed that Strike Force Neiwand “made a deliberate decision” not to pursue further those POIs and instead focus on other approaches, such as victimology.<sup>1983</sup>
- 12.159. The NSWPF, in the June NSWPF Submissions, was only prepared to accept that a decision was made “not to comprehensively pursue” the POIs, that such a comprehensive investigation “no doubt would have been difficult”, and that “it appears (on the limited available evidence) that the activities actually undertaken by Strike Force Neiwand did not live up to the ambitions held at the time it was initiated”.<sup>1984</sup>
- 12.160. Those grudging and partial concessions in the NSWPF submissions, in the face of overwhelming evidence that a deliberate decision was made (as I have described above), are further examples of the defensive and adversarial approach adopted by the NSWPF to this Inquiry.

### What was done?

- 12.161. Each of the Neiwand Summaries (as well as most of the POA) appeared to have been created by Mr Chebl, and reviewed and accepted by Detective Sergeant Morgan.<sup>1985</sup> Mr Chebl left the NSWPF some years ago and was excused from giving evidence to the Inquiry, but Detective Sergeant Morgan gave both written and oral evidence about his role (and that of Mr Chebl) in Strike Force Neiwand. Their respective roles are discussed below. However, in terms of establishing what was done by Strike Force Neiwand, I have found the principal documents produced by the strike force most instructive.

### Neiwand Summaries

#### GILLES MATTAINI

- 12.162. Counsel Assisting submitted, and I consider, that in relation to the death of Mr Mattaini, Strike Force Neiwand overwhelmingly, if not exclusively, pursued evidence supporting the possibility of suicide.<sup>1986</sup>
- 12.163. While some (ultimately unsuccessful) steps were undertaken in relation to DNA testing and obtaining medical and military records, it was clear that the overriding focus was pursuing information from Mr Musy about Mr Mattaini’s previous suicide attempts (one, or possibly two).

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<sup>1983</sup> Transcript of the Inquiry, 23 February 2023, T1955.9–16 (TRA.00026.00001).

<sup>1984</sup> Submissions of NSWPF, 28 June 2023, [323]–[326], [335] (SCOI.84211).

<sup>1985</sup> Transcript of the Inquiry, 24 February 2023, T2068.37–2069.7 (TRA.00027.00001).

<sup>1986</sup> Submissions of Counsel Assisting, 7 June 2023, [648] (SCOI.84380).



- 12.164. Detective Sergeant Morgan agreed that Strike Force Neiwand pursued lines of inquiry that were relevant to the possibility of suicide.<sup>1987</sup> He also agreed that Strike Force Neiwand made no attempt to explore the possibility of finding POIs with respect to 1985 and Mr Mattaini.<sup>1988</sup> He did not believe that there were any lines of inquiry in relation to homicide to pursue.<sup>1989</sup>
- 12.165. Mr Willing also agreed that, based on the Progress Reports, there is no record of any investigation pursuing possible homicide in the case of Mr Mattaini.<sup>1990</sup>
- 12.166. Detective Sergeant Morgan accepted that Strike Force Neiwand did not do any canvassing of the locality of Mr Mattaini’s disappearance, or probe whether youth gangs of any kind might have been operating in the area as early as 1985.<sup>1991</sup>
- 12.167. The “investigation” by Strike Force Neiwand into Mr Mattaini’s death was very short. By around 10 April 2017, the Mattaini case was deemed “inactive” and work ceased.<sup>1992</sup> The reason for doing so was that there was no evidence of homicide.<sup>1993</sup> But, as Counsel Assisting submitted, none had been sought. Homicide had simply never been pursued.<sup>1994</sup>
- 12.168. The NSWPF accepted that the “primary focus” of the Mattaini investigation was the possibility of suicide but submitted that in the absence of evidence from Mr Chebl, the reasons for this were not apparent.<sup>1995</sup> The NSWPF also submitted that the most likely inference is that Mr Chebl concluded that it was unlikely that avenues of investigation in relation to the possibility of homicide could be fruitfully pursued.<sup>1996</sup>
- 12.169. For reasons discussed further below, I do not agree that the reasons Strike Force Neiwand focused on the possibility of suicide cannot be determined in the absence of Mr Chebl. I also do not agree that the most likely inference is that homicide could not be “fruitfully pursued”.<sup>1997</sup>

<sup>1987</sup> Transcript of the Inquiry, 23 February 2023, T2019.42, 2026.9–12 (TRA.00026.00001).

<sup>1988</sup> Transcript of the Inquiry, 23 February 2023, T2004.13 (TRA.00026.00001).

<sup>1989</sup> Transcript of the Inquiry, 23 February 2023, T2019.46–47, 2020.21–32, 2026.18 (TRA.00026.00001).

<sup>1990</sup> Transcript of the Inquiry, 21 February 2023, T1787.42 (TRA.00024.00001).

<sup>1991</sup> Transcript of the Inquiry, 23 February 2023, T2045.25–38 (TRA.00026.00001).

<sup>1992</sup> Transcript of the Inquiry, 21 February 2023, T1787.2–1788.37 (TRA.00024.00001).

<sup>1993</sup> Transcript of the Inquiry, 21 February 2023, T1787.3–4 (TRA.00024.00001).

<sup>1994</sup> Submissions of Counsel Assisting, 7 June 2023, [655] (SCOI.84380).

<sup>1995</sup> Submissions of NSWPF, 28 June 2023, [374]–[375] (SCOI.84211).

<sup>1996</sup> Submissions of NSWPF, 28 June 2023, [375] (SCOI.84211).

<sup>1997</sup> Submissions of NSWPF, 28 June 2023, [375] (SCOI.84211).

## ROSS WARREN

- 12.170. As to Mr Warren’s death, Strike Force Neiwand pursued the possibility of suicide or misadventure, and to a lesser extent, homicide of a domestic nature.<sup>1998</sup> As Counsel Assisting submitted, at no point was the possibility of homicide as a result of “gay hate” violence pursued. The NSWPF accepted this and, again, submitted that the reasons for this had not been explored with Mr Chebl.<sup>1999</sup>
- 12.171. In his evidence, Detective Sergeant Morgan asserted that there were suspicions of some “associates” of Mr Warren.<sup>2000</sup> At its highest point, Strike Force Neiwand listed five POIs for Mr Warren, all of whom were former partners or associates of Mr Warren (and all of whom had already been the subject of investigation by Operation Taradale).<sup>2001</sup> However, as Detective Sergeant Morgan ultimately accepted, none of those inquiries could be pursued any further.<sup>2002</sup>
- 12.172. Detective Sergeant Morgan’s evidence was that there was a consensus view held by Strike Force Neiwand at the time that Mr Warren’s death was a possible homicide, but possibly of a “domestic nature”, involving a former partner rather than the result of “gay hate gang violence”.<sup>2003</sup>
- 12.173. As Counsel Assisting submitted, there is no evidence of any such steps being taken to inquire as to the possibility of “gay hate gang violence”, beyond reviewing the material from Operation Taradale.<sup>2004</sup> Detective Sergeant Morgan could not recall if Strike Force Neiwand had taken such steps.<sup>2005</sup> The NSWPF claimed that there was a “fundamental difficulty” with this submission, in that Detective Sergeant Morgan:<sup>2006</sup>
- was not responsible for the day-to-day conduct of [Strike Force] Neiwand’s investigative steps, and no evidence has been called from [Mr] Chebl.*
- 12.174. Again, for reasons explained below, I do not accept that the absence of Mr Chebl prevents me from reaching any of the conclusions that Counsel Assisting has submitted are available in relation to what was done in relation to Mr Warren’s case. No evidence of any steps being taken to investigate “gay hate” violence in relation to Mr Warren has been produced to the Inquiry. Furthermore, no positive explanation for Strike Force Neiwand’s focus on theories other than homicide, have been provided by the NSWPF. It beggars belief that Mr Chebl was on a frolic of his own in this respect.

<sup>1998</sup> Submissions of NSWPF, 28 June 2023, [378] (SCOI.84211).

<sup>1999</sup> Submissions of NSWPF, 28 June 2023, [378]–[379] (SCOI.84211).

<sup>2000</sup> Transcript of the Inquiry, 23 February 2023, T2018.38–42 (TRA.00026.00001).

<sup>2001</sup> Exhibit 6, Tab 164D, Strike Force Neiwand, Progress Report, 23 January 2017, 4 (SCOI.82050).

<sup>2002</sup> Transcript of the Inquiry, 23 February 2023, T2018.38–42 (TRA.00026.00001).

<sup>2003</sup> Transcript of the Inquiry, 23 February 2023, T2021.15–33, 2024.12–30 (TRA.00026.00001).

<sup>2004</sup> Submissions of Counsel Assisting, 7 June 2023, [658] (SCOI.84380).

<sup>2005</sup> Transcript of the Inquiry, 23 February 2023, T2024.40 (TRA.00026.00001).

<sup>2006</sup> Submissions of NSWPF, 28 June 2023, [380] (SCOI.84211).

**JOHN RUSSELL**

- 12.175. In relation to Mr Russell’s death, Strike Force Neiwand pursued the possibility of misadventure, not homicide.
- 12.176. In May 2017, Strike Force Neiwand noted, as to Mr Russell, that suicide was “unlikely” and that “as a result” investigators would “primarily” focus on Mr Warren rather than Mr Russell.<sup>2007</sup> As Mr Willing readily agreed, that did not make any sense.<sup>2008</sup>
- 12.177. The NSWPF accepted, only that, the evidence “tends to suggest” that Strike Force Neiwand “focused its attention more” on the possibility of misadventure than on the possibility of homicide. Again, I note with regret the grudging and partial nature of the NSWPF concession. Again, I do not consider that the absence of Mr Chebl prevents findings being made and conclusions being reached in relation to what Strike Force Neiwand actually did (and did not do), and why.

**Investigation Plan**

- 12.178. There was no Investigation Plan for Strike Force Neiwand until September or October 2016, despite the strike force commencing around a year earlier, in October 2015.<sup>2009</sup>
- 12.179. The Investigation Plan, even when finally created, was rather sparse. It was just under three pages, with the first page and a half consisting of a brief summary of the background of the three deaths.<sup>2010</sup>
- 12.180. Under the heading “Strategies/Execution”, there was very little information about the actual approach or methodology that Strike Force Neiwand intended to adopt. The focus appeared to be collating and assembling material that was available elsewhere, as Detective Sergeant Morgan agreed.<sup>2011</sup>
- 12.181. While other steps, such as canvassing residents who resided around Marks Park in 1989–1990, and taking statements from “freshly identified witnesses”, were proposed in the Investigation Plan,<sup>2012</sup> no such step was undertaken by Strike Force Neiwand. Nor were any “freshly identified witnesses” approached other than family members.<sup>2013</sup>

<sup>2007</sup> Transcript of the Inquiry, 21 February 2023, T1789.24–27 (TRA.00024.00001).

<sup>2008</sup> Transcript of the Inquiry, 21 February 2023, T1789.7–36 (TRA.00024.00001).

<sup>2009</sup> Exhibit 6, Tab 18, Strike Force Neiwand, Investigation Plan, undated (SCOI.74880). See also Transcript of the Inquiry, 21 February 2023, T1796.6 (TRA.00024.00001); Transcript of the Inquiry, 23 February 2023 T2007.19–20 (TRA.00026.00001).

<sup>2010</sup> Exhibit 6, Tab 18, Strike Force Neiwand, Investigation Plan, undated, 1–2 (SCOI.74880).

<sup>2011</sup> Transcript of the Inquiry, 23 February 2023, T2007.38 (TRA.00026.00001).

<sup>2012</sup> Exhibit 6, Tab 18, Strike Force Neiwand, Investigation Plan, undated, 3 (SCOI.74880).

<sup>2013</sup> Transcript of the Inquiry, 23 February 2023, T2007.46–2008.28 (TRA.00026.00001). See also Transcript of the Inquiry, 21 February 2023, T1798.4–36 (TRA.00024.00001).

- 12.182. Further, although the Investigation Plan provided that “a detailed list of persons of interests [sic] will be developed after an extensive review of all material”, no such list was ever prepared.<sup>2014</sup> When asked about the reason for the lack of detail in the Investigation Plan, Detective Sergeant Morgan suggested that:<sup>2015</sup>

*Well, keeping in mind that, as you've pointed out, this investigation plan wasn't done for some considerable months, it may have been done on the basis that that was what we'd arrived at by that stage.*

- 12.183. Detective Sergeant Morgan's evidence was that it was during or after September/October 2016 that a decision was made not to follow the Investigation Plan, and instead to focus on “victimology, associates and the last known movements of the three males”.<sup>2016</sup> He could not recall who made the decision, but believed that it was a consensus position, with which he agreed.<sup>2017</sup> As appears below, the documentary evidence indicates that this decision had been made much earlier.
- 12.184. Again, the NSWPF submitted that the contents of the Investigation Plan, and the steps taken in response to it, were not pursued with Mr Chebl.<sup>2018</sup>
- 12.185. Mr Willing agreed that the Investigation Plan for Strike Force Neiwand was “a great deal shorter” than the Investigation Plan for Strike Force Macnamir, which contained “quite a lot of detail” and a more comprehensive list of tactical steps, including finding POIs.<sup>2019</sup> He said that the Strike Force Neiwand Investigation Plan had “very, very limited” detail under the heading “Strategies/Execution”.<sup>2020</sup>
- 12.186. Mr Willing stated that the two Investigation Plans were “certainly different”, but that he did not know why that was.<sup>2021</sup> He accepted that an assertion could be made that this was because Strike Force Neiwand's real objective was not to reinvestigate the deaths in any comprehensive way, but to focus on the possibilities of suicide or misadventure, and to cast a critical eye over Operation Taradale. However, he said he did not believe that that was the case.<sup>2022</sup>
- 12.187. The NSWPF submitted the fact that Mr Willing accepted that “such an assertion could be made” is of no probative force because he did not say that such an assertion would be persuasive or accurate, and that no such finding could be made in the absence of direct evidence on the point from Mr Chebl and/or Detective Sergeant Morgan. This submission is discussed further below.

<sup>2014</sup> Transcript of the Inquiry, 23 February 2023, T2008.32–39 (TRA.00026.00001).

<sup>2015</sup> Transcript of the Inquiry, 23 February 2023, T2009.4–7 (TRA.00026.00001).

<sup>2016</sup> Transcript of the Inquiry, 23 February 2023, T2016.19–27 (TRA.00026.00001).

<sup>2017</sup> Transcript of the Inquiry, 23 February 2023, T2016.29–47 (TRA.00026.00001).

<sup>2018</sup> Submissions of NSWPF, 28 June 2023, [384] (SCOI.84211).

<sup>2019</sup> Exhibit 6, Tab 18, Strike Force Neiwand, Investigation Plan, Undated (SCOI.74880); Exhibit 6, Tab 7, Strike Force Macnamir, Investigation Plan, 13 March 2013 (SCOI.75757); Transcript of the Inquiry, 21 February 2023, T1794.34–1795.5, 1797.1–11 (TRA.00024.00001).

<sup>2020</sup> Transcript of the Inquiry, 21 February 2023, T1797.8–24 (TRA.00024.00001).

<sup>2021</sup> Transcript of the Inquiry, 21 February 2023, T1800.8–13 (TRA.00024.00001).

<sup>2022</sup> Transcript of the Inquiry, 21 February 2023, T1800.19–26 (TRA.00024.00001).

## Progress Reports

- 12.188. There were nine Progress Reports for Strike Force Neiwand, which outlined the steps taken by Strike Force Neiwand between 1 July 2016 and 20 November 2017.<sup>2023</sup>
- 12.189. These Progress Reports starkly reveal the minimal steps taken by Strike Force Neiwand to pursue the Operation Taradale POIs.
- a. In the first Progress Report, dated 1 July 2016, the “Future Directions” focused on, *inter alia*, completing the victimology for the three deceased men, reviewing and uploading the Operation Taradale material and finding relevant experts.<sup>2024</sup>
  - b. Detective Sergeant Morgan accepted that “at that stage” none of those directions involved pursuing lines of inquiry associated with POIs.<sup>2025</sup> Mr Willing also accepted that under the “Future Directions” heading, one POI was listed for Mr Warren but beyond that, there was no reference to any attempt to pursue any of the Taradale POIs for Mr Warren, Mr Russell, or Mr Mattaini.<sup>2026</sup>
  - c. In a State Crime Command “Initial Consultation” form for Strike Force Neiwand dated 17 August 2016, an entry is made under the heading “Persons of Interest”: “None known at this stage”.<sup>2027</sup>
  - d. Detective Sergeant Morgan agreed that this was utterly inaccurate,<sup>2028</sup> and that it “clearly” indicated that whoever was composing that document did not have in mind pursuing POIs.<sup>2029</sup> Mr Willing also stated that this was “incorrect” and agreed that there were at least 50–100 POIs known.<sup>2030</sup> (In fact, the number of POIs on Detective Sergeant Brown’s spreadsheet was 116.)<sup>2031</sup>
  - e. The third Progress Report, in October 2016, recorded advice given by Detective Acting Inspector Mathieu Russell, who was at the time one of the UHT Investigator Coordinators,<sup>2032</sup> regarding the targeting of POIs with call charge records (**CCRs**) around “recent ‘gay hate’ media events and to consider

<sup>2023</sup> Exhibit 6, Tab 164A, Strike Force Neiwand, Progress Report, 1 July 2016 (SCOI.82054); Exhibit 6, Tab 164B, Strike Force Neiwand, Progress Report, 6 September 2016 (SCOI.82049); Exhibit 6, Tab 164C, Strike Force Neiwand, Progress Report, 26 October 2016 (SCOI.82053); Exhibit 6, Tab 164D, Strike Force Neiwand, Progress Report, 23 January 2017 (SCOI.82050); Exhibit 6, Tab 164E, Strike Force Neiwand, Progress Report, 20 March 2017 (SCOI.82048); Exhibit 6, Tab 164F, Strike Force Neiwand, Progress Report, 16 May 2017 (SCOI.82051); Exhibit 6, Tab 164G, Strike Force Neiwand, Progress Report, 17 July 2017 (SCOI.82055); Exhibit 6, Tab 164H, Strike Force Neiwand, Progress Report, 18 September 2017 (SCOI.82052); Exhibit 6, Tab 164I, Strike Force Neiwand, Progress Report, 20 November 2017 (SCOI.82047).

<sup>2024</sup> Exhibit 6, Tab 164A, Strike Force Neiwand, Progress Report, 1 July 2016, 6–7 (SCOI.82054).

<sup>2025</sup> Transcript of the Inquiry, 23 February 2023, T2018.3–5 (TRA.00026.00001).

<sup>2026</sup> Transcript of the Inquiry, 21 February 2023, T1777.13–32 (TRA.00024.00001).

<sup>2027</sup> Exhibit 6, Tab 295A, Memorandum, State Crime Command Operational Legal Support – Initial Consultation SF Neiwand, 17 August 2016, 2 (NPL.0115.0003.1501).

<sup>2028</sup> Transcript of the Inquiry, 23 February 2023, T2022.38–47 (TRA.00026.00001).

<sup>2029</sup> Transcript of the Inquiry, 23 February 2023, T2023.2–4 (TRA.00026.00001).

<sup>2030</sup> Transcript of the Inquiry, 21 February 2023, T1779.29–39 (TRA.00024.00001).

<sup>2031</sup> Exhibit 6, Tab 306A, Excel spreadsheet titled ‘TARADALE’, Undated (NPL.3000.0001.0027).

<sup>2032</sup> Transcript of the Inquiry, 21 February 2023, T1780.35–43 (TRA.00024.00001).

patterns of behaviour and movement.”<sup>2033</sup> Detective Sergeant Morgan said that he did not know if any of the POIs were targeted with CCRs.<sup>2034</sup> Mr Willing said that we would have expected some targeting of POIs to have ensued, but did not know if it had.<sup>2035</sup>

- 12.190. As Counsel Assisting submitted, there plainly was not, any such targeting. Had there been, it would have been noted in the Progress Reports. While some CCRs had been obtained for some of Mr Warren’s former associates, these were not connected to POIs.<sup>2036</sup> By the time of the next two Progress Reports, no such targeting is recorded as being done.<sup>2037</sup>
- 12.191. The NSWPF accepted only that the Progress Reports “tend to suggest” that Strike Force Neiwand’s investigations had “only a limited focus” on potential POIs.<sup>2038</sup> Again, the grudging and partial nature of that concession flies in the face of the uncontested evidence. The NSWPF submitted that “in the absence of evidence from Mr Chebl, the precise scope of the work actually conducted by Strike Force Neiwand and the reasons particular tasks were, or were not, undertaken cannot be properly understood”.<sup>2039</sup> I address and reject this submission below.

### Conclusion in relation to the conduct of Strike Force Neiwand

- 12.192. Counsel Assisting submitted, and I accept, that the focus of Strike Force Neiwand was overwhelmingly, in all three deaths, on factors pointing towards the possibility of suicide or misadventure, and not on factors pointing towards the possibility of homicide (especially not “gay hate homicide”).
- 12.193. The NSWPF conceded only that the available material “suggests” that Strike Force Neiwand did not proceed “in line with the approach contemplated” by those responsible for its establishment, as recorded in the Terms of Reference and set out in the Investigation Plan.<sup>2040</sup> I note again the unduly limited nature of the concession.
- 12.194. However, the NSWPF offered no positive explanation for the conduct of Strike Force Neiwand. The NSWPF pointed to the oral evidence of Detective Sergeant Morgan who stated “...I think we went in with an open mind and the thing of suicide or misadventure developed as we were going through the inquiry.”<sup>2041</sup> The suggestion seemingly is that Strike Force Neiwand was conducted in the way it was because of the natural evolution of the investigation.

<sup>2033</sup> Transcript of the Inquiry, 21 February 2023, T1780.45–1781.26 (TRA.00024.00001).

<sup>2034</sup> Transcript of the Inquiry, 23 February 2023, T2023.38–2024.4 (TRA.00026.00001).

<sup>2035</sup> Transcript of the Inquiry, 21 February 2023, T1781.39–44 (TRA.00024.00001).

<sup>2036</sup> Transcript of the Inquiry, 21 February 2023, T1785.19–27 (TRA.00024.00001).

<sup>2037</sup> Transcript of the Inquiry, 21 February 2023, T1782.20–45, 1783.46–1784.14 (TRA.00024.00001).

<sup>2038</sup> Submissions of NSWPF, 28 June 2023, [387] (SCOI.84211).

<sup>2039</sup> Submissions of NSWPF, 28 June 2023, [390] (SCOI.84211).

<sup>2040</sup> Submissions of NSWPF, 28 June 2023, [323] (SCOI.84211).

<sup>2041</sup> Submissions of NSWPF, 28 June 2023, [328] (SCOI.84211); Transcript of the Inquiry, 23 February 2023, T1955.31–33 (TRA.00026.00001).

- 12.195. However, there is every reason to doubt this. The Progress Reports, the Neiwand Summaries, and the POA all make clear that Strike Force Neiwand made a deliberate choice not to pursue POIs such as gang members, even though Operation Taradale had identified many such persons. Detective Sergeant Morgan agreed that Strike Force Neiwand “made a deliberate decision”, relatively early in the course of the strike force, not to pursue further those POIs, and instead to focus on other approaches, such as victimology.<sup>2042</sup>
- 12.196. In my view, the evidence establishes that Strike Force Neiwand made virtually no attempt to actually investigate, as homicides, the deaths of any of these three men, notwithstanding that Senior Deputy State Coroner Milledge had expressly found the deaths of Mr Warren and Mr Russell to be homicides and had expressed the view that there was a strong possibility the death of Mr Mattaini was also a homicide. That evidence includes:
- a. The deliberate decision by Strike Force Neiwand to take no steps to pursue the many dozens of POIs identified by Operation Taradale in relation to the 1989 deaths of Mr Warren and Mr Russell;
  - b. The failure by Strike Force Neiwand to make any attempt to seek to identify possible POIs in the case of the 1985 death of Mr Mattaini;
  - c. The concessions by Detective Sergeant Morgan, including that:
    - i. Strike Force Neiwand put far more effort into finding evidence that might indicate suicide or misadventure than it did into finding evidence that might indicate homicide;<sup>2043</sup>
    - ii. In the case of Mr Mattaini, Strike Force Neiwand pursued no line of inquiry other than suicide;<sup>2044</sup>
    - iii. In the case of Mr Russell, Strike Force Neiwand devoted its attention overwhelmingly to misadventure, and really made no inquiries at all directed to exploring the possibility of homicide;<sup>2045</sup>
    - iv. In the case of Mr Warren, Strike Force Neiwand did nothing, itself, to pursue the possibility of “gay hate homicide” (as distinct from “domestic” homicide) other than to review what Operation Taradale had done;<sup>2046</sup> and
    - v. Strike Force Neiwand itself, not Operation Taradale, could be seen to have engaged in “tunnel vision” and reliance on “confirmation bias” (see discussion below), at least in relation to the cases of Mr Mattaini and Mr Russell.<sup>2047</sup>

<sup>2042</sup> Transcript of the Inquiry, 23 February 2023, T1955.9–13 (TRA.00026.00001).

<sup>2043</sup> Transcript of the Inquiry, 27 February 2023, T2218.18–31 (TRA.00028.00001).

<sup>2044</sup> Transcript of the Inquiry, 23 February 2023, T2019.30–47 (TRA.00026.00001).

<sup>2045</sup> Transcript of the Inquiry, 23 February 2023, T2020.34–2021.6 (TRA.00026.00001).

<sup>2046</sup> Transcript of the Inquiry, 23 February 2023, T2024.12–44 (TRA.00026.00001).

<sup>2047</sup> Transcript of the Inquiry, T2204.6–12, 2264.43–2265.2, 2291.41–44 (TRA.00028.00001).

- 12.197. In the “Key Findings” section of the POA, Mr Leggat stated that “Strike Force Neiwand investigators focused on victimology, associates and the last known movements of the three males”.<sup>2048</sup> Both Mr Willing and Detective Sergeant Morgan agreed that this was an accurate summary of what (little) Strike Force Neiwand actually did, and that this was different both from what had been proposed in the Investigation Plan, and from what Mr Willing thought Strike Force Neiwand was going to do.<sup>2049</sup>
- 12.198. As acknowledged by the NSWPF in their submissions, the logical first step would have been to conduct an assessment to confirm which of those 116 POIs could, most fruitfully, have been examined. The public would expect this, at a bare minimum of a UHT reinvestigation.
- 12.199. There is no evidence before me, that even that logical first step was taken. Instead, Strike Force Neiwand directed its considerable efforts and resources, over some two years, to attempting to build a case for contradicting and overturning the findings of Operation Taradale and Senior Deputy State Coroner Milledge. It is altogether regrettable, and a lost opportunity by police to meaningfully reinvestigate these deaths.

## **The Conclusions of Strike Force Neiwand generally**

### **The Neiwand Summaries: Generally**

- 12.200. As noted above, at the conclusion of Strike Force Neiwand, the Neiwand Summaries were prepared, consisting of the Russell Summary, the Warren Summary and the Mattaini Summary.<sup>2050</sup>
- 12.201. This section of this Chapter concerns the contents of the Neiwand Summaries to the extent that they all share commonalities with each other. Aspects of the Neiwand Summaries that are particular to each case are dealt with in the following section.

### **Detective Sergeant Morgan’s involvement in the Neiwand Summaries**

- 12.202. The extent of Detective Sergeant Morgan’s involvement with the preparation of the Neiwand Summaries was a vexed issue at the February–May 2023 hearings.

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<sup>2048</sup> Exhibit 6, Tab 176, Strike Force Neiwand, Post Operational Assessment, 22 February 2018, 13 (SCOI.76962.00007).

<sup>2049</sup> Transcript of the Inquiry, 21 February 2023, T1808.40 (TRA.00024.00001); Transcript of the Inquiry, 23 February 2023, T2016.13 (TRA.00026.00001).

<sup>2050</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017 (SCOI.74881); Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018 (SCOI.74882); Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018 (SCOI.74883).



12.203. On the cover page of all three Neiwand Summaries, there was a notation which said:<sup>2051</sup>

***Created by***                      *DET SEN CONSTABLE MICHAEL CHEBL*  
***Reviewed By***                      *DET SERGEANT STEVEN MORGAN*

12.204. Yet initially, and then intermittently throughout his evidence, Detective Sergeant Morgan sought to assert that the Neiwand Summaries were the work of Mr Chebl alone, and (apparently) not documents that he himself stood by.<sup>2052</sup>

12.205. However, in the course of further questioning, Detective Sergeant Morgan later conceded that, as he was the Investigation Supervisor, “there would have been some consultation” in Mr Chebl’s creation of the Neiwand Summaries.<sup>2053</sup> At different times in his evidence, Detective Sergeant Morgan stated that he would have “reviewed it and accepted it”,<sup>2054</sup> “read through it and accepted it”,<sup>2055</sup> and “accepted it as being accurate enough”.<sup>2056</sup>

12.206. Detective Sergeant Morgan could not recall if he had suggested any changes to the Neiwand Summaries during this review process, but thought that if he had, those changes would have been incorporated into the final versions of the documents.<sup>2057</sup>

12.207. Ultimately, albeit with obvious reluctance, Detective Sergeant Morgan said that he took responsibility for the final versions of the Neiwand Summaries.<sup>2058</sup> Even then, he later sought to again backtrack his involvement by saying that he “clearly didn’t read [the summaries] in enough detail”,<sup>2059</sup> and claiming that it was not his role as reviewer to check the factual accuracy of evidence or facts contained within the Neiwand Summaries.<sup>2060</sup>

12.208. Counsel Assisting submitted that such a claim is ridiculous to the point of embarrassment, and that Detective Sergeant Morgan should be regarded as, and found to be, the joint author of, and jointly responsible for, each of the Neiwand Summaries.

<sup>2051</sup> Exhibit 6, Tab 172A, e@gle-i Product Details Form: Summary of investigation – Gilles Mattaini, 27 December 2017 (SCOI.76962.00004\_0001); Exhibit 6, Tab 173A, e@gle-i Product Details Form: Summary of investigation – John Russell, 8 January 2018 (SCOI.76962.00005\_0001); Exhibit 6, Tab 174A, e@gle-i Product Details Form: Summary of Investigation – Ross Warren, 8 January 2018 (SCOI.76962.00006\_0001).

<sup>2052</sup> Transcript of the Inquiry, 23 February 2023, T1957.28–1958.13, 1959.1–4, 2048.28–33 (TRA.00026.00001); Transcript of the Inquiry, 24 February 2023, T2075.21–24, 2078.11–14, 2101.34–37, 2175.19, 2146.13–15 (TRA.00027.00001).

<sup>2053</sup> Transcript of the Inquiry, 23 February 2023, T2030.14–15 (TRA.00026.00001).

<sup>2054</sup> Transcript of the Inquiry, 23 February 2023, T2030.23–24 (TRA.00026.00001).

<sup>2055</sup> Transcript of the Inquiry, 23 February 2023, T2031.1–2 (TRA.00026.00001).

<sup>2056</sup> Transcript of the Inquiry, 23 February 2023, T2048.37 (TRA.00026.00001).

<sup>2057</sup> Transcript of the Inquiry, 23 February 2023, T2030.39–2031.2 (TRA.00026.00001).

<sup>2058</sup> Transcript of the Inquiry, 23 February 2023, T2048.46 (TRA.00026.00001); Transcript of the Inquiry, 28 February 2023, T2335.32 (TRA.00029.00001).

<sup>2059</sup> Transcript of the Inquiry, 27 February 2023, T2265.21–22 (TRA.00028.00001).

<sup>2060</sup> Transcript of the Inquiry, 27 February 2023, T2274.28–29 (TRA.00028.00001).

- 12.209. The NSWPF resisted this analysis as having “no basis in fact”. The NSWPF submitted that Mr Chebl was the “author” of the Neiwand Summaries (relying on a dictionary definition of “author”), that Detective Sergeant Morgan had “candidly” acknowledged that he did not read them in enough detail and that the absence of evidence from Mr Chebl was again significant.<sup>2061</sup>
- 12.210. I reject each of those NSWPF submissions.
- 12.211. The evidence of Mr Lehmann and Mr Leggat, both former Detective Chief Inspectors within the UHT, reinforced the submissions made by Counsel Assisting as to the Investigation Supervisor (in this case, Detective Sergeant Morgan) having overall responsibility for a strike force such as Strike Force Neiwand, including, in particular, responsibility for review documents or summary documents such as the Neiwand Summaries.
- 12.212. According to Mr Lehmann,<sup>2062</sup> the Investigation Supervisor on a strike force:
- a. Is the team leader;
  - b. Has a hands-on role, actively and closely involved with the work of the strike force;
  - c. Oversees the team and the work they are undertaking;
  - d. Is expected to have direct involvement in how the investigation runs, and in directing the tasks and activities of the staff members involved, including the OIC; and
  - e. As to documents produced by the strike force, such as summaries or progress reports, even if drafted by the OIC, is expected to read them, review them, check them, and make sure that they themselves agrees with them.
- 12.213. According to Mr Leggat,<sup>2063</sup> the Investigation Supervisor would:
- a. Oversee the investigation to ensure that the OIC is on the right track;
  - b. “[V]erify the product” that goes through e@gle.i, meaning read the “product” and ensure it makes sense;
  - c. Be required to be across the investigation itself, so he could feed the relevant information back to the Coordinator;
  - d. Be expected to be taking an active and close interest in what was going on;
  - e. Review any decisions which the OIC might have in mind, which the OIC would be required to “run past” the Investigation Supervisor; and

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<sup>2061</sup> Submissions of NSWPF, 28 June 2023, [392]–[394] (SCOI.84211).

<sup>2062</sup> Transcript of the Inquiry, 26 September 2023, T6080.12-6081.15 (TRA.00091.00001).

<sup>2063</sup> Transcript of the Inquiry, 25 September 2023, T5951.10-22, 5952.5-23 (TRA.00090.00001).

- f. Be expected to carefully read and review and check any review documents or summary documents which the OIC might draft, before endorsing them.
- 12.214. As to the Neiwand Summaries specifically, Mr Leggat gave evidence that, as Investigation Supervisor, Detective Sergeant Morgan should have read, reviewed, checked and endorsed what Mr Chebl wrote.<sup>2064</sup> He said that he, as Coordinator, had assumed that Detective Sergeant Morgan had done so, in part because he (Mr Leggat) had to have regard to those Summaries when writing his part of the POA.<sup>2065</sup> Mr Leggat considered that he himself did not need to check that Detective Sergeant Morgan had actually done so, because, since Detective Sergeant Morgan had approved the Neiwand Summaries on the e@gle.i system, Mr Leggat was entitled to make that assumption.<sup>2066</sup>
- 12.215. I unequivocally reject Detective Sergeant Morgan's attempts, embraced in the June NSWPF Submissions, to distance himself from the contents of the Neiwand Summaries. In my view, Detective Sergeant Morgan did not give his evidence in a forthright manner and only made concessions when presented with evidence that made such concessions inevitable.
- 12.216. Detective Sergeant Morgan was at least the joint author of, and jointly responsible for, each of the Neiwand Summaries. Detective Sergeant Morgan was working hand in glove with Mr Chebl, and the evidence leads to the conclusion that at the very least he was wholly embracing everything that Mr Chebl said. Indeed, as I have also explained elsewhere in this chapter, given the relative seniority of Mr Chebl and Detective Sergeant Morgan and their relative levels of authority, a case may be made that Detective Sergeant Morgan bears more responsibility for the Neiwand Summaries than Mr Chebl does.

### Criticisms of Operation Taradale which are common to the Neiwand Summaries

- 12.217. While each of the Neiwand Summaries addressed the particular circumstances of each death and the surrounding investigation, there were several common criticisms of Operation Taradale and Mr Page that were made across the Neiwand Summaries.
- 12.218. First, each Summary contained the following paragraph verbatim:<sup>2067</sup>

*On the 09/03/2005 Magistrate Jacqueline Milledge [Senior Deputy State Coroner] delivered her findings following an Inquest into [death], which was premised on the 'gay hate' line of inquiry. Operation Taradale focused on 'gay hate' and relied on investigation confirmation bias which was a major factor that ultimately limited the validity of the Coroner's*

<sup>2064</sup> Transcript of the Inquiry, 25 September 2023, T5971.7–11 (TRA.00090.00001).

<sup>2065</sup> Transcript of the Inquiry, 25 September 2023, T5971.13–22 (TRA.00090.00001).

<sup>2066</sup> Transcript of the Inquiry, 25 September 2023, T5971.24–44 (TRA.00090.00001).

<sup>2067</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [59] (SCOI.74881); Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [152] (SCOI.74882); Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [268] (SCOI.74883).

*findings. Confirmation bias ‘is the tendency to bolster a hypothesis by seeking consistent evidence while disregarding inconsistent evidence. In criminal investigations, preference for hypothesis-consistent information could contribute to false convictions by leading investigators to disregard evidence that challenges their theory of a case.’*

- 12.219. As Mr Page noted in the Page Statement, this definition of “confirmation bias” appears to have been cut and pasted from the abstract of a paper published in 2006 titled, “Confirmation Bias in Criminal Investigations” authored by two academics from the USA, which Mr Page “easily found after doing an online search for ‘confirmation bias’”.<sup>2068</sup>
- 12.220. Secondly, both the Warren Summary and Russell Summary contained accusations to the effect that Operation Taradale had approached the investigation into these deaths with “tunnel vision” by focusing on members of youth gangs, and that no other hypotheses were “considered” or “explained”.<sup>2069</sup>
- 12.221. Thirdly, both the Warren Summary and Russell Summary also criticised Operation Taradale for failing to conduct a thorough “victimology”.<sup>2070</sup>
- 12.222. Mr Page’s responses to these general criticisms are outlined below. However, it is notable that by the time both Mr Willing and Detective Sergeant Morgan had completed their oral evidence in the February–May 2023 hearings, all three of these criticisms had been abandoned. Among the many places in the transcript where such abandonment was made clear, were the following:
- a. After he had been questioned at some length by Senior Counsel Assisting, Detective Sergeant Morgan was invited by Senior Counsel for the NSWPF to agree, and he did agree, with a number of general propositions, including that:
    - i. The vast majority of the criticisms in the Neiwand Summaries of Operation Taradale and Mr Page were unjustified;<sup>2071</sup>
    - ii. All three investigations by Mr Page were in fact very thorough and appropriate;<sup>2072</sup> and
    - iii. The allegations by Strike Force Neiwand of “tunnel vision” and “confirmation bias” were unwarranted and unjustified.<sup>2073</sup>
  - b. Detective Sergeant Morgan had previously made numerous other concessions in answer to Senior Counsel Assisting, including that (among other things):

<sup>2068</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [38] (SCOI.82472).

<sup>2069</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [107], [148] (SCOI.74882); Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [179(a)] (SCOI.74883).

<sup>2070</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [144] (SCOI.74882); Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018 [179(c)] (SCOI.74883).

<sup>2071</sup> Transcript of the Inquiry, 27 February 2023, T2272.13–18 (TRA.00028.00001).

<sup>2072</sup> Transcript of the Inquiry, 27 February 2023, T2272.20–23 (TRA.00028.00001).

<sup>2073</sup> Transcript of the Inquiry, 24 February 2023, T2184.46–2185.10 (TRA.00027.00001); Transcript of the Inquiry, 27 February 2023, T2264.43–2265.22, 2266.2–8 (TRA.00028.00001).

- i. It was “not correct”, and “factually wrong” for Strike Force Neiwand to assert that Operation Taradale had focused on one line of inquiry and had not considered victimology in relation to Mr Warren;<sup>2074</sup>
- ii. As to the accusations against Operation Taradale in the Russell Summary:
  - A. “[V]irtually every sentence, and every part of every sentence”, at [140], “is wrong”<sup>2075</sup> as to “crucial errors or oversights”, and “tunnel vision”;<sup>2076</sup>
  - B. The criticism at [143], in relation to the evidence of Mr McMahon, was “silly”;<sup>2077</sup>
  - C. The criticisms at [144], relating to a “pre-conceived agenda”, use of victimology, and previous investigations, did not “make sense” and were “unmaintainable” (and, in the case of Mr Mattaini, also factually wrong);<sup>2078</sup> and
  - D. The accusation at [145], that evidence of misadventure was “discounted, with no corroborating evidence being submitted”, was “completely wrong” in the cases of both Mr Russell and Mr Warren.<sup>2079</sup>
- c. Mr Willing, for his part, also made numerous concessions about the inadequacies and inaccuracies of the Neiwand Summaries, including:
  - i. The Mattaini Summary, at [55], was “completely wrong”;<sup>2080</sup>
  - ii. The Warren Summary, at [107], was “just not true”;<sup>2081</sup>
  - iii. The accusations of “errors” and “oversights”, in the Russell Summary at [140], were not correct and in at least one respect “ridiculous”;<sup>2082</sup>
  - iv. The accusation at [143] of the Russell Summary, relating to Mr McMahon, was also “ridiculous”;<sup>2083</sup> and
  - v. The various criticisms in the Russell Summary at [141] and [152] were also “ridiculous”.<sup>2084</sup>

<sup>2074</sup> Transcript of the Inquiry, 23 February 2023, T2038.15–27 (TRA.00026.00001); Transcript of the Inquiry, 27 February 2023, T2209.26–29 (TRA.00028.00001).

<sup>2075</sup> Transcript of the Inquiry, 27 February 2023, T2266.22–24 (TRA.00028.00001).

<sup>2076</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [140] (SCOI.74882).

<sup>2077</sup> Transcript of the Inquiry, 27 February 2023, T2267.3–6 (TRA.00028.00001).

<sup>2078</sup> Transcript of the Inquiry, 27 February 2023, T2267.25–36, 2268.13–18 (TRA.00028.00001).

<sup>2079</sup> Transcript of the Inquiry, 27 February 2023, T2268.24–35 (TRA.00028.00001).

<sup>2080</sup> Transcript of the Inquiry, 22 February 2023, T1833.5–9 (TRA.00024.00001).

<sup>2081</sup> Transcript of the Inquiry, 22 February 2023, T1837.14–20 (TRA.00024.00001).

<sup>2082</sup> Transcript of the Inquiry, 22 February 2023, T1839.13–1840.23 (TRA.00024.00001).

<sup>2083</sup> Transcript of the Inquiry, 22 February 2023, T1840.25–1841.40 (TRA.00024.00001).

<sup>2084</sup> Transcript of the Inquiry, 22 February 2023, T1840.25–1841.40 (TRA.00024.00001).

- 12.223. While not a criticism of Operation Taradale *per se*, the Warren Summary and the Mattaini Summary included the following statement about the solvability of the matters, namely: “[t]here are no further lines of inquiry for the [deceased’s name] matter. There is no forensic evidence, no identified suspect and/or witnesses.”<sup>2085</sup> The Russell Summary included the statement “[t]here are no identified suspect/s and/or witnesses and no forensic evidence”.<sup>2086</sup> The accuracy of such a statement is discussed further below in relation to the Mattaini Summary.
- 12.224. The NSWPF conceded in its submissions that the criticisms of Strike Force Taradale contained in the Neiwand Summaries were “unjustified”.<sup>2087</sup> The NSWPF submitted that those criticisms were not the product of any direction or suggestion from the leadership of UHT or the Homicide Squad more generally.<sup>2088</sup>

### Overturing of coronial findings

- 12.225. The Neiwand Summaries purported to overturn the 2005 findings of the Milledge Inquest.
- 12.226. Senior Deputy State Coroner Milledge had returned findings of homicide for Mr Warren and Mr Russell, and an open finding for Mr Mattaini.<sup>2089</sup>
- 12.227. By contrast, Strike Force Neiwand made the following findings (emphasis in original):

a. In relation to Mr Warren:<sup>2090</sup>

*WARREN’S disappearance – cause and manner of death remain **‘undetermined’** despite the 2005 ‘homicide’ findings of the Coroner, which list it as homicide. It is recommended that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available.*

b. In relation to Mr Russell:<sup>2091</sup>

*The manner of RUSSELL’S death should be reclassified as **‘undetermined’** despite the 2005 ‘homicide’ findings of the Coroner. It is recommended that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available.*

<sup>2085</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [61] (SCOI.74881); Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [270] (SCOI.74883).

<sup>2086</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [154] (SCOI.74882).

<sup>2087</sup> Submissions of NSWPF, 28 June 2023, [395] (SCOI.84211).

<sup>2088</sup> Submissions of NSWPF, 28 June 2023, [396] (SCOI.84211).

<sup>2089</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 28 August 2002, 14 (SCOI.02751.00021).

<sup>2090</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [270] (SCOI.74883).

<sup>2091</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [154] (SCOI.74882).

c. In relation to Mr Mattaini:<sup>2092</sup>

*... it can be suggested that MATTAINI may well have taken his own life rather than met with foul play. ... MATTAINI's [sic] disappearance – cause and manner of death remain 'undetermined'. It is recommended that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available.*

- 12.228. Detective Sergeant Morgan agreed that each of the Neiwand Summaries arrived at conclusions which essentially contradicted, first, the findings of homicide as to Mr Russell's and Mr Warren's deaths, and, secondly, the "expression of probability" about all three deaths.<sup>2093</sup> He also agreed that this contradiction of the coronial findings was made even though Strike Force Neiwand had, in fact, uncovered nothing of any consequence beyond what was before Senior Deputy State Coroner Milledge.<sup>2094</sup>
- 12.229. Mr Willing agreed that it was "breathtaking" for Strike Force Neiwand to reverse the decision of Senior Deputy State Coroner Milledge, and said that he had never seen the like of it before.<sup>2095</sup>
- 12.230. The NSWPF submitted that the fact UHT detectives might arrive at conclusions different to a Coroner was not *per se* inappropriate, because the results from further investigations may well warrant a departure from a previous coronial finding.<sup>2096</sup>
- 12.231. Of course, that much may be accepted. However, based on the available evidence, I consider that Strike Force Neiwand had no proper or reasonable basis for contradicting the coronial findings in any way.

## Response of Mr Page

- 12.232. Mr Page pointed out that the Neiwand Summaries indicated that the objectives of Strike Force Neiwand were narrower than as set out in its Terms of Reference. He noted:<sup>2097</sup>

*Each of the Neiwand summaries devotes much of its attention to criticising the work of Taradale and myself. For example:*

- the Russell Summary describes the purpose of Neiwand, at [140], as to "identify any new lines of inquiries [sic] and ensure the case [of John Russell] was previously investigated thoroughly", and "to cast fresh eyes over the work previously done";*

<sup>2092</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [61] (SCOI.74881).

<sup>2093</sup> Transcript of the Inquiry, 23 February 2023, T2031.32 (TRA.00026.00001).

<sup>2094</sup> Transcript of the Inquiry, 27 February 2023, T2269.31 (TRA.00028.00001).

<sup>2095</sup> Transcript of the Inquiry, 21 February 2023, T1815.2–34 (TRA.00024.00001).

<sup>2096</sup> Submissions of NSWPF, 28 June 2023, [402] (SCOI.84211).

<sup>2097</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [38] (SCOI.82472).

- *the Russell Summary then goes on to assert, at [152], that “TARADALE focused on ‘gay hate’ and relied on investigation confirmation bias which was a major factor that ultimately limited the validity of the Coroner’s findings”;*
- *the Warren Summary, at [268], repeated verbatim those words quoted from [152] of the Russell Summary; [and]*
- *the Mattaini Summary, at [59], again repeated verbatim those words quoted from [152] of the Russell Summary ...*

12.233. Mr Page observed, correctly in my view, that Strike Force Neiwand’s approach:<sup>2098</sup>

*...largely involved pursuing case theories other than homicide, together with a focus on the discrediting of Taradale, and arriving at conclusions which contradicted findings of homicide by Senior Deputy State Coroner Milledge.*

12.234. Mr Page gave evidence that it was “absolutely false” to suggest that Operation Taradale had been guilty of tunnel vision, saying: “[t]he Taradale brief of evidence shows examinations in multiple areas including suicide and the like.”<sup>2099</sup> I agree. He also asserted that Strike Force Neiwand’s claim that Operation Taradale “relied on investigation confirmation bias which was a major factor that ultimately limited the validity of the Coroner’s findings”, should be rejected.<sup>2100</sup> I do reject that claim, and indeed the NSWPF conceded that such a claim was wrong.<sup>2101</sup>

12.235. Mr Page further stated:<sup>2102</sup>

*I note in addition that, notwithstanding Neiwand’s stated emphasis on the importance of examining each case individually from a victimology perspective, in fact Neiwand appears to have approached all three Taradale cases in essentially the same way. This is particularly clear from the similarities between the Russell Summary and the Warren Summary, in which numerous sentences, paragraphs and whole passages are substantially repeated, either in word-for-word identical form or close to it. This is contrary to the approach that an objective and dispassionate investigation should take, and it casts doubt on the reliability of Neiwand’s findings.*

12.236. Mr Page’s evidence, on these matters and indeed in its entirety, was not challenged. No suggestion was put to him, on behalf of the NSWPF, that any part of his evidence was in any way incorrect, much less untrue.

<sup>2098</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [43] (SCOI.82472).

<sup>2099</sup> Transcript of the Inquiry, 28 February 2023, T2341.21–23 (TRA.00029.00001).

<sup>2100</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [89] (SCOI.82472).

<sup>2101</sup> Submissions of NSWPF, 28 June 2023, [395] (SCOI.84211).

<sup>2102</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [76] (SCOI.82472).



- 12.237. The NSWPF, however, submitted that some of the evidence of Mr Page does not relate to factual matters, and was a combination of speculation and opinion evidence said to be inadmissible.<sup>2103</sup>
- 12.238. Mr Page was never confronted with the suggestion that what he was saying was mere speculation. But in any event, I consider that the views expressed by Mr Page are sound, and I agree with them. Indeed, I do not understand the NSWPF itself actually to disagree with those views.

### Evidence of Detective Sergeant Morgan

- 12.239. Detective Sergeant Morgan accepted that Strike Force Neiwand was heavily focused on finding fault with Operation Taradale, including the criticisms in relation to confirmation bias, tunnel vision and victimology.<sup>2104</sup> He conceded that the vast majority of the criticisms of Mr Page and Operation Taradale were in fact unjustified.<sup>2105</sup> Those concessions were inescapable, and I accept them.
- 12.240. Detective Sergeant Morgan denied that anyone in NSWPF directed or suggested to him what direction Strike Force Neiwand should take.<sup>2106</sup>

### Conclusion about the Neiwand Summaries generally

- 12.241. As Counsel Assisting submitted, both Mr Willing and Detective Sergeant Morgan acknowledged that the Neiwand Summaries were replete with very serious criticisms of Operation Taradale and Mr Page.
- 12.242. By the June NSWPF Submissions, the NSWPF accepted that the criticisms of Operation Taradale contained in the Neiwand Summaries were unjustified, and that Operation Taradale was a diligent and comprehensive investigation that made use of sophisticated investigative techniques and was conducted in an open-minded manner.<sup>2107</sup>

## The Neiwand Summaries in respect of each case

### Ross Warren

#### Assertions of Strike Force Neiwand

- 12.243. Strike Force Neiwand arrived at the conclusion that the manner and cause of Mr Warren's death "could be one of several possibilities" including misadventure, suicide or homicide, and should be treated as "undetermined", "despite" the findings of the Coroner.<sup>2108</sup>

<sup>2103</sup> Submissions of NSWPF, 28 June 2023, [399]–[400] (SCOI.84211).

<sup>2104</sup> Transcript of the Inquiry, 27 February 2023, T2204.5–12, 2264.43–2265.2 (TRA.00028.00001).

<sup>2105</sup> Transcript of the Inquiry, 27 February 2023, T2272.13–18, 2291.41–44 (TRA.00028.00001).

<sup>2106</sup> Transcript of the Inquiry, 27 February 2023, T2273.45–2274.8, 2291.46–2292.3 (TRA.00028.00001).

<sup>2107</sup> Submissions of NSWPF, 28 June 2023, [395], [398] (SCOI.84211).

<sup>2108</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [270] (SCOI.74883).

- 12.244. Most of the Warren Summary placed emphasis on evidence relating to possible misadventure and possible suicide, as opposed to homicide.
- 12.245. In relation to the possibility of misadventure, the Warren Summary attributed some weight to the 1989 speculations of the original OIC, Mr Bowditch (then Detective Sergeant),<sup>2109</sup> despite elsewhere acknowledging inadequacies in certain aspects of Mr Bowditch’s investigation.<sup>2110</sup>
- 12.246. For Strike Force Neiwand to do so, in the light of the devastating (and, as Counsel Assisting submitted, deserved) criticisms of Mr Bowditch’s original investigation by Senior Deputy State Coroner Milledge, is remarkable.
- 12.247. In relation to suicide, Strike Force Neiwand acknowledged that suicide was “an unlikely scenario”, but nevertheless drew attention to the following matters so as to suggest that the possibility was still available, “despite [Mr Warren’s] family and friends saying he wasn’t suicidal or depressed”:<sup>2111</sup>
- a. Evidence of Mr Warren’s mother that Mr Warren may have missed out on a job opportunity with another TV station;<sup>2112</sup>
  - b. Two alleged rejections from potential romantic interests;<sup>2113</sup>
  - c. Mr Warren’s potential exposure to HIV/AIDS;<sup>2114</sup> and
  - d. Reported statements from work colleagues that Mr Warren was “always concerned about the effect his homosexuality would have on his career”.<sup>2115</sup>
- 12.248. Later, in its “Key Findings” section (the last four paragraphs of the Warren Summary), Strike Force Neiwand again nominated the first three of those matters, which it regarded as having been “established”, as bearing upon the possibility of suicide.<sup>2116</sup>
- 12.249. In relation to homicide, Strike Force Neiwand asserted that there was “no evidence” to support a theory that Mr Warren’s death could be linked to a man that he met at the Marks Park beat (also referred to as the Mackenzie’s Point beat), and noted that Operation Taradale was unable to link any individual or group to Mr Warren’s disappearance.<sup>2117</sup>
- 12.250. Strike Force Neiwand also downplayed the incidence of violence against the LGBTIQ community at the Marks Park beat. The Warren Summary stated:<sup>2118</sup>

<sup>2109</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [5], [116], [262] (SCOI.74883).

<sup>2110</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [178], [257] (SCOI.74883).

<sup>2111</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [263] (SCOI.74883).

<sup>2112</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [192], [263] (SCOI.74883).

<sup>2113</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [225], [263] (SCOI.74883).

<sup>2114</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [263] (SCOI.74883).

<sup>2115</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [195] (SCOI.74883).

<sup>2116</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [269] (SCOI.74883).

<sup>2117</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [264] (SCOI.74883).

<sup>2118</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [266] (SCOI.74883).

*An interesting detail from several witnesses who frequented the Mackenzie's Point gay beat was that they did not witness or encounter violence of any sort. They were aware that 'gay bashings' happened at beats but were not aware that they happened at the Mackenzie's Point gay beat. [...] Based on this information police confirmed that attacks on gay men did occur, but may not have been as prevalent as portrayed by the Operation Taradale investigation or the media.*

12.251. In addition, the Warren Summary explicitly drew attention to several of Operation Taradale's "investigative deficiencies", including:

- a. That Operation Taradale overly relied on the witness account of Mr McMahon, and that as a result of Mr McMahon's account, investigators formed a hypothesis that Mr Warren and Mr Russell were subject to the same style of "gay hate gang attack".<sup>2119</sup>
- b. That Operation Taradale investigators did "very little" to learn more about Mr Warren and a thorough "victimology" was not conducted.<sup>2120</sup> The Warren Summary claimed that:<sup>2121</sup>

*[a] thorough review of all aspects of [Mr Warren's] life was not conducted. Some of [Mr Warren's] associates and former partners were not identified and interviewed. [Mr Warren's] last known movements were not thoroughly explored.*

- c. That Operation Taradale investigators implemented "poor strategies when covert strategies were in place",<sup>2122</sup> and inappropriately disclosed and publicised police methodology to witnesses and POIs through the Milledge Inquest.<sup>2123</sup>

### Response of Mr Page

12.252. Mr Page responded to the Warren Summary at [88]–[107] of the Page Statement. That evidence, from [92] onwards, is reproduced below:<sup>2124</sup>

*[92] Several aspects of these conclusions by Neiwand should be rejected.*

*[93] First, it is simply incorrect to say that there were no credible suspects in relation to Mr Warren's case.*

*[94] Several persons of interest were identified by Taradale, and some of those appeared at the Taradale Inquests. Indeed, the main persons of*

<sup>2119</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [107] (SCOI.74883). See also Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [68] (SCOI.74882).

<sup>2120</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [112], [179] (SCOI.74883).

<sup>2121</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [258] (SCOI.74883).

<sup>2122</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [179] (SCOI.74883).

<sup>2123</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [180], [259] (SCOI.74883).

<sup>2124</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [92]–[107] (SCOI.82472).

*interest are identified in the Warren Summary. However, Neiwand took no steps whatsoever to investigate those persons of interest further. Neiwand did not pursue the “youth gangs” line of inquiry at all, and instead focused almost exclusively on Mr Warren’s “background, social groups and relationships” (see WS [180]). This is so even though it appears that Neiwand did receive further information about potential persons of interest, as a result of publicity generated at around the time Neiwand commenced and as a result of Neiwand generally (see Annexure 8 to the Morgan Statement) (SCOI.82054). There is no indication that Neiwand followed up these leads at all.*

[95] *The reason why Taradale did not result in any criminal charges in relation to the deaths of the three men was not the absence of any credible suspects, but the absence of admissible evidence, at that time, to support criminal charges against those individuals.*

[96] *Taradale established that numerous members of the LGBTIQ community, gay men in particular, had been subjected to serious assaults by predatory groups of youths at least between October 1987 and July 1990 in and around Bondi, and also that many other such incidents had not been reported to the NSWPF. The recorded conversations and intelligence indicated that these groups were prolific in their violent offences against gay men, making it very unlikely (given the circumstances) that Mr Warren was not a victim of violence.*

[97] *Secondly, the possibility that Mr Warren’s case was a domestic homicide involving a former partner, a possibility evidently favoured by Neiwand, is in my view unlikely. Neiwand has provided no indication of any plausible motive, or opportunity, to substantiate such a theory. I know of no other domestic homicides that happen to have occurred at beats. Moreover, Taradale looked at the close associates of Mr Warren including his friends and partners, and there was no indication of any conflict in his former relationships which might have impacted on his disappearance.*

[98] *Thirdly, evidence used by Neiwand to bolster theories relating to misadventure, and to undermine the likelihood of foul play or homicide, is tenuous at best.*

[99] *In support of the theory of misadventure, one factor relied on in the Warren Summary is the opinion of former Detective Sergeant Kenneth Bowditch, the initial investigator into the disappearance of Mr Warren, who thought (in the absence of any evidence) there was a possibility that Mr Warren slipped on the rock ledge overlooking McKenzie’s Bay.*

[100] *Mr Bowditch’s initial investigation into Mr Warren’s disappearance was described by Deputy State Coroner Milledge in her findings, as Neiwand was aware (see WS [175]), as “a grossly inadequate and shameful investigation. Indeed, to characterise it as an ‘investigation’ is to give it a label it doesn’t deserve”. For Neiwand to rely on Mr Bowditch’s account in these circumstances is extraordinary. In contrast,*

*although Neiwand acknowledges the “spate of assaults/ robberies/ murders committed against gay men in the Eastern Suburbs of Sydney around the period of WARREN’s disappearance”, at WS 162], no investigative work appears to have been done in relation to that “spate” by Neiwand.*

*[101] Fourthly, the evidence used by Neiwand to bolster theories relating to suicide is also tenuous. Even after acknowledging that suicide was an “unlikely scenario” in Mr Warren’s case, the Warren Summary nevertheless concludes that certain factors “may have led to him to taking his own life”. This is maintained despite Mr Warren’s family and friends saying that he was not suicidal or depressed at the time he disappeared (see WS [263]), and despite other evidence that also tends against suicide as a possible manner of death, including that Mr Warren locked his car, took his keys with him, and was a gay man attending a location that he knew was a beat.*

*[102] Fifthly, in drawing its conclusions, Neiwand again makes explicit criticisms of Taradale which I reject.*

*[103] Again, I reject the suggestion that Taradale was infected by “confirmation bias” or “tunnel vision”. In relation to youth gangs (such as the Tamarama 3 and the Alexandria 8) Taradale investigated gangs that were known to have killed two gay men, and the Bondi Boys were known to have been involved in violence in the immediate area where Mr Warren disappeared. There were also instances of non-youth gang violence against men in the area.*

*[104] I also reject the suggestion that Taradale relied too strongly on Mr McMabon’s identification evidence. Mr McMabon was by no means the only victim of violent crime in and around Bondi that Taradale relied upon. Neiwand’s reference to Mr McMabon as someone whom I “viewed” as a survivor — with the word ‘survivor’ placed in quotation marks — is consistent only with Neiwand’s seeking to undermine or downplay the possibility of homicide. I did not merely “view” Mr McMabon as a survivor (of a gang attack on a gay man near Marks Park); he was in fact a survivor of such an attack, as was readily accepted by counsel for the Commissioner of Police when Mr McMabon gave evidence before Deputy State Coroner Milledge.*

*[105] Taradale was also criticised by Neiwand for failing to conduct interviews with witnesses (family and associates) about the type of person Mr Warren was, who he associated with and his lifestyle, and for only addressing these matters in a peripheral way (see WS at [117]). I reject this criticism. Everything that witnesses had to say that was relevant to the investigation was captured. While Taradale did not obtain statements from all of Mr Warren’s family members or all of his associates, it was considered unlikely that the others would have anything material to add that would shed any light on the circumstances of Mr Warren’s disappearance. That assessment is borne out by the fact that Neiwand,*

*which did purport to engage in the more extensive exercise supposedly called for, failed to find anything of significance.*

*[106] Finally, Neiwand’s focus on victimology again closed down other possible avenues of inquiry that should have been pursued. It is true, as Neiwand emphasises, that at the time of Operation Taradale in 2001-2003 the abundance of evidence and intelligence in relation to identified persons of interest was not specifically or positively tied to Mr Warren’s disappearance. However, it is extraordinary, in my view, for Neiwand in 2016-2017 simply to decline to follow up, and essentially to disregard, that evidence and intelligence, which could have proven invaluable had it been supplemented by fresh and/or additional evidence at a later stage. But Neiwand made no attempt at all to explore that possibility.*

*[107] Neiwand nominates three matters which it regarded as having been “established” by means of that approach, namely (see WS [269]): (1) the possibility that Mr Warren had been exposed to HIV through his relationship with [I413]; (2) Mr Warren’s supposed unrequited romantic interest in [I413] and Kingi Marsh; and (3) Mr Warren’s failure to gain employment with a major television network. These theories appear to be little more than speculation.*

- 12.253. This evidence was unchallenged. As to factual matters, I accept Mr Page’s evidence in its entirety. As to matters of opinion, I agree.
- 12.254. In his oral evidence, Mr Page was taken to evidence available to Strike Force Neiwand regarding Mr Warren’s rejection by two men, his failure to obtain employment and the risk of exposure to HIV/AIDS. Mr Page agreed that, accepting those things as true, it was reasonable for Strike Force Neiwand to take them into account.<sup>2125</sup>

### **Evidence of Detective Sergeant Morgan**

- 12.255. In answer to a leading question from Senior Counsel for the NSWPF, Detective Sergeant Morgan accepted Senior Counsel’s suggestion that the investigations by Operation Taradale into the death of Mr Warren were “appropriate and fulsome”,<sup>2126</sup> and that Strike Force Neiwand’s criticisms of Operation Taradale were “largely unwarranted”.<sup>2127</sup>

<sup>2125</sup> Transcript of the Inquiry, 28 February 2023, T2357.14–46 (TRA.00029.00001).

<sup>2126</sup> Transcript of the Inquiry, 27 February 2023, T2290.30–33 (TRA.00028.00001).

<sup>2127</sup> Transcript of the Inquiry, 27 February 2023, T2291.23–25 (TRA.00028.00001).

- 12.256. Detective Sergeant Morgan conceded that Strike Force Neiwand’s work did not shed any further light on what had happened to Mr Warren,<sup>2128</sup> and that Strike Force Neiwand did nothing beyond what was already done in Operation Taradale to pursue the possibility of “gay hate homicide”.<sup>2129</sup>
- 12.257. When asked why Strike Force Neiwand had not focused at all on the youth gangs, Detective Sergeant Morgan suggested that it was because Senior Deputy State Coroner Milledge had commented so favourably on Operation Taradale that Strike Force Neiwand did not want to “go over old ground”.<sup>2130</sup> Such an explanation is both inadequate and unconvincing, and I do not accept it.
- 12.258. The level of hostility displayed in the Neiwand Summaries towards Operation Taradale, and the nature and extent of the accusations made against Operation Taradale and Mr Page, are a powerful indication that Strike Force Neiwand was a deliberate attempt to undermine Operation Taradale, Mr Page, and the findings of Senior Deputy State Coroner Milledge. The egregious nature of the enterprise is only compounded by the fact that these criticisms were “largely unwarranted” (as accepted by Detective Sergeant Morgan)<sup>2131</sup> and “wrong” (as accepted by Mr Willing).<sup>2132</sup>
- 12.259. Detective Sergeant Morgan further accepted that, in Mr Warren’s case, the allegation by Strike Force Neiwand of “tunnel vision” or “confirmation bias” was unwarranted.<sup>2133</sup> He agreed that the idea that very little was done by Operation Taradale to learn about Mr Warren’s life was an exaggeration,<sup>2134</sup> and conceded that it was factually wrong to have said that Mr Warren’s last movements were not thoroughly explored by Operation Taradale.<sup>2135</sup>
- 12.260. In relation to the attempt by the Warren Summary to downplay the incidence of violence against the LGBTIQ community at the Marks Park beat, Detective Sergeant Morgan conceded that this paragraph was “totally incorrect”,<sup>2136</sup> and at odds with the evidence of the two witnesses in question who had actually given evidence in the Milledge Inquest.<sup>2137</sup> Detective Sergeant Morgan also conceded that even if there were two men who did say that they were not aware of bashings at Marks Park, that would not be a sufficient basis for suggesting that attacks on gay men may not have been as prevalent as portrayed by Operation Taradale or the media.<sup>2138</sup>

<sup>2128</sup> Transcript of the Inquiry, 27 February 2023, T2220.42–45 (TRA.00028.00001).

<sup>2129</sup> Transcript of the Inquiry, 23 February 2023, T2021.15–33 (TRA.00026.00001).

<sup>2130</sup> Transcript of the Inquiry, 27 February 2023, T2192.32–2193.1 (TRA.00028.00001).

<sup>2131</sup> Transcript of the Inquiry, 27 February 2023, T2291.23–25 (TRA.00028.00001).

<sup>2132</sup> Transcript of the Inquiry, 21 February 2023, T1858.37–1859.19 (TRA.00024.00001).

<sup>2133</sup> Transcript of the Inquiry, 27 February 2023, T2291.41–44 (TRA.00028.00001).

<sup>2134</sup> Transcript of the Inquiry, 24 February 2023, T2186.23–37 (TRA.00027.00001).

<sup>2135</sup> Transcript of the Inquiry, 27 February 2023, T2209.26–29 (TRA.00028.00001).

<sup>2136</sup> Transcript of the Inquiry, 27 February 2023, T2215.21–27 (TRA.00028.00001).

<sup>2137</sup> Transcript of the Inquiry, 27 February 2023, T2211.6–10, 2213.15–39 (TRA.00028.00001).

<sup>2138</sup> Transcript of the Inquiry, 27 February 2023, T2214.23–28 (TRA.00028.00001).

- 12.261. Detective Sergeant Morgan was asked whether the paragraph was included to downplay or minimise “gay hate” attacks. His revealing response was:<sup>2139</sup>

*Yes, I - I can only think that it was - it is totally wrong, that statement, and I can only think that it suited Senior Constable Chebl's findings on it to put that forward, that he wanted to put that forward as a fact, when clearly it wasn't.*

### Evidence of Mr Willing

- 12.262. Mr Willing agreed that the Warren Summary’s assertion that Operation Taradale was “merely” a continuation of the investigation conducted by Detective Sergeant McCann, and that somehow that was a weakness or a defect in Operation Taradale’s approach, was “ridiculous”.<sup>2140</sup>
- 12.263. Mr Willing similarly conceded that the statement in the Warren Summary about the incidence of violence against the LGBTIQ community at the Marks Park beat was “inaccurate”.<sup>2141</sup> He also could not conceive of a reason why one would not regard Mr McMahon’s account as a likely occurrence.<sup>2142</sup>

### Conclusion in relation to the Warren Summary

- 12.264. The NSWPF, in this Inquiry, distanced itself from the position taken by Strike Force Neiwand in relation to Operation Taradale, accepting that it was a “very comprehensive investigation”.<sup>2143</sup> However, the NSWPF adopted the Warren Summary’s comment that the investigation undertaken by Operation Taradale had been unable to link any individual or group to Mr Warren’s disappearance,<sup>2144</sup> and submitted that it was not unreasonable for Strike Force Neiwand to have concluded that the manner and cause of Mr Warren’s death could not be determined.<sup>2145</sup>
- 12.265. The NSWPF submitted, based on statistics which were not in evidence before me at that time (but which were subsequently tendered at the request of the NSWPF), that accident and suicide are vastly more common than homicide.<sup>2146</sup> The NSWPF also submitted that:<sup>2147</sup>

*The evidence referred to by Deputy State Coroner Milledge in support of her Honour’s finding of homicide appears to be limited to a combination of the difficulty in positively establishing another cause for Mr Warren’s death, and the evidence in relation to the evidence of significant violence*

<sup>2139</sup> Transcript of the Inquiry, 27 February 2023, T2216.43–47 (TRA.00028.00001).

<sup>2140</sup> Transcript of the Inquiry, 21 February 2023, T1848.37–1849.4 (TRA.00024.00001).

<sup>2141</sup> Transcript of the Inquiry, 21 February 2023, T1851.41–1852.5 (TRA.00024.00001).

<sup>2142</sup> Transcript of the Inquiry, 21 February 2023, T1847.40–1848.12 (TRA.00024.00001).

<sup>2143</sup> Submissions of NSWPF, 28 June 2023, [411] (SCOI.84211).

<sup>2144</sup> Submissions of NSWPF, 28 June 2023, [411] (SCOI.84211); Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [264] (SCOI.74883).

<sup>2145</sup> Submissions of NSWPF, 28 June 2023, [414] (SCOI.84211).

<sup>2146</sup> Submissions of NSWPF, 28 June 2023, [413] (SCOI.84211).

<sup>2147</sup> Submissions of NSWPF, 28 June 2023, [412] (SCOI.84211).



*directed towards gay men at the time, and the location where his car was found (being in proximity to a beat).*

- 12.266. As the NSWPF observed, Counsel Assisting the Coroner in the Milledge Inquest, Mr Lakatos (as he then was), had submitted that the manner and cause of Mr Warren’s death remained unknown and that an open finding should be brought in.<sup>2148</sup> Mr Lakatos had also observed that there was “real suspicion” regarding foul play, but that “there is no reliable evidence that this conclusion can firmly be drawn”.<sup>2149</sup> The NSWPF submitted, by reference to these statements, that to “find that [Mr] Chebl’s conclusions were not open on the evidence would be to find that the submissions made by Lakatos SC DCJ (as his Honour shortly became) were unreasonable”.<sup>2150</sup>
- 12.267. In my view it is irrelevant and unhelpful for the NSWPF to try to second guess the thought process of Counsel Assisting the Coroner in the Milledge Inquest. Nonetheless, it is notable that the NSWPF did not demur from his proposition that there was a real suspicion of foul play. Contrary to the submissions of the NSWPF, this proposition cannot be said to align with either the conduct, or the outcome, of Strike Force Neiwand.
- 12.268. The submissions of the NSWPF also elide the essential problem with the Warren Summary specifically, and Strike Force Neiwand more generally.
- 12.269. Operation Taradale had identified large numbers of POIs in respect of the deaths of Mr Warren and Mr Russell. Many of those persons were members or associates of various gangs which operated not only in the Bondi-Tamarama area but also in other parts of Sydney including Alexandria, Oxford Street and Kings Cross. However, as outlined above, Strike Force Neiwand made a deliberate decision not to pursue any of those POIs by any fresh investigative means. On the evidence available to the Inquiry, only one of them was spoken to by Strike Force Neiwand, but even then, the subject of that conversation was not anything related to the deaths of Mr Warren or Mr Russell, but rather was about what that person might say, or had said, to the makers of the SBS/Blackfella Films program *Deep Water*.<sup>2151</sup>
- 12.270. Furthermore, the Warren Summary devoted many pages to summarising some of what had been uncovered by the work of Detective Sergeant McCann in the early 1990s and Mr Page in the early 2000s, as to the “spate” of violent attacks on gay men in the Bondi-Tamarama area, and the activities of various gangs in connection with many of those attacks.<sup>2152</sup> Counsel Assisting observed that those same

<sup>2148</sup> Exhibit 6, Tab 323, Extract of oral evidence of Mr Lakatos, Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and the death of John Russell, 23 December 2004, T4.56–5.15 (SCOI.02751.00159).

<sup>2149</sup> Exhibit 6, Tab 323, Extract of oral evidence of Mr Lakatos, Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and the death of John Russell, 23 December 2004, T5.1–5 (SCOI.02751.00159).

<sup>2150</sup> Submissions of NSWPF, 28 June 2023, [408] (SCOI.84211).

<sup>2151</sup> Transcript of the Inquiry, 27 February 2023, T2220.2–17 (TRA.00028.00001); Exhibit 6, Tab 168, Strike Force Neiwand, Investigator’s Note, ‘Contact with NP34’, 30 March 2017 (SCOI.10389.00081).

<sup>2152</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [62]–[84], [104]–[112], [152]–[164] (SCOI.74883).

paragraphs, with minor editorial variations, were also included in the Russell Summary.<sup>2153</sup> However, nothing was done with this information.

12.271. Instead, Strike Force Neiwand:

- a. Reviewed the work of Operation Taradale and made criticisms of it; and
- b. Interviewed certain persons (most of whom had already previously been interviewed by Operation Taradale) in relation to the possibilities of either suicide or a “domestic” (non-LGBTIQ bias related) homicide.

12.272. As Detective Sergeant Morgan conceded, none of the lines of inquiry favoured by Strike Force Neiwand, as to suicide or “domestic” homicide, actually “led anywhere in the end”, and “the basic upshot” in relation to Mr Warren was that the work of Strike Force Neiwand “did not shed any further light on what had happened to Mr Warren, in the end”.<sup>2154</sup>

12.273. Yet notwithstanding those concessions, Detective Sergeant Morgan was not prepared also to concede that Strike Force Neiwand accordingly had no reasonable or proper basis for contradicting the findings of Senior Deputy State Coroner Milledge.

12.274. Mr Willing, by contrast, did make such a concession (as to all three findings of Senior Deputy State Coroner Milledge),<sup>2155</sup> which was entirely appropriate and, in my view, inescapable.

12.275. It was also submitted by Counsel Assisting that Mr Page was correct in his view that the possibility that Mr Warren’s case was a “domestic” homicide involving a former partner, a possibility evidently favoured by Strike Force Neiwand, was unlikely.<sup>2156</sup> Strike Force Neiwand had provided no indication of any plausible motive, or opportunity, to substantiate such a theory.<sup>2157</sup> Mr Page said he knew of no other “domestic” homicides that happened to have occurred at beats.<sup>2158</sup> Moreover, Operation Taradale had previously looked at the close associates of Mr Warren including his friends and partners, and there was no indication of any conflict in his former relationships which might have impacted on his disappearance.<sup>2159</sup>

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<sup>2153</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [43]–[70], [77]–[91] (SCOI.74883).

<sup>2154</sup> Transcript of the Inquiry, 27 February 2023, T2220.24–45 (TRA.00028.00001).

<sup>2155</sup> Transcript of the Inquiry, 21 February 2023, T1814.43–1815.31 (TRA.00024.00001).

<sup>2156</sup> Submissions of Counsel Assisting, 7 June 2023, [708] (SCOI.84380), referring to Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [97] (SCOI.82472).

<sup>2157</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [97] (SCOI.82472).

<sup>2158</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [97] (SCOI.82472).

<sup>2159</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [97] (SCOI.82472).

- 12.276. I accept those submissions. I agree that, as pointed out by Mr Page, such a theory appears to be little more than speculation. Even Strike Force Neiwand acknowledged that suicide was an “unlikely scenario” in Mr Warren’s case. These speculative theories were nevertheless advanced, as factors that “may have led to him to taking his own life” — “despite his family and friends saying that he wasn’t suicidal or depressed” at the time, and despite other evidence that also tends against suicide as a possible manner of death, including that Mr Warren locked his car, took his keys with him, and was a gay man attending a location that he knew was a beat.<sup>2160</sup>
- 12.277. In relation to the Warren Summary, I consider that Strike Force Neiwand had no proper or reasonable basis for its purported conclusions.

## John Russell

### Assertions of Strike Force Neiwand

- 12.278. The Russell Summary concluded that:<sup>2161</sup>
- ...there is still a possibility of [Mr Russell’s] death being a result of a homicide; unfortunately, a lack of corroborating evidence, physical evidence and witness accounts prevents this investigation being considered as a homicide from proceeding any further.*
- 12.279. It added that “[c]onsideration needs to be given to the fact [Mr Russell] may have died as a result of misadventure, which can be supported with corroborating evidence”.<sup>2162</sup>
- 12.280. Counsel Assisting submitted that Strike Force Neiwand deliberately approached Mr Russell’s matter with a view to bolstering a misadventure hypothesis in preference to Senior Deputy State Coroner Milledge’s finding of homicide.<sup>2163</sup> It was further suggested that the proposition that the absence of evidence *to date* meant that investigation as a homicide would not continue, was “obviously absurd”.<sup>2164</sup>
- 12.281. The Russell Summary highlighted that, during the original investigation, Plain Clothes Constable Dunbar had concluded that no evidence suggested that Mr Russell died by suicide or that there were any suspicious circumstances surrounding his death.<sup>2165</sup> It also referred to:
- a. The statement of Detective Senior Constable Rivera, who had noted that there was some damage to the vegetation on the seaward side of the path above Mr Russell’s location;<sup>2166</sup> and

<sup>2160</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [92]–[107] (SCOI.82472); Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [263] (SCOI.74883).

<sup>2161</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [149] (SCOI.74882).

<sup>2162</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [149] (SCOI.74882).

<sup>2163</sup> Submissions of Counsel Assisting, 7 June 2023, [720] (SCOI.84380).

<sup>2164</sup> Submissions of Counsel Assisting, 7 June 2023, [720] (SCOI.84380).

<sup>2165</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [31]–[32] (SCOI.74882).

<sup>2166</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [36] (SCOI.74882).

- b. The statement of Detective Sergeant Cameron, who had written (emphasis in original):<sup>2167</sup>

*In one area between the walkway and the cliff edge, where there was vegetation growing, there was a small amount of damage to the vegetation. **In my opinion, this could only have occurred if one person were to walk in that area.***

- 12.282. The Russell Summary went on:<sup>2168</sup>

*If we accept that evidence of the shrubbery on the cliff top being disturbed, then consideration needs to be given to the fact that RUSSELL had strands of grass near and underneath his body on the rock shelf. This would refute the theory of him being thrown over the edge of the cliff.*

- 12.283. The Russell Summary also referred to steps taken by Strike Force Neiwand investigators to source an additional opinion of a forensic pathologist in order to “corroborate or refute” the 2001 opinion of Dr Allan Cala.<sup>2169</sup> In that opinion, Dr Cala considered that the position of Mr Russell’s body was “unusual”, on the basis that the body would have to twist 180 degrees in a relatively short fall to land in that position. Dr Cala considered that the red jumper exposing the lower abdomen of Mr Russell suggests that it was pulled up prior to the fall. He also stated that the hairs on the left hand were suggestive that Mr Russell might have pulled them from the head of another person, raising the possibility of foul play. Dr Cala also noted that some injuries to the face and hand were suggestive of an assault.<sup>2170</sup> According to the Russell Summary, “the second inquest into Russell’s death relied on and was heavily influenced by the evidence of Dr Cala.”<sup>2171</sup>
- 12.284. Strike Force Neiwand investigators obtained in June 2017 an additional report from Professor Anthony Moynham (who had also made a statement in the matter in 2001 in the course of Operation Taradale). The 2017 report of Professor Moynham focused on the blood alcohol level at the time of Mr Russell’s death (estimated to be 0.244-0.385 grams/100mL) and the level of impairment expected to be caused by that level of inebriation. Professor Moynham indicated that his opinion had not altered since the preparation of his 2001 report and stated that it was not possible to determine if Mr Russell was the victim of an accident or foul play, as both were possible.<sup>2172</sup> The Russell Summary asserted that Mr Russell’s level of intoxication, as explored in Professor Moynham’s report,<sup>2173</sup> supported the misadventure theory.

<sup>2167</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [37] (SCOI.74882).

<sup>2168</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [150] (SCOI.74882).

<sup>2169</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [133] (SCOI.74882).

<sup>2170</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [93]–[94] (SCOI.74882).

<sup>2171</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [133] (SCOI.74882).

<sup>2172</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [136] (SCOI.74882).

<sup>2173</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [149] (SCOI.74882).

- 12.285. Another report was obtained by Strike Force Neiwand from forensic pathologist Professor Johan Duflou, in August 2017. Professor Duflou also found that the position of the body was somewhat unusual for an accidental or suicidal fall, as Mr Russell likely faced the walkway when he commenced his fall.<sup>2174</sup> Professor Duflou further commented that a laceration on Mr Russell’s scalp (at the back of the head) could be an impact injury. Significantly, he also considered that it was relatively unlikely that the hair located on Mr Russell’s hand originated from the head of the deceased.<sup>2175</sup>
- 12.286. The comparison of Dr Cala’s and Professor Duflou’s reports at [153]–[154] of the Russell Summary incorrectly suggested that there is a marked contrast or significant difference between Professor Duflou and Dr Cala. In fact, the differences between the two opinions are few and slight.
- 12.287. According to the Russell Summary, Strike Force Neiwand “encountered great difficulties as a result of crucial errors or oversights made by Operation Taradale.”<sup>2176</sup> These “errors” were said to be “a premature approach towards persons of interest being made, tunnel vision, a lack of identifying witnesses and a lack of physical evidence being present.”<sup>2177</sup>
- 12.288. Both Mr Willing<sup>2178</sup> and Detective Sergeant Morgan<sup>2179</sup> conceded in their oral evidence that such criticisms were groundless. In particular, it is plainly untenable to describe the absence of witnesses or of physical evidence as an “error”, much less a “crucial error”.
- 12.289. The NSWPF “accepted” that the investigation conducted by Strike Force Neiwand in relation to Mr Russell’s death “did not amount to the comprehensive reinvestigation of Mr Russell’s death by reference to potential POIs contemplated in the Terms of Reference”, and that “additional investigations ought to have been conducted in line with the Investigation Plan”. However, the NSWPF also contended that the conclusions in the Russell Summary “were not without at least some foundation”.<sup>2180</sup> I address this submission below.

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<sup>2174</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [138] (SCOI.74882).

<sup>2175</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [139] (SCOI.74882).

<sup>2176</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [140] (SCOI.74882).

<sup>2177</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [140] (SCOI.74882).

<sup>2178</sup> Transcript of the Inquiry, 21 February 2023, T1839.13–1840.23 (TRA.00024.00001).

<sup>2179</sup> Transcript of the Inquiry, 27 February 2023, T2265.24–2266.24 (TRA.00028.00001).

<sup>2180</sup> Submissions of NSWPF, 28 June 2023, [417]–[419] (SCOI.84211).

## Response of Mr Page

12.290. Mr Page responded to the criticisms and assertions of Strike Force Neiwand in relation to Mr Russell’s death in his statement, in particular at [108]–[126]. Some of Mr Page’s responses were similar to those outlined in response to the Warren Summary. Additional reasons specific to Mr Russell’s death included the following:<sup>2181</sup>

*[108] Taradale concluded that it was likely that Mr Russell met his death at Marks Park as a result of violence. Deputy State Coroner Milledge found that Mr Russell was a victim of homicide perpetrated by an unknown person or persons.*

*[109] In contrast, in its final “Key Findings” section (RS [152]-[154]), Neiwand again repeated the claim, made in Mattaini and Warren, that Taradale had “relied on investigation confirmation bias which was a major factor that ultimately limited the validity of the Coroner’s findings”. Again, I reject that claim.*

*[110] Neiwand went on to conclude that “the available facts could support death by misadventure and/or homicide”. The basis for this elevation of the misadventure theory appears to be a supposedly different expert opinion and Mr Russell’s high Blood Alcohol Concentration (BAC) at the time of his death.*

*[111] As with Mr Warren, and adopting the same language, Neiwand categorised the cause and manner of Mr Russell’s death as “undetermined”, “despite the 2005 ‘homicide’ findings of the Coroner”. As with Mr Mattaini and Mr Warren, again verbatim, Neiwand recommended “that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available”.*

*[112] The approach and conclusions reached by Neiwand in relation to Mr Russell’s death are also flawed, both for similar reasons to some of those outlined above in relation to Mr Warren, and for additional reasons specific to the Russell case. Some of those additional reasons are outlined below.*

*[113] First, I note again that large slabs of text appear, verbatim or near-verbatim, in both the Warren Summary and the Russell Summary. Among numerous examples are the accusations of “tunnel vision” and “Investigation confirmation bias” on the part of Taradale.*

*[114] Secondly, Neiwand’s treatment of the available expert opinion is troubling, in at least two respects.*

*[115] The first of those concerns Neiwand’s attempt to contrast some aspects of the evidence of a forensic pathologist, Dr Allan Cala, in the*

<sup>2181</sup> Exhibit 6, Tab 253 Statement of former Detective Sergeant Stephen Page, 16 February 2023, [108]–[126] (SCOI.82472).

*Taradale Inquests, with a statement obtained by Neiwand in 2017 from another forensic pathologist, Professor Johan Duflou.*

[116] *In his report of 14 August 2001 (Annexure 24 to the Morgan Statement) (SCOI.76962.00024), Dr Cala had considered foul play to be a possibility and that Mr Russell “might have been forcibly thrown off the cliff”. He had pointed to such matters as the position of Mr Russell’s body, which Dr Cala considered “unusual in a case of jumping or falling from a height”; the fact that Mr Russell’s red jumper was pulled up and exposed his abdomen; and the fact that Mr Russell was found with hairs on his hand that Dr Cala said was “suggestive the deceased might have pulled them from the head of another person at the time he fell, implying the presence of another person or persons at the time of the fall”.*

[117] *In Professor Duflou’s 2017 statement (Annexure 23 to the Morgan Statement) (SCOI.76962.00023), he expressed broadly similar views on each of these matters, at [121(a), (e) and (g).*

[118] *The differences between the views of Dr Cala and Professor Duflou on these issues, if any, are slight. Yet the Russell Summary is expressed in terms suggesting that there is a stark contrast between the two. There is not.*

[119] *The second aspect of Neiwand’s treatment of the expert material concerns Mr Russell’s level of intoxication, and what consequences may have flowed from it.*

[120] *Neiwand focuses heavily on Mr Russell’s high BAC, in order to support its suggestion that it may have led to him falling from the cliff — i.e. misadventure.*

[121] *However, while Mr Russell did have a high BAC reading at post-mortem, these facts need to be tempered by other evidence from the Taradale inquests, available to Neiwand, including: first, Mr Russell’s close friend, I403, who was the last person to see Mr Russell alive, described him as only appearing moderately intoxicated; second, Mr Russell’s brother, who would drink with Mr Russell regularly, described him as someone who would drink “a fair bit” but never until he was sick or lost control.*

[122] *In 2017, Neiwand obtained an opinion from Dr Moynham (who had also given evidence at the Taradale inquests, and who by 2017 had become Professor Moynham). That 2017 opinion includes detailed observations by Professor Moynham about Mr Russell’s level of intoxication and on the typical effects of such levels on a person’s perceptive skills and reaction time (see RS [134], [135]). Neiwand uses this evidence to support its preferred theory that Mr Russell died as a result of misadventure (see RS [148]).*

[123] *However, the Russell Summary conspicuously omits, or fails to acknowledge the significance of, several important aspects of Professor Moynham’s evidence:*

1. *Professor Moynham was not provided with Mr Russell's drinking history (see RS [135], top p 36). On that topic the evidence of I403 and Mr Peter Russell, noted above, would have been of some significance.*
2. *At the Taradale inquest, Professor Moynham's evidence included his opinion that one effect of Mr Russell's intoxication would have been a diminished capacity to protect himself from danger.*
3. *To similar effect, in his 2017 statement provided to Neiwand, Professor Moynham stated that Mr Russell's BAC would have made him "more vulnerable to predatory behaviour by other persons. His capacity to protect himself would be impaired."*
4. *In his 2017 statement, Professor Moynham went on to say: "It is not possible to determine if he was the victim of an accident or if he was the victim of foul play. Both are possible."*

[124] *However, although the lengthy extract from Professor Moynham's 2017 statement contained in RS [136] includes the passages referred to at (3) and (4) above, neither is referred to in the Russell Summary, either in the section headed "Summary" (see RS [140]-[151]) or in the section headed "Key Findings" (RS [152]—[154]). Evidence of intoxication appears to have been used by Neiwand only to undermine the possibility of foul play, whereas (as Professor Moynham plainly appreciated) it was equally capable of making a victim more vulnerable to foul play.*

[125] *Thirdly, as in the Warren Summary, Neiwand criticises the approach taken by Taradale to persons of interest, highlighting a lack of identifying witnesses and of forensic evidence directly linking such persons to Mr Russell's death. This criticism is misconceived. As with the case of Mr Warren, the difficulty in 2001-2003 in obtaining evidence that directly incriminated those persons of interest, such that charges could be laid, does not mean that those individuals and groups are no longer persons of interest. Taradale's conclusions were not drawn as a result of "tunnel vision" but rather, were based on (amongst other things) toxicology reports, postmortem reports, expert reports, crime scene photographs, and a detailed understanding of the specific context in which Mr Russell's death took place.*

[126] *Fourthly, the Russell Summary (at [150]) suggests that the evidence relating to disturbed shrubbery would "refute the theory" of Mr Russell being thrown from the cliff. As a matter of logic, this is a perverse conclusion. It is at least equally possible, for example, that shrubbery could be disturbed during a struggle.*

- 12.291. Again, this evidence was unchallenged. So far as it comprises matters of fact, I accept it in its entirety. So far as it expresses opinions, I agree with them.



### Evidence of Detective Sergeant Morgan

- 12.292. In his oral evidence, Detective Sergeant Morgan agreed that:<sup>2182</sup>
- a. Mr Russell’s intoxication would have made him more vulnerable to attack as well as misadventure (which might be thought to “corroborate” the homicide theory, as a person may be more prone to trauma as a consequence of physical impairment, or vulnerable to predatory behaviour by other persons).
  - b. Intoxication and impairment had been considered by Senior Deputy State Coroner Milledge (Professor Moynham was in fact a witness) in the Milledge Inquest.
  - c. Professor Moynham’s evidence was used by Strike Force Neiwand only for the single purpose of advancing the accident or misadventure possibility. Such use is itself an example of “confirmation bias” or “tunnel vision”.
  - d. Professor Duflou’s findings that the position of the body was somewhat unusual for an accidental or suicidal fall, as Mr Russell likely faced the walkway when he commenced his fall, was essentially the same view that had been expressed by Dr Cala.
  - e. Both Dr Cala and Professor Duflou considered that neither assault nor misadventure could be positively excluded, and considered various hypotheses in terms of “possibilities” and “likelihoods”.
  - f. Professor Duflou said in the Milledge Inquest that he considered it less likely that Mr Russell’s body rotated during the fall to land in the way depicted. He stated, “I agree with Dr Cala that it would be most unlikely that the deceased would have moved significantly after sustaining the injuries from the fall.”
  - g. Professor Duflou does not exclude it as a possibility, but considered it was relatively unlikely to have been Mr Russell’s own hair. This was substantially the same as Dr Cala’s opinion.

### Evidence of Mr Willing

- 12.293. Mr Willing agreed in his oral evidence that for Strike Force Neiwand to purport to say that the death of Mr Russell should be reclassified as undetermined, in effect thereby contradicting the findings of the Coroner, was “completely without foundation”.<sup>2183</sup>

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<sup>2182</sup> Transcript of the Inquiry, 27 February 2023, T2240.9–17, 2243.25, 2248.36, 2250.1–4, 2251.17, 2256.42, 2260.7–28, 2262.19 (TRA.00028.00001).

<sup>2183</sup> Transcript of the Inquiry, 21 February 2023, T1811.45–1812.7 (TRA.00024.00001).

- 12.294. Mr Willing accepted that Senior Deputy State Coroner Milledge had described the original investigation into Mr Russell’s death as “far from adequate”, and that the hairs located on the back of Mr Russell’s hand were a very important exhibit which had been lost.<sup>2184</sup> Mr Willing agreed that, given the inadequacy of the initial investigation, Strike Force Neiwand was, for the most part, not seeking to reinvestigate the three cases but was rather seeking to analyse Operation Taradale and criticise it where possible.<sup>2185</sup>
- 12.295. Mr Willing agreed that the presence of grass would not refute the possibility of Mr Russell having been thrown over the cliff, a proposition with which Detective Sergeant Morgan also agreed.<sup>2186</sup>

### Conclusions in relation to the Russell Summary

- 12.296. As was submitted by Counsel Assisting, in the case of Mr Russell, Strike Force Neiwand made no attempt to investigate the possibility of homicide. Instead, the efforts of Strike Force Neiwand were directed almost exclusively to advancing and bolstering a theory of misadventure—i.e., that Mr Russell had accidentally fallen to his death, possibly as a result of his level of intoxication.
- 12.297. The NSWPF accepted, in the June NSWPF Submissions, only that the evidence “tends to suggest” that Strike Force Neiwand focused its attention “more” on the possibility of misadventure than on the possibility that the death of Mr Russell was a homicide”.<sup>2187</sup> That is another of the grudging and partial concessions that I have referred to previously, and it does the NSWPF little credit.
- 12.298. However, the NSWPF also submitted that:<sup>2188</sup>

*While additional investigations ought to have been conducted in line with the Investigation Plan, the conclusions ultimately reached by [Mr] Chebl in the Neiwand summaries were not without at least some foundation.*

- 12.299. The NSWPF went on to submit that having regard, relevantly, to the circumstances in which Mr Russell’s body was found, the opinions expressed by Professor Duflou and Elizabeth Brooks, Senior Forensic Scientist with the Australian Federal Police, and the fact that the Inquiry had not received evidence from Mr Chebl (or other investigating officers beyond Detective Sergeant Morgan), the Inquiry:<sup>2189</sup>

*...could not properly or fairly conclude that the position expressed by [Mr] Chebl and, in turn, [Strike Force] Neiwand was anything but an honest reflection of the views he reached having reviewed the [Operation] Taradale*

<sup>2184</sup> Transcript of the Inquiry, 21 February 2023, T1802.40–1803.22 (TRA.00024.00001).

<sup>2185</sup> Transcript of the Inquiry, 21 February 2023, T1803.24–31 (TRA.00024.00001).

<sup>2186</sup> Transcript of the Inquiry, 27 February 2023, T2269.4–7 (TRA.00028.00001).

<sup>2187</sup> Submissions of NSWPF, 28 June 2023, [381] (SCOI.84211).

<sup>2188</sup> Submissions of NSWPF, 28 June 2023, [419] (SCOI.84211).

<sup>2189</sup> Submissions of NSWPF, 28 June 2023, [423] (SCOI.84211).

*material and conducted the additional investigative steps (albeit relatively limited) he set out in the [Strike Force] Neiwand summary.*

- 12.300. In making the above submissions, the NSWPF has again sought to shift blame for Strike Force Neiwand onto Mr Chebl. For the reasons explained elsewhere in this Chapter, I wholeheartedly reject this submission and consider such attempts to be an entirely ineffective rhetorical tactic. The submission is also misconceived from an evidentiary perspective.
- 12.301. The three main components of Strike Force Neiwand’s focus on the misadventure theory were:
- a. Suggested differences of opinion between two forensic pathologists, Dr Cala and Professor Duflou;
  - b. Mr Russell’s blood alcohol concentration, and the evidence of Professor Moynham; and
  - c. The views of Sergeant Cameron, a crime scene officer, as to the disturbance of the bushes at the top of the cliff.
- 12.302. As to the issue of blood alcohol concentration, the evidence established, in my view, that Strike Force Neiwand used Professor Moynham’s evidence selectively and for the purposes of advancing only the accident or misadventure hypothesis.<sup>2190</sup>
- 12.303. As to the opinions of the two experts, Dr Cala and Professor Duflou, in fact the differences between the two opinions are few and slight.<sup>2191</sup> In particular, both experts:
- a. Considered the position of Mr Russell’s body to be unusual for a fall, such that foul play (being thrown or pushed) was possible;
  - b. Thought that the hairs on Mr Russell’s hand were more likely to be from a second person than to be Mr Russell’s own hair;
  - c. Considered that some of the bruising on Mr Russell’s head could have come from an assault prior to death; and
  - d. Acknowledged that misadventure could not be ruled out.
- 12.304. In other words, the findings of Professor Duflou did not “differ significantly” from those of Dr Cala (as asserted by Detective Sergeant Morgan at [67] of the Morgan Statement).<sup>2192</sup> Detective Sergeant Morgan made numerous concessions to that effect in the course of his examination by Senior Counsel Assisting.<sup>2193</sup>

<sup>2190</sup> Transcript of the Inquiry, 27 February 2023, T2240.4–2243.35 (TRA.00028.00001).

<sup>2191</sup> Exhibit 6, Tab 157, Expert certificate of Dr Allan Cala, 14 August 2001 (SCOI.10386.00142); Exhibit 6, Tab 171, Expert certificate of Dr Johan Duflou, 16 August 2017 (SCOI.10385.00060).

<sup>2192</sup> Exhibit 6, Tab 5, Statement of Detective Sergeant Steven Morgan, 31 October 2022, [67] (SCOI.76962).

<sup>2193</sup> Transcript of the Inquiry, 27 February 2023, T2263.18–43 (TRA.00028.00001).

- 12.305. However, at the conclusion of his oral evidence, Detective Sergeant Morgan was asked a number of leading questions by Senior Counsel for the NSWPF, which contained within them the proposition that, at the Milledge Inquest, Dr Cala was positively advancing, and favouring, the theory that assault was most likely.<sup>2194</sup> Detective Sergeant Morgan promptly adopted that proposition, and thereafter changed his position so as to say that in his view Dr Cala definitely favoured assault whereas Professor Duflou merely considered it a possibility.
- 12.306. Such a characterisation does not accurately reflect the views actually expressed by the two experts (particularly having regard to the way in which questions—themselves also leading questions—had been put to Dr Cala at the Milledge Inquest by counsel for the NSWPF).
- 12.307. Finally, as to the issue of the views of Sergeant Cameron, I consider that, as Mr Page suggested, this theory does not withstand scrutiny. It is at least equally possible, for example, that shrubbery could be disturbed during a struggle.
- 12.308. In relation to the Russell Summary, I consider that Strike Force Neiwand had no proper or reasonable basis for its purported conclusions.

## Gilles Mattaini

### Assertions of Strike Force Neiwand

- 12.309. Strike Force Neiwand concluded that Mr Mattaini:<sup>2195</sup>
- ...may well have taken his own life rather than met with foul play. There are no further lines of inquiry for the Mattaini matter. There is no forensic evidence, no identified suspect and/or witnesses that can provided [sic] a time line for his last movements.*
- 12.310. The Mattaini Summary asserted that a review of the Operation Taradale investigation revealed “a number of areas which were not explored” by Operation Taradale, including “but not limited to”, obtaining a DNA sample from Mr Mattaini’s mother, obtaining Mr Mattaini’s medical and military records, and obtaining further statements from Mr Mattaini’s associates to clarify his previous suicide attempts.<sup>2196</sup>
- 12.311. Detective Sergeant Morgan conceded that the work of Strike Force Neiwand with respect to the first two of these areas was unfruitful.<sup>2197</sup>

<sup>2194</sup> Transcript of the Inquiry, 27 February 2023, T2300.16–2302.35 (TRA.00028.00001).

<sup>2195</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [61] (SCOL.74881).

<sup>2196</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [37] (SCOL.74881).

<sup>2197</sup> Exhibit 6, Tab 5, Statement of Detective Sergeant Steven Morgan, 31 October 2022, [59] (SCOI. 76962); Transcript of the Inquiry, 24 February 2023, T2106.24–37 (TRA.00027.00001).

- 12.312. Counsel Assisting submitted, and in my view the evidence clearly establishes, that the primary focus of Strike Force Neiwand was overwhelmingly to try to obtain further information as to Mr Mattaini's previous suicide attempts, and to attempt to bolster a theory of suicide.<sup>2198</sup>
- 12.313. The NSWPF accepted only that the "primary focus" of the investigative efforts undertaken by Strike Force Neiwand "appears, at least on the material tendered before the Inquiry", to have been Mr Mattaini's previous suicide attempts and ideation.<sup>2199</sup>
- 12.314. The evidence showed that the attempted bolstering of the suicide theory was primarily pursued through communications with Mr Musy. Mr Musy had previously provided a statement to Operation Taradale in August 2002 and had also given oral evidence at the Milledge Inquest in 2003.
- 12.315. In December 2016, Mr Chebl appears to have had a telephone conversation with Mr Musy. In the Investigator's Note of that telephone call, Mr Musy's account is recorded as follows:<sup>2200</sup>

*MUSY stated throughout his relationship with MATTAINI he found him to be comfortable with death and would speak openly about dying on his own accord rather than naturally. MUSY elaborated on this by saying, following MATTAINI's discharge from the army and prior to the pair moving to Australia, MATTAINI would make comments about taking his own life. MUSY explained this by stating "He (MATTAINI) spoke of death as being a release for him from this life. He believed death was more attractive than life, he believed he would be happier dead."*

*Detective CHEBL asked MUSY about the information he provided EYRAUD in relation to MATTAINI stating "he wanted to die and nobody would find his body". MUSY agreed this comment was said by MATTAINI, he elaborated on this by explaining that MATTAINI believed that if nobody found his body it would cause less pain and grief for his family. MUSY quoted MATTAINI "If I die, I will do it so no one finds my corpse, it would cause less pain and grief for my mother." When MUSY was explaining this comment, he reinforced the point Mattaini was making that he did not want his body to be found to ease the grief on his mother and friends.*

<sup>2198</sup> Submissions of Counsel Assisting, 7 June 2023, [648] (SCOI.84380).

<sup>2199</sup> Submissions of NSWPF, 28 June 2023, [426] (SCOI.84211).

<sup>2200</sup> Exhibit 6, Tab 167A, Strike Force Neiwand, Investigator's Note, 'Telephone call with Jacques Musy', 13 December 2016, 4–5 (SCOI.10389.00042).

- 12.316. In summarising the conversation, the Mattaini Summary failed to acknowledge that Mr Musy made it clear that both suicide attempts (one of which Mr Musy thought may actually have been a device by which to avoid compulsory military service) had occurred years before 1985, when Mr Mattaini was in his teens and still lived in France. When asked how many times Mr Mattaini had planned to die by suicide, Mr Musy had said:<sup>2201</sup>

*Gilles had made two suicide attempts. However, with me he had become someone happy to live. His new life in Australia suited him fully. He was very happy. Throughout this period, he has never shown any suicidal intent. Those two attempts were made in France and being younger.*

- 12.317. In addition, the evidence given by Mr Musy at the Milledge Inquest (when, as Mr Musy pointed out, he had a better recollection of events than in 2017) made it even more clear that he considered that Mr Mattaini was not at all inclined to suicide in 1985. Mr Musy recalled that at the time of Mr Mattaini's disappearance, Mr Mattaini was "happy" that Mr Musy was returning from France and that he had made some recent purchases for his Bondi flat.<sup>2202</sup>
- 12.318. None of this is referred to in the Mattaini Summary. Either Detective Sergeant Morgan or Mr Leggat did not read the transcript of Mr Musy's evidence to the Milledge Inquest, or did read it but omitted reference to it from the Mattaini Summary. Either alternative is indefensible. Given the serious nature of the allegations being made (which I outline further below), it was incumbent on Detective Sergeant Morgan and Mr Leggat to be satisfied that the underlying materials supported the allegation.
- 12.319. The Mattaini Summary made a number of very serious allegations against Mr Page, including in particular that he deliberately withheld from the Coroner evidence from Mr Musy as to previous suicide attempts and suicidal thinking on the part of Mr Mattaini:<sup>2203</sup>

*In 2002 Jacques [sic] MUSY had provided former Detective Sergeant PAGE with a statement. The statement outlined 2 suicide attempts by Mattaini whilst he was in France, but failed to outline prior suicidal ideation despite MUSY raising it with PAGE. In 2017, SF Neiwand spoke with MUSY provided French Police with a statement which clearly outlined MATTAINI's suicidal ideation and multiple attempts at suicide. PAGE's failure to include all the information about MATTAINI's suicidal ideation in MUSY's 2002 statement was a key factor in the Coroner not considering suicide as a possibility in MATTIANI's disappearance.*

<sup>2201</sup> Exhibit 6, Tab 170, Statement of Jacques Musy (English Translation), 10 May 2017, 3 (SCOI.10397.00007).

<sup>2202</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and the death of John Russell, 1 April 2003, T50.33–39 (SCOI.82371).

<sup>2203</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [60] (SCOI.74881).

- 12.320. The Mattaini Summary also alleged, at [52], that in 2002 Mr Page “convinced” Mr Musy that Mr Mattaini had been murdered.
- 12.321. These allegations in the Mattaini Summary were so serious (and, in my view, so unwarranted) that I set out some of the detail in the following paragraphs.
- 12.322. The Mattaini Summary accused Mr Page of deliberately not informing Senior Deputy State Coroner Milledge of information provided to him by Mr Musy in relation to previous suicide attempts and suicidal ideation on the part of Mr Mattaini, despite Mr Musy having told Mr Page about those matters.
- 12.323. The Mattaini Summary further alleged that such supposed withholding of information “was a key factor in the Coroner not considering suicide as a possibility in [Mr] Mattaini’s disappearance”.<sup>2204</sup>
- 12.324. The allegations made by Strike Force Neiwand in this respect were essentially these:
- a. That Mr Mattaini had made “multiple” attempts at suicide;<sup>2205</sup>
  - b. That “throughout his relationship” with Mr Musy, Mr Mattaini spoke openly about dying, saying that he was comfortable with dying and that he preferred death to life, and said that if he did die by suicide, he would do so in a way that no one would find his body;<sup>2206</sup>
  - c. That Mr Musy told Mr Page all these things in 2002 but Mr Page failed to include them in Mr Musy’s statement;<sup>2207</sup>
  - d. That it was Mr Page who had persuaded Mr Musy that Mr Mattaini’s disappearance was a homicide; and
  - e. That, as a consequence, Senior Deputy State Coroner Milledge did not consider the possibility of suicide in relation to Mr Mattaini.<sup>2208</sup>
- 12.325. The evidence has established that all five of those allegations were completely wrong.
- 12.326. First, Mr Mattaini had not made “multiple” suicide attempts, but a total of two such attempts. Both of those were explicitly set out in Mr Musy’s 2002 statement prepared by Mr Page.<sup>2209</sup> Moreover, in Mr Musy’s opinion, the second incident was probably not a “suicide attempt” at all, but more likely a device by which to bring Mr Mattaini’s conscription in the French Army to an end.<sup>2210</sup>

<sup>2204</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [60] (SCOL.74881).

<sup>2205</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [60] (SCOL.74881).

<sup>2206</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [46] (SCOL.74881).

<sup>2207</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [60] (SCOL.74881).

<sup>2208</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [59] (SCOL.74881).

<sup>2209</sup> Exhibit 6, Tab 159, Statement of Jacques Musy, 3 August 2002, [5]–[6] (SCOL.02744.00381).

<sup>2210</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and the death of John Russell, 1 April 2003, T48.35–49.21 (SCOL.82371).

- 12.327. Secondly, Mr Musy made clear, both in his 2003 sworn oral evidence at the Milledge Inquest,<sup>2211</sup> and in a communication to French Police in May 2017,<sup>2212</sup> that the ideas Mr Mattaini had about dying were ideas he once had in his youth, before meeting Mr Musy, and that he never had expressed any such views since meeting Mr Musy (in about 1978).
- 12.328. Indeed, Mr Musy’s 2003 sworn evidence was that being with him (Mr Musy) “had made [Mr Mattaini] forget about these thoughts or his problems he had in the past”, and that Mr Mattaini had remarked in more recent times “how stupid he had been before” to have had such ideas in the past.<sup>2213</sup>
- 12.329. Mr Musy did not tell Mr Page that these sorts of ideas were discussed “throughout his relationship” with Mr Mattaini, and (as Detective Sergeant Morgan conceded) Mr Musy was free to provide any recollections that he chose, when he was asked about suicidal ideation when he was in the witness box at the Milledge Inquest, and he did not mention this point.<sup>2214</sup>
- 12.330. Thirdly, Mr Page gave unchallenged evidence that Mr Musy did not say to him anything along the lines that “throughout his relationship” with Mr Mattaini, he spoke openly about dying, or said that he was comfortable with dying or that he preferred death to life, or said that if he did die by suicide, he would do so in a way that no one would find his body.<sup>2215</sup>
- 12.331. Fourthly, Mr Musy and Mr Wyszynski did not get the idea that Mr Mattaini might have been the victim of a homicide from Mr Page. On the contrary, the reason they went to the police, and spoke to Mr Page, was that publicity about Operation Taradale and about “gay hate” deaths had come to their attention and had caused them to think that perhaps that was what had happened to Mr Mattaini.<sup>2216</sup>
- 12.332. Fifthly, the possibility of suicide undoubtedly was considered by Senior Deputy State Coroner Milledge in relation to Mr Mattaini. It was raised in the opening address of Counsel Assisting;<sup>2217</sup> the two suicide attempts were expressly referred to in the statements of both Mr Musy and Mr Page; it was referred to at length in the oral evidence of Mr Musy on 1 April 2003; it was referred to in the closing

<sup>2211</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and the death of John Russell, 1 April 2003, T48.35–49.21 (SCOI.82371).

<sup>2212</sup> Exhibit 6, Tab 170, Statement of Jacques Musy (English Translation), 10 May 2017 (SCOI.10397.00006).

<sup>2213</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and the death of John Russell, 1 April 2003, T48.35–49.21 (SCOI.82371).

<sup>2214</sup> Transcript of the Inquiry, 24 February 2023, T2137.14–2138.12 (TRA.00027.00001).

<sup>2215</sup> Transcript of the Inquiry, 28 February 2023, T2344.33–2345.7 (TRA.00029.00001).

<sup>2216</sup> Transcript of the Inquiry, 28 February 2023, T2341.25–2342.30 (TRA.00029.00001); Statement of Antony Jean Wyszynski, 3 August 2002, [18] (SCOI.02744.00382); Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and the death of John Russell, 1 April 2003, T56.31–33 (SCOI.82371).

<sup>2217</sup> Exhibit 6, Tab 321, Transcript of Inquests into deaths of Ross Bradley Warren, Jacques Mattaini and John Allan Russell – Opening address of Counsel Assisting the Coroner, 31 March 2003 (SCOI.00173.00001).



- address of Counsel Assisting;<sup>2218</sup> and it was dealt with by Senior Deputy State Coroner Milledge in her Honour's findings.<sup>2219</sup>
- 12.333. The allegations by Strike Force Neiwand were apparently based mainly on four things:
- a. An email from Ms Eyraud of the French Police dated 19 November 2016;
  - b. A conversation between Mr Chebl and Mr Musy on 8 December 2016, which was not recorded or transcribed but of which Mr Chebl made a typed note five days later on 13 December 2016;
  - c. An email from Mr Musy to Mr Chebl on 10 December 2016, the contents of which are also included, in full, in the Investigator's Note; and
  - d. A typed document dated 10 May 2017, translated from French using Google Translate, received by Strike Force Neiwand on 19 December 2017, apparently being a note made by French Police of a communication by them with Mr Musy in May 2017.
- 12.334. The May 2017 French document, albeit the subject of a clumsy and inadequate translation, also indicated with reasonable clarity Mr Musy's recollection that the suicidal ideation on the part of Mr Mattaini, had been in the past, and not at any time since meeting Mr Musy.<sup>2220</sup>
- 12.335. As noted above, Mr Page was not given any opportunity by Strike Force Neiwand to respond to the allegations. In his written and oral evidence to the Inquiry, he emphatically rejected them. He said he included in Mr Musy's statement everything that Mr Musy told him about suicide in relation to Mr Mattaini.
- 12.336. In addition, the Mattaini Summary was also slanted in other ways—deliberately, it was submitted by Counsel Assisting—towards suggesting the likelihood of suicide. For example:
- a. It included Mr Wyszynski's hearsay understanding (in his statement) that Mr Mattaini's keys were still in the apartment,<sup>2221</sup> but made no reference to Mr Wyszynski's more equivocal evidence at the Milledge Inquest where he said that he had no specific recollection of Mr Ottaviani saying anything about the keys;<sup>2222</sup>

<sup>2218</sup> Exhibit 6, Tab 323, Transcript of the Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and death of John Russell – Closing address of Counsel Assisting, 23 December 2004 (SCOI.02751.00159).

<sup>2219</sup> Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 3 (SCOI.02751.00021)

<sup>2220</sup> Exhibit 6, Tab 170, Statement of Jacques Musy (English Translation), 10 May 2017 (SCOI.10397.00006).

<sup>2221</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [22] (SCOI.74881).

<sup>2222</sup> Exhibit 44, Tab 14, Transcript of Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and the death of John Russell – Evidence of Antony Wyszynski, 1 April 2003, T64.36–38 (SCOI.84052).

- b. Similarly, it referred to Mr Musy having noticed that the yellow spray jacket was missing,<sup>2223</sup> but conspicuously omitted the first-hand evidence of Mr Musy that Mr Mattaini’s keys in fact were also missing;<sup>2224</sup> and
- c. It asserted that the issue relating to his visa expiring “appeared to weigh heavily on [Mr] Mattaini’s mind”,<sup>2225</sup> whereas the express evidence of Mr Musy was that “it was not something which was really sort of weighing on him constantly not at all”.<sup>2226</sup>
- 12.337. As Counsel Assisting submitted, having regard to all the evidence, the accusations made in the Mattaini Summary against Mr Page were not only entirely without basis, and very unfair, but demonstrably false. They should never have been made. Such attacks on Mr Page were completely unjustified, and they are totally rejected.
- 12.338. The NSWPF agreed that “having regard to the evidence given by Mr Page, and the evidence he placed before the Taradale Inquest, the suggestion that he did not consider suicide as a possibility should be rejected. It may be accepted that Mr Page conducted his investigation appropriately”.<sup>2227</sup>
- 12.339. The NSWPF submitted that, nevertheless, findings such as those proposed by Counsel Assisting could not be made in the absence of evidence from Mr Chebl. Again, I reject that submission, for the reasons outlined below.

### Response by Mr Page

- 12.340. Mr Page responded to the criticisms and assertions of Strike Force Neiwand in relation to Mr Mattaini’s matter in the Page Statement, particularly at [77]–[87]. His evidence there stated (emphasis in original):

*[79] In ... its final “Key findings” section (MS [60], [61]), Neiwand asserted, wrongly, that Deputy State Coroner Milledge had not considered suicide as a possibility in Mr Mattaini’s disappearance, and put forward the view that Mr Mattaini “may well have taken his own life rather than met with foul play”. Neiwand added that “[t]here are no further lines of inquiry”. Neiwand categorised the cause and manner of Mr Mattaini’s death as “undetermined” and recommended “that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available”.*

*[80] At MS [59], Neiwand claims that Taradale “relied on investigation confirmation bias which was a major factor that ultimately limited the validity of the Coroner’s findings”. I reject those claims, which are also contained, in identical words, in the other two Neiwand Summaries.*

<sup>2223</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [24] (SCOI.74881).

<sup>2224</sup> Exhibit 6, Tab 159, Statement of Jacques Musy, 3 August 2002, [20] (SCOI.02744.00381).

<sup>2225</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [28] (SCOI.74881).

<sup>2226</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and the death of John Russell, 1 April 2003, T49.44–58 (SCOI.82371).

<sup>2227</sup> Submissions of NSWPF, 28 June 2023, [433] (SCOI.84211).

[81] *At MS [60], Neiwand claims that Taradale, and I personally, “fail[ed] to include all the information about Mattaini’s suicidal ideation” in a 2002 statement by Jacques Musy, Mr Mattaini’s partner, and that this “failure” was “a key factor in the Coroner not considering suicide as a possibility in Mattaini’s disappearance”. I reject those claims as well.*

[82] *First, Mr Musy gave evidence at the Taradale Inquests by way of a written witness statement dated 3 August 2002, and also by oral evidence on 1 April 2003. In his statement, Mr Musy expressly referred to Mr Mattaini having “tried to take his own life” on two separate occasions in France when he was young —once before, and once after, he and Mr Musy had met. He gave oral evidence to similar effect, Mr Musy also gave oral evidence that while Mr Mattaini had had suicidal thoughts in the past, that was before meeting Mr Musy (which was in about 1978).*

[83] *I referred to these matters in my own Mattaini Statement, at [803] and [825].*

[84] *The matters emphasised by Neiwand in relation to its preferred view that Mr Mattaini may have died by suicide were before Deputy State Coroner Milledge at the Taradale Inquests, and were referred to in closing submissions by counsel assisting. Having considered that evidence and those submissions, her Honour’s conclusion was that “there is no evidence before me to support the finding of ‘suicide’. The claim made by Neiwand, that her Honour did not consider suicide as a possibility, is simply wrong.*

[85] *Secondly, I note the following matters:*

- a. *The Mattaini Summary refers to Mr Mattaini’s “multiple attempts at suicide” and states that Mr Mattaini made suicide attempts “before he went missing”. Such language is apparently intended to imply, wrongly, that Mr Mattaini had made more than two suicide attempts, and that they were shortly prior to his disappearance in September 1985. Neither of those suggestions is correct.*
- b. *Neiwand places weight on the hearsay evidence in 2002 of Mr Antony Wyszynski, who said that he had been told by another person that Mr Mattaini left his keys in the house. However, this was incorrect. Mr Musy gave evidence that in fact, when he returned from France to the flat he shared with Mr Mattaini, although Mr Mattaini’s wallet, watch and credit card were there, his keys and Walkman were missing.*
- c. *The Mattaini Summary three times makes reference to Mr Mattaini’s not usually going out at night, apparently to support the suicide theory in some way, or to cast doubt on the homicide possibility. For example, the third such reference (at MS [57]) is immediately followed by reference to Mr Mattaini’s having spoken of death being more attractive than life. However,*

*in Mr Musy's 2002 Taradale statement, Mr Musy recalled that Mr Mattaini was known to take walks both during daylight hours and "the early evening", and that his walks would be on the coastal walk and around Marks Park.*

- d. There was an abundance of evidence inconsistent with suicide, including: his keys, spray jacket and headphones were missing; there was no suicide note left; there was a calendar in use by Mr Mattaini at the time diarising future events; his financial affairs had not fallen into disarray; and both Mr Musy and other witnesses described Mr Mattaini as being happy at the time. Such evidence is either downplayed, or not considered at all, by Neiwand.*
- e. In December 2016 DSC Chebl spoke to Mr Musy by telephone. This conversation is recorded only by way of an Investigators Note composed by DSC Chebl. Given the significance of the suicide theory to Neiwand's approach to Mr Mattaini's case, and the importance Mr Musy's recollections in relating to this, I would have expected there to be an audio recording of the conversation, to ensure that nothing was "lost in translation" and that the information could be independently assessed at a later stage.*
- f. On 19 December 2017, Neiwand received, from the French authorities, a document in French dated 10 May 2017. It seems that Neiwand had it translated it from French to English using "Google translate". A more rigorous method than "Google translate" may have produced a more reliable translation. However, assuming the document (which seems to be a record of an interview or conversation between Mr Musy and a French police officer) is accurately translated, I note that Mr Musy states among other things that Mr Mattaini's references to suicide had been made in France before moving to Australia in 1983, and that since moving to Australia "he has never shown any suicidal intent".*

- g. *The Mattaini Summary is composed in a way which suggests that Mr Mattaini’s “suicidal ideation” existed at or near the time of his death. In fact the evidence was that such “ideation” had been in the past as distinct from the present.*
- b. *Neiwand does not appear to have made any real attempt to pursue the possible involvement of youth gangs, who were actively engaged in gay hate crimes at the time, in the disappearance of Mr Mattaini. Indeed Neiwand repeatedly plays down this possibility: see MS [35]-[58]. At [55], the Mattaini Summary states:*

*The investigation conducted under Operation Taradale did not identify any Person/s of interest that could be linked to the death of MATTAINI. It need be noted the basis of the Operation Taradale investigation focused on members of marauding youth gangs who loitered or frequented the Bondi area. It is fair to say Operation Taradale exhausted all avenues related to members of these youth gangs and their possible involvement in criminal offences in and around McKenzie’s Point... One cannot dismiss the involvement of the members of these youth gangs but based on the investigation carried out under SF Neiwand no evidence has come to light to draw a nexus between youth gangs and the disappearance and suspected death of MATTAINI.*

*The underlined passage is misleading. The Neiwand “investigation” made no attempt to seek or find any evidence which might establish such a “nexus” in the case of Mr Mattaini.*

*[86] Overall, the approach of Neiwand seems to have been not to pursue all possible avenues of enquiry, including evidence which was contrary to the theory that Mr Mattaini committed suicide, and instead to give weight and preference only to evidence that might have suggested that he did.*

*[87] I entirely reject the suggestion, made in the Mattaini Summary, that the investigation into the disappearance of Mr Mattaini conducted in Taradale was infected with “confirmation bias” or that any attempt was made to persuade witnesses such as Mr Musy that one theory was more likely to be correct than any other.*

- 12.341. In his oral evidence, Mr Page also directly refuted any suggestion that he had in any way withheld information from Senior Deputy State Coroner Milledge.<sup>2228</sup>
- 12.342. Again, none of Mr Page’s evidence, in relation to any aspect of Mr Mattaini’s death, was challenged. As to factual matters, I accept it in its entirety. As to matters of opinion, I agree.

<sup>2228</sup> Transcript of the Inquiry, 28 February 2023, T2345.26–33 (TRA.00029.00001).

## Evidence of Detective Sergeant Morgan

- 12.343. In his oral evidence, Detective Sergeant Morgan conceded that “[t]here are some serious concerns about the reliability of the summary”.<sup>2229</sup> He accepted that numerous aspects of the Mattaini Summary were incorrect, including among others:
- a. The allegations that Senior Deputy State Coroner Milledge did not consider suicide as a possibility, and that this was because Mr Page had not put certain material before her;<sup>2230</sup>
  - b. That in connection with 1985, Operation Taradale had exhausted all avenues related to members of youth gangs in and around Mackenzie’s Point;<sup>2231</sup>
  - c. That there was an investigation carried out by Strike Force Neiwand in connection to youth gangs and Mr Mattaini;<sup>2232</sup>
  - d. That Mr Mattaini was last seen walking along a track around Mackenzie’s Point;<sup>2233</sup> and
  - e. The failure to record that Mr Mattaini’s keys were also noted as missing by Mr Musy.<sup>2234</sup>
- 12.344. Detective Sergeant Morgan gave a series of inconsistent answers during his oral evidence as to whether he or Mr Chebl had, or had not, read the transcript of Mr Musy’s evidence before Senior Deputy State Coroner Milledge.<sup>2235</sup>
- 12.345. When shown the transcript of the opening address of Counsel Assisting the Coroner at the Milledge Inquest, Detective Sergeant Morgan said he was “somewhat shocked” to see that the possibility of suicide by Mr Mattaini was considered by Senior Deputy State Coroner Milledge, and that therefore the accusation to the contrary in the Mattaini Summary was “quite wrong”.<sup>2236</sup> In due course he conceded that to assert that Senior Deputy State Coroner Milledge had not considered the possibility of suicide was “inaccurate” and “wrong”. Consequently, he acknowledged that the blame for her Honour (supposedly) not doing so could not be laid at the feet of Mr Page.<sup>2237</sup>
- 12.346. Notwithstanding that concession, Detective Sergeant Morgan nevertheless at first claimed to stand by his allegation that Mr Page had deliberately withheld information from Senior Deputy State Coroner Milledge, thereby causing her

<sup>2229</sup> Transcript of the Inquiry, 24 February 2023, T2075.14–15 (TRA.00027.00001).

<sup>2230</sup> Transcript of the Inquiry, 23 February 2023, T1974.17–43, 2053.27–34 (TRA.00026.00001); Transcript of the Inquiry, 24 February 2023, T2092.22–47, 2135.20–26, 2158.6–9 (TRA.00027.00001).

<sup>2231</sup> Transcript of the Inquiry, 23 February 2023, T2046.29 (TRA.00026.00001).

<sup>2232</sup> Transcript of the Inquiry, 23 February 2023, T2047.27–46 (TRA.00026.00001).

<sup>2233</sup> Transcript of the Inquiry, 24 February 2023, T2096.5–7 (TRA.00027.00001).

<sup>2234</sup> Transcript of the Inquiry, 24 February 2023, T2104.12 (TRA.00027.00001).

<sup>2235</sup> Transcript of the Inquiry, 23 February 2023, T2002.30–38 (TRA.00026.00001); Transcript of the Inquiry, 24 February 2023, T2067.16–2069.19 (TRA.00027.00001).

<sup>2236</sup> Transcript of the Inquiry, 23 February 2023, T1974.17–40 (TRA.00026.00001).

<sup>2237</sup> Transcript of the Inquiry, 23 February 2023, T2053.27–45 (TRA.00026.00001).

Honour not to consider something that she should have. He gave three reasons for doing so, namely:

- a. That Senior Deputy State Coroner Milledge was not told about Mr Mattaini feeling more comfortable with death than being alive;<sup>2238</sup>
- b. That Senior Deputy State Coroner Milledge was not told about Mr Mattaini saying that if he did kill himself he wanted to make sure his body not found;<sup>2239</sup> and
- c. “[M]ost importantly, the fact that he [Mr Musy] claims that Mr Page convinced him that it was a homicide rather than a suicide or anything else”.<sup>2240</sup>

12.347. However, he eventually resiled from all three of those reasons. He said he “withdrew” the first reason; he conceded that the second reason could not be “sustained”, and he agreed that the third was “untenable”.<sup>2241</sup>

12.348. It is quite obvious that if those responsible for the Mattaini Summary had checked the transcript of the Milledge Inquest, in particular the evidence of Mr Musy and also the opening and closing addressees, they would have known that their allegations were unsustainable.

12.349. Detective Sergeant Morgan accepted that it was unfair not to have told Mr Page about the serious accusations against him in the Mattaini Summary, and not to have asked him for a response.<sup>2242</sup>

12.350. It was put to Detective Sergeant Morgan that, given the extensive evidence concerning violence against gay men in the Bondi, Tamarama and Marks Park area, and the fact that Strike Force Neiwand overwhelmingly focused on one hypothesis, namely suicide, that was an example of the very “confirmation bias” of which he accused Operation Taradale. Detective Sergeant Morgan acknowledged that he could see how that allegation could be made.<sup>2243</sup>

### Evidence of Mr Willing

12.351. Mr Willing accepted that Strike Force Neiwand had not made the slightest attempt to obtain any forensic evidence, identify a suspect, or approach any witnesses in the reinvestigation of Mr Mattaini’s case.<sup>2244</sup>

12.352. Mr Willing accepted that in all the Progress Reports, there did not appear to be any record of any investigation pursuing possible homicide in the case of Mr Mattaini.<sup>2245</sup>

<sup>2238</sup> Transcript of the Inquiry, 23 February 2023, T2056.5–16 (TRA.00026.00001).

<sup>2239</sup> Transcript of the Inquiry, 23 February 2023, T2056.16–19 (TRA.00026.00001).

<sup>2240</sup> Transcript of the Inquiry, 23 February 2023, T2056.19–21 (TRA.00026.00001).

<sup>2241</sup> Transcript of the Inquiry, 24 February 2023, T2142.8–9, 2159.43–2160.17 (TRA.00027.00001).

<sup>2242</sup> Transcript of the Inquiry, 23 February 2023, T2035.29–34 (TRA.00026.00001).

<sup>2243</sup> Transcript of the Inquiry, 24 February 2023, T2163.21–2165.9 (TRA.00027.00001).

<sup>2244</sup> Transcript of the Inquiry, 21 February 2023, T1810.7 (TRA.00024.00001).

<sup>2245</sup> Transcript of the Inquiry, 21 February 2023, T1787.18–42 (TRA.00024.00001).

- 12.353. Mr Willing further agreed that the assertion that Operation Taradale did not identify any POIs that could be linked to the death of Mr Mattaini was “misleading”, as Operation Taradale essentially had no opportunity to carry out any inquiries.<sup>2246</sup> He agreed that Operation Taradale had not, in fact, done any investigations about POIs apropos 1985 and Mr Mattaini, and that the statement in the Mattaini Summary, that Operation Taradale had done all that could be done about looking for youth gangs in 1985, was “completely wrong”.<sup>2247</sup> He also conceded that the claim in the Mattaini Summary that Strike Force Neiwand’s investigation had produced no evidence of “a nexus” between youth gangs and Mr Mattaini’s disappearance was “simply meaningless”.<sup>2248</sup>

### Conclusion in relation to the Mattaini Summary

- 12.354. The NSWPF submitted that the Inquiry cannot sensibly make findings regarding the Mattaini Summary in circumstances where Mr Chebl has not been afforded the opportunity to respond to criticisms and explain his actions.<sup>2249</sup> As discussed further below, I do not consider that Mr Chebl’s inability to give evidence to the Inquiry impacts on my ability to make the findings sought by Counsel Assisting. However, and in any event, this submission ignores the evidence, both documentary and oral, that I have received on this issue.
- 12.355. The NSWPF also submitted that it is difficult to resist the conclusion that Mr Mattaini “may well” have taken his own life when considering, relevantly, Mr Mattaini’s history of suicidal ideation, past suicide attempts and the fact there was no positive evidence of foul play.<sup>2250</sup> The NSWPF submitted that such a view was not only entirely defensible, but one which, having regard to the available evidence, should not be controversial.<sup>2251</sup> Indeed, said the NSWPF, a conclusion that suicide was not a very real possibility would be highly surprising in the circumstances.<sup>2252</sup>
- 12.356. Again, in making this submission, the NSWPF ignores that Strike Force Neiwand pursued no lines of inquiry other than suicide in relation to the death of Mr Mattaini. It made no attempt to investigate the possibility of homicide, at all.
- 12.357. In my view, the accusations made by Detective Sergeant Morgan and Mr Chebl in the Mattaini Summary, and by Mr Leggat in the POA, that Mr Page deliberately withheld information from Senior Deputy State Coroner Milledge, thereby causing her Honour not to consider suicide as a possibility, were and are completely without foundation. They are rejected out of hand.

<sup>2246</sup> Transcript of the Inquiry, 21 February 2023, T1832.3–10 (TRA.00024.00001).

<sup>2247</sup> Transcript of the Inquiry, 21 February 2023, T1833.1–9 (TRA.00024.00001).

<sup>2248</sup> Transcript of the Inquiry, 21 February 2023, T1833.33–36 (TRA.00024.00001).

<sup>2249</sup> Submissions of NSWPF, 28 June 2023, [432] (SCOI.84211).

<sup>2250</sup> Submissions of NSWPF, 28 June 2023, [434] (SCOI.84211).

<sup>2251</sup> Submissions of NSWPF, 28 June 2023, [428] (SCOI.84211).

<sup>2252</sup> Submissions of NSWPF, 28 June 2023, [428] (SCOI.84211).



- 12.358. Furthermore, the Mattaini Summary, aimed as it plainly was at advancing only a suicide hypothesis, and at discrediting Mr Page, was at least incompetent, and I comprehensively reject it.

## The Post Operational Assessment (POA)

- 12.359. The POA was prepared at the conclusion of Strike Force Neiwand.<sup>2253</sup> The POA itself had no publication date, but it recorded the final date of Strike Force Neiwand as 30 November 2017.<sup>2254</sup> According to Detective Sergeant Morgan, a POA is compiled following the conclusion of an investigation and provides an overview of the investigation, strategies undertaken, recommendations and conclusions reached by the investigative team.<sup>2255</sup>
- 12.360. The POA comprised three sections. The first two sections, “Terms of Reference” and “Investigation Summary”, were written and signed Mr Chebl, and endorsed by Detective Sergeant Morgan, at the time.<sup>2256</sup> The third section “Key Findings” was composed and signed by Mr Leggat.<sup>2257</sup>
- 12.361. Counsel Assisting submitted that the contents of the POA demonstrate that Strike Force Neiwand was, in effect, a review, and not a reinvestigation.<sup>2258</sup> This was conceded by Mr Willing and Detective Sergeant Morgan in evidence.<sup>2259</sup>
- 12.362. In fact, at one point, while being taken to the Progress Report for March 2017— that is, over a year after the Strike Force Neiwand investigation commenced— Mr Willing stated, “[i]t seems to me that they’ve been reviewing material the entire time”.<sup>2260</sup>
- 12.363. This was also supported by other evidence, including the description of Strike Force Neiwand as “Cold Case. Evidentiary review” (see above at [12.144(b)]).
- 12.364. Further, Assistant Commissioner Crandell gave evidence that the first time that he heard that Strike Force Neiwand was said to be a “reinvestigation” of the three deaths (as opposed to Strike Force Neiwand “reviewing” them), may have been during the course of this Inquiry.<sup>2261</sup>
- 12.365. Both Mr Willing and Detective Sergeant Morgan agreed that the “Investigation Summary” section of the POA contained multiple factual inaccuracies,<sup>2262</sup> some of

<sup>2253</sup> Exhibit 6, Tab 176, Strike Force Neiwand, Post Operational Assessment, 22 February 2018, 2 (SCOI.76962.00007).

<sup>2254</sup> Exhibit 6, Tab 176, Strike Force Neiwand, Post Operational Assessment, 22 February 2018, 3 (SCOI.76962.00007).

<sup>2255</sup> Exhibit 6, Tab 5, Statement of Detective Sergeant Steven Morgan, 31 October 2022, [32] (SCOI.76962).

<sup>2256</sup> Transcript of the Inquiry, 23 February 2023, T2015.29 (TRA.00026.00001).

<sup>2257</sup> Transcript of the Inquiry, 21 February 2023, T1807.46–1808.21 (TRA.00024.00001); Transcript of the Inquiry, 23 February 2023 T2015.34–40 (TRA.00026.00001).

<sup>2258</sup> Submissions of Counsel Assisting, 7 June 2023, [773] (SCOI.84380).

<sup>2259</sup> Transcript of the Inquiry, 21 February 2023, T1805.13–31, 1807.10–14, 1807.16–37 (TRA.00024.00001); Transcript of the Inquiry, 23 February 2023, T2012.24–39 (TRA.00026.00001).

<sup>2260</sup> Exhibit 6, Tab 164E, Strike Force Neiwand, Progress Report, 20 March 2017, 5–7 (SCOI.82048); Transcript of the Inquiry, 21 February 2023, T1784.16–32 (TRA.00024.00001).

<sup>2261</sup> Transcript of the Inquiry, 6 December 2022, T674.3–675.10 (TRA.00011.00001).

<sup>2262</sup> Transcript of the Inquiry, 21 February 2023, T1805.13–26 (TRA.00024.00001); Transcript of the Inquiry, 24 February 2023, T2161.14–45 (TRA.00027.00001).

which were repeated in the “Key Findings” section.<sup>2263</sup> Mr Willing found these errors troubling and “not right”.<sup>2264</sup>

- 12.366. In the “Key Findings” section, Mr Leggat stated that “Strike Force Neiwand investigators focused on victimology, associates and the last known movements of the three males”.<sup>2265</sup> As previously noted, this was an accurate summary of what Strike Force Neiwand actually did. Both Mr Willing and Detective Sergeant Morgan agreed with this proposition,<sup>2266</sup> and that this was different both from what had been proposed in the Investigation Plan, and from what Mr Willing thought Strike Force Neiwand was going to do.<sup>2267</sup>
- 12.367. Mr Willing agreed that the conclusions of Strike Force Neiwand in relation to Mr Warren and Mr Russell were “completely without foundation”,<sup>2268</sup> and that Strike Force Neiwand had directly contradicted the findings of Senior Deputy State Coroner Milledge, without having made any attempt to explore the question of POIs.<sup>2269</sup> He also agreed that in Mr Mattaini’s matter, Strike Force Neiwand did not, in fact, make any attempt to obtain forensic evidence, to identify a suspect or to approach any witnesses.<sup>2270</sup>
- 12.368. As to the next steps regarding these matters, Mr Willing’s evidence was that the UHT would act on Mr Leggat’s recommendation that the investigations be listed “as inactive”, and that the cases would sit on the UHT database with that classification but nothing further.<sup>2271</sup>
- 12.369. As is apparent, there is a circular logic at work here, as Mr Willing outlined: the matters would only be reactivated if new and compelling evidence became available; however, as the matters were inactive, the NSWPF would not be taking steps to obtain any such evidence.<sup>2272</sup> As outlined in **Chapter 11**, that was consistent with the evidence of Ms Young and Mr Lehmann that whilst “unsolved” cases were never literally “closed”,<sup>2273</sup> the reality was that the case would not be proactively investigated unless new information were obtained.<sup>2274</sup>

<sup>2263</sup> Transcript of the Inquiry, 24 February 2023, T2161.47–2162.15 (TRA.00027.00001).

<sup>2264</sup> Transcript of the Inquiry, 21 February 2023, T1805.19–23 (TRA.00024.00001).

<sup>2265</sup> Exhibit 6, Tab 176, Strike Force Neiwand, Post Operational Assessment, 22 February 2018, 13 (SCOI.76962.00007).

<sup>2266</sup> Transcript of the Inquiry, 21 February 2023, T1808.40 (TRA.00024.00001); Transcript of the Inquiry, 23 February 2023 T2016.13 (TRA.00026.00001).

<sup>2267</sup> Transcript of the Inquiry, 21 February 2023, T1808.44–1809.1 (TRA.00024.00001); Transcript of the Inquiry, 23 February 2023, T2016.17 (TRA.00026.00001).

<sup>2268</sup> Transcript of the Inquiry, 21 February 2023, T1811.38–43 (TRA.00024.00001).

<sup>2269</sup> Transcript of the Inquiry, 21 February 2023, T1811.10–16 (TRA.00024.00001).

<sup>2270</sup> Transcript of the Inquiry, 21 February 2023, T1810.3–27 (TRA.00024.00001).

<sup>2271</sup> Transcript of the Inquiry, 21 February 2023, T1813.15–44 (TRA.00024.00001).

<sup>2272</sup> Transcript of the Inquiry, 21 February 2023, T1814.15–41 (TRA.00024.00001).

<sup>2273</sup> Transcript of the Inquiry, 26 September 2023, T6057.29–30 (TRA.00091.00001); Transcript of the Inquiry, 5 October 2023, T6644.20 (TRA.00097.00001)

<sup>2274</sup> Transcript of the Inquiry, 26 September 2023, T6057.3–43 (TRA.00091.00001); Transcript of the Inquiry, 5 October 2023, T6644.17–31 (TRA.00097.00001).

## The dissemination of the Neiwand Summaries and the POA

- 12.370. The Neiwand Summaries and the POA were disseminated up the chain of command of the NSWPF. The POA, and most likely the Neiwand Summaries themselves,<sup>2275</sup> were provided to three high-ranking officers, namely Detective Superintendent Scott Cook (Commander Homicide), Detective Acting Chief Superintendent Deborah Wallace (Director of Crime Operations) and Assistant Commissioner Mal Lanyon (Commander of State Crime Command).<sup>2276</sup>
- 12.371. The Neiwand Summaries were also available on the NSWPF e@gle.i investigative database.<sup>2277</sup> There is no evidence that access to the Neiwand Summaries was restricted.<sup>2278</sup> Thus, they were not only available to the Strike Force Neiwand investigators, but potentially a considerable range of other NSWPF officers both inside and outside of the Homicide Squad.<sup>2279</sup> Mr Willing accepted that whoever did have access to the Neiwand Summaries via e@gle.i would have been able to read the criticisms of Mr Page and Operation Taradale.<sup>2280</sup>
- 12.372. However, at no point were the Neiwand Summaries, or the general tenor of the damaging criticisms they contained about Operation Taradale, provided to Mr Page.<sup>2281</sup> Nor was he given a chance to respond.<sup>2282</sup>
- 12.373. Mr Page’s evidence was that he felt his reputation was “professionally destroyed” in the Neiwand Summaries.<sup>2283</sup>
- 12.374. Counsel Assisting submitted, and I emphatically agree, that this state of affairs—whereby the damaging accusations about Mr Page and Operation Taradale in the Neiwand Summaries were available to all officers with relevant access on e@gle.i and directly provided to three high-ranking officers—was most unfair to Mr Page.<sup>2284</sup> So much was conceded by both Mr Willing and Detective Sergeant Morgan.<sup>2285</sup>
- 12.375. As Counsel Assisting submitted, the NSWPF should have both informed Mr Page of the criticisms made against him, and given him an opportunity to respond, before the POA or Neiwand Summaries were distributed within the NSWPF.<sup>2286</sup>

<sup>2275</sup> Transcript of the Inquiry, 21 February 2023, T1819.40–1820.19 (TRA.00024.00001).

<sup>2276</sup> Transcript of the Inquiry, 21 February 2023, T1823.14–24, 1828.13–19 (TRA.00024.00001); Transcript of the Inquiry, 24 February 2023, T2144.24–47 (TRA.00027.00001).

<sup>2277</sup> Transcript of the Inquiry, 21 February 2023, T1833.41–47 (TRA.00024.00001).

<sup>2278</sup> Transcript of the Inquiry, 21 February 2023, T1834.23, 1835.30–45 (TRA.00024.00001).

<sup>2279</sup> Transcript of the Inquiry, 21 February 2023, T1834.2–36, 1835.47–1836.31 (TRA.00024.00001); Transcript of the Inquiry, 24 February 2023, T2144.16 (TRA.00027.00001).

<sup>2280</sup> Transcript of the Inquiry, 21 February 2023, T1834.25–34 (TRA.00024.00001).

<sup>2281</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [47] (SCOI.82472).

<sup>2282</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [47] (SCOI.82472).

<sup>2283</sup> Transcript of the Inquiry, 28 February 2023, T2346.38–39 (TRA.00029.00001).

<sup>2284</sup> Submissions of Counsel Assisting, 7 June 2023, [761] (SCOI.84380).

<sup>2285</sup> Transcript of the Inquiry, 21 February 2023, T1819.38 (TRA.00024.00001); Transcript of the Inquiry, 23 February 2023 T2035.23–34 (TRA.00026.00001); Transcript of the Inquiry, 24 February 2023, T2145.3–4 (TRA.00027.00001).

<sup>2286</sup> Submissions of Counsel Assisting, 7 June 2023, [761] (SCOI.84380).

- 12.376. It was submitted by Counsel Assisting that the failure to afford Mr Page any opportunity to answer the allegations against him was utterly unfair. Mr Willing acknowledged that it was unfair.<sup>2287</sup> Detective Sergeant Morgan was only prepared to go so far as to say: “[o]n face value, it appears to have been unfair not to have told him”,<sup>2288</sup> and again later: “I can see that it appears to have been unfair to him, yes.”<sup>2289</sup>
- 12.377. I agree with Counsel Assisting that the treatment of Mr Page was utterly unfair. The rather grudging nature of Detective Sergeant Morgan’s responses did him little credit.
- 12.378. Remarkably, the distribution of the findings of Strike Force Neiwand to key actors outside of the NSWPF was a completely different story.
- 12.379. Neither the Neiwand Summaries, nor their conclusions, were provided to Senior Deputy State Coroner Milledge or the Coroners Court, despite the fact that her Honour’s findings had, in effect, been reversed, and the fact that Strike Force Neiwand had alleged that Mr Page misled Senior Deputy State Coroner Milledge.<sup>2290</sup>
- 12.380. Mr Willing agreed that it was “breathtaking” for Strike Force Neiwand to reverse the decision of Senior Deputy State Coroner Milledge and said that he had never seen the like of it before.<sup>2291</sup>
- 12.381. Detective Sergeant Morgan was not aware whether the State Coroner was ever made aware that a reclassification was recommended or carried out, but conceded that “on reflection”, that should have happened.<sup>2292</sup>
- 12.382. According to Mr Leggat, he “intended”<sup>2293</sup> to approach the State Coroner about the findings of Strike Force Neiwand, but considered such contact should be postponed until State Coroner Barnes’ successor was appointed because any new inquest would be conducted under their direction.<sup>2294</sup> In oral evidence, Mr Leggat explained that the ultimate failure to do so was an “oversight” that he took full responsibility for.<sup>2295</sup> Mr Leggat also submitted that he sincerely regretted this failure.<sup>2296</sup>
- 12.383. I say more about this aspect of Strike Force Neiwand below.

<sup>2287</sup> Transcript of the Inquiry, 21 February 2023, T1819.29–38 (TRA.00024.00001).

<sup>2288</sup> Transcript of the Inquiry, 23 February 2023 T2035.28–30 (TRA.00026.00001).

<sup>2289</sup> Transcript of the Inquiry, 24 February 2023, T2145.2–4 (TRA.00027.00001).

<sup>2290</sup> Transcript of the Inquiry, 21 February 2023, T1814.46, 1816.47 (TRA.00024.00001).

<sup>2291</sup> Transcript of the Inquiry, 21 February 2023, T1815.2–31 (TRA.00024.00001).

<sup>2292</sup> Transcript of the Inquiry, 23 February 2023, T2034.16–18 (TRA.00026.00001).

<sup>2293</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [48] (SCOI.85707).

<sup>2294</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [49] (SCOI.85707).

<sup>2295</sup> Transcript of the Inquiry, 25 September 2023, T5981.32–33 (TRA.00090.00001).

<sup>2296</sup> Submissions of Stewart Leggat, 23 October 2023, [27] (SCOI.86381).

- 12.384. The families of the deceased men were never informed of Strike Force Neiwand’s findings. Mr Willing accepted that they should have been told in the circumstances.<sup>2297</sup> Mr Page’s evidence was that, in his experience and understanding, it was highly unusual for Strike Force Neiwand not to have communicated its contradictory conclusions either to the Coroner or to the families of the deceased.<sup>2298</sup>
- 12.385. Moreover, neither the findings of Strike Force Neiwand, nor the very existence of Strike Force Neiwand itself,<sup>2299</sup> were ever mentioned in public by the NSWPF, including at the Parliamentary Inquiry.<sup>2300</sup>

## The Purpose of Strike Force Neiwand

### Strike Force Neiwand’s stated purpose

- 12.386. The evidence as to the reasons for the establishment of Strike Force Neiwand, at the time it was established in October 2015, and my views in relation to that evidence, are outlined above.
- 12.387. According to the NSWPF, Detective Sergeant Brown’s email of 1 February 2016,<sup>2301</sup> attaching the spreadsheet of 116 POIs, “underscores that the objective of Strike Force Neiwand was a simple one; to attempt to solve the cases, including via an examination of the possible involvement of the identified persons of interest”.<sup>2302</sup>
- 12.388. The NSWPF submitted that little could be taken from Detective Sergeant Morgan’s email of 26 February 2016<sup>2303</sup> and that his evidence that he did not know the reasons for the establishment of Strike Force Neiwand should be “wholly uncontroversial” because Detective Sergeant Morgan was not involved in the establishment of Strike Force Neiwand, was a “subordinate member of the Homicide Squad”, and was not its OIC.<sup>2304</sup>

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<sup>2297</sup> Transcript of the Inquiry, 21 February 2023, T1816.14–20, 1817.6–11 (TRA.00024.00001).

<sup>2298</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Stephen Page, 16 February 2023, [67] (SCOI.82472).

<sup>2299</sup> Outside, it appears, of an article in the *Sydney Morning Herald* in May 2016 where Mr Willing was quoted as saying “Flowing on from the UHT’s ongoing investigation into the death of Scott Johnson, the investigations into the deaths of Gilles Mattaini, John Russell and Ross Warren have been recommenced”: Exhibit 6, Tab 222, Ava Benny-Morrison, ‘Police Reopen Sydney Gay- Hate Homicide Cases’, *Sydney Morning Herald* (Sydney, 23 May 2016) (SCOI.82028).

<sup>2300</sup> Transcript of the Inquiry, 21 February 2023, T1856.4–19 (TRA.00024.00001).

<sup>2301</sup> Exhibit 6, Tab 306, Email from Penelope Brown to Strike Force Neiwand Team, 1 February 2016 (NPL.3000.0001.0026).

<sup>2302</sup> Submissions of NSWPF, 28 June 2023, [237] (SCOI.84211).

<sup>2303</sup> Exhibit 6, Tab 285, Email from Steven Morgan to Sebastian Herft, 26 February 2016 (NPL.0115.0004.3512).

<sup>2304</sup> Submissions of NSWPF, 28 June 2023, [317] (SCOI.84211).

- 12.389. I agree that there is no suggestion in the evidence that Detective Sergeant Morgan was involved in the establishment of Strike Force Neiwand. However, given Mr Lehmann’s evidence concerning the nature of the role of an Investigation Supervisor,<sup>2305</sup> and given the terms of the email of 26 February 2016, I do not accept that Detective Sergeant Morgan did not know or was not aware of the purpose of the strike force.
- 12.390. According to the NSWPF, there is nothing in the 26 February 2016 email “to suggest that police considered that the Taradale investigation or Coronial findings were incorrect or needed to be somehow “undermined”<sup>2306</sup> To the contrary, the NSWPF submitted that it makes it apparent that Detective Sergeant Morgan’s understanding was that the investigation would proceed on the basis that the three men had met violent deaths, having been “thrown from the cliffs”<sup>2307</sup>
- 12.391. The NSWPF further submitted that the existence of media interest, and the possibility that such interest played a role in reaching the decision to commence Strike Force Neiwand, does not detract from Mr Willing’s evidence that the purpose of the strike force was to attempt to effect arrests.<sup>2308</sup> In support of this submission, the NSWPF observed that police applied for very significant rewards in connection with the three deaths, which the NSWPF said “makes it abundantly clear that police were seeking to elicit information that would lead to the resolution of those cases”<sup>2309</sup> The NSWPF submitted that evidence from Mr Lehmann, and the 2013 Issue Paper, offer significant support to Mr Willing’s evidence in that respect.<sup>2310</sup>
- 12.392. According to the NSWPF:<sup>2311</sup>

*There is no inconsistency between an investigation being a matter of significant political or media interest and police harbouring a desire that the relevant investigation result in the identification of person/s of interest and the laying of charge/s. Indeed, contrary to the imputations of Counsel Assisting’s submissions, the reputational interests of police would best have been served by the identification of evidence sufficient to justify the laying of charges.*

<sup>2305</sup> Transcript of the Inquiry, 26 September 2023, T6080.2–7 (TRA.00091.00001).

<sup>2306</sup> Submissions of NSWPF, 28 June 2023, [319] (SCOI.84211).

<sup>2307</sup> Submissions of NSWPF, 28 June 2023, [319] (SCOI.84211).

<sup>2308</sup> Supplementary Submissions of NSWPF, 23 October 2023, [294] (SCOI.86378).

<sup>2309</sup> Supplementary Submissions of NSWPF, 23 October 2023, [295] (SCOI.86378).

<sup>2310</sup> Exhibit 6, Tab 47, Detective Chief Inspector John Lehmann, “Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team to determine if any bias motivation existed” (Issue Paper, 25 September 2013), 3 (SCOI.74906); Supplementary Submissions of NSWPF, 23 October 2023, [296]–[298] (SCOI.86378).

<sup>2311</sup> Submissions of NSWPF, 28 June 2023, [321] (SCOI.84211).

## The actual purpose of Strike Force Neiwand

- 12.393. Counsel Assisting submitted that whatever its stated or ostensible purpose, soon after its establishment Strike Force Neiwand deliberately eschewed any focus on POIs, specifically sought to identify faults with Operation Taradale (an inference that Mr Willing agreed could be drawn),<sup>2312</sup> and sought to direct the focus of the investigation away from any suggestion that Mr Warren, Mr Russell or Mr Mattaini died by homicide. It did so despite the fact that Operation Taradale had received praise from multiple quarters, despite the findings of Senior Deputy State Coroner Milledge, and despite the recommendations of Detective Sergeant Taylor of the UHT.<sup>2313</sup>
- 12.394. The recommendations of Detective Sergeant Taylor had not been adopted or implemented at all prior to the creation of Strike Force Neiwand, a fact which Mr Willing accepted.<sup>2314</sup> Nor were they implemented as part of Strike Force Neiwand, as acknowledged by Mr Willing and Detective Sergeant Morgan.<sup>2315</sup>
- 12.395. According to Mr Willing, the decision not to pursue POIs was not a choice he made in his capacity as Homicide Commander. Rather, it would have been made by the investigative team, and likely the OIC—either Detective Sergeant Brown or Mr Chebl.<sup>2316</sup> As noted below, Detective Sergeant Brown denied this, and I accept her evidence. As I have also noted below, I do not consider it likely that Mr Chebl had authority to change the scope and direction of Strike Force Neiwand on his own, particularly given the extent of the involvement of Mr Leggat and Detective Sergeant Morgan in the strike force, both of whom were senior to Mr Chebl.
- 12.396. According to Detective Sergeant Morgan, the change in Strike Force Neiwand’s approach—away from seeking to investigate POIs, to deliberately not doing so—arose early. He thought the decision was made during the course of a team meeting.<sup>2317</sup>
- 12.397. Counsel Assisting submitted that this change (if change it was, and assuming Strike Force Neiwand was not actually set up in the first place to undermine Operation Taradale and overturn the findings of Senior Deputy State Coroner Milledge) must have occurred at a very early stage of Strike Force Neiwand. The small Strike Force Neiwand team never had sufficient resources to undertake the task of investigating the 116 POIs listed in the spreadsheet circulated by Detective Sergeant Brown amongst Strike Force Neiwand members in February 2016. Nor did it ever ask for more.<sup>2318</sup>

<sup>2312</sup> Transcript of the Inquiry, 21 February 2023, T1773.2–41 (TRA.00024.00001).

<sup>2313</sup> Submissions of Counsel Assisting, 7 June 2023, [597] (SCOI.84380).

<sup>2314</sup> Transcript of the Inquiry, 21 February 2023, T1757.3–30 (TRA.00024.00001).

<sup>2315</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [180] (SCOI.74883); Transcript of the Inquiry, 21 February 2023, T1757.21–30 (TRA.00024.00001); Transcript of the Inquiry, 28 February 2023, T2193.4–42 (TRA.00028.00001).

<sup>2316</sup> Transcript of the Inquiry, 21 February 2023, T1790.25–43, 1791.23–34 (TRA.00024.00001).

<sup>2317</sup> Transcript of the Inquiry, 23 February 2023, T2016.36–40 (TRA.00026.00001).

<sup>2318</sup> Submissions of Counsel Assisting, 7 June 2023, [601] (SCOI.84380).

- 12.398. As Mr Willing agreed, the chances of Strike Force Neiwand’s resources being able to investigate those 116 POIs were “limited”.<sup>2319</sup> The NSWPF also accepted as much.<sup>2320</sup>
- 12.399. Detective Sergeant Morgan also conceded that Strike Force Neiwand would have been likely to need more resources if it were to actually investigate any of the identified POIs, that no such resources were ever sought by him, and that inquiries in relation to the identified POIs were not pursued other than in possibly one or two cases.<sup>2321</sup>
- 12.400. The NSWPF accepted that Strike Force Neiwand did not proceed in the manner envisaged by the Terms of Reference, whereby the Taradale deaths would be thoroughly reinvestigated and with a view to identifying potential POIs.<sup>2322</sup>

### **Role of Detective Sergeant Brown**

- 12.401. I accept the evidence of Detective Sergeant Brown that she intended or believed that Strike Force Neiwand was going to proceed as an investigation into the Taradale deaths as homicides, and in relation to her having no awareness of the actual direction of the strike force until recently.<sup>2323</sup>

### **Role of Mr Lehmann**

- 12.402. Having co-written the 2013 Issue Paper, Mr Lehmann had devoted considerable time to the issue of suspected hate crime deaths, the police response to those deaths, and the public criticism of that response. He had made his views on these issues known in the 2013 Issue Paper, in which he characterised the number of unsolved suspected hate crime deaths as “a gross exaggeration” and accused *The Sydney Morning Herald* and *The Sun Herald* of “irresponsible journalism bordering on sensationalism.”<sup>2324</sup>
- 12.403. Mr Lehmann included the three Taradale deaths among the eight cases (out of 30) of “probable or possible” hate crime deaths in the 2013 Issue Paper, although he expressed this view with rather more doubt than Senior Deputy State Coroner Milledge’s findings.<sup>2325</sup>

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<sup>2319</sup> Transcript of the Inquiry, 21 February 2023, T1794.26–32 (TRA.00024.00001).

<sup>2320</sup> Submissions of NSWPF, 28 June 2023, [326] (SCOI.84211).

<sup>2321</sup> Transcript of the Inquiry, 23 February 2023, T1960.27–1961.15 (TRA.00026.00001).

<sup>2322</sup> Submissions of NSWPF, 28 June 2023, [322]–[323] (SCOI.84211).

<sup>2323</sup> See Transcript of the Inquiry, 3 October 2023, T6518.44–6519.45 (TRA.00095.00001).

<sup>2324</sup> Exhibit 6, Tab 47, Detective Chief Inspector John Lehmann, “Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team to determine if any bias motivation existed” (Issue Paper, 25 September 2013), 9 (SCOI.74906).

<sup>2325</sup> Exhibit 6, Tab 47, Detective Chief Inspector John Lehmann, “Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team to determine if any bias motivation existed” (Issue Paper, 25 September 2013), 9 (SCOI.74906).



- 12.404. In the June CAS, Counsel Assisting submitted that whether Mr Lehmann approached the task of supervising Strike Force Neiwand with the motivation of solving these cases, as homicides, was open to doubt. At the very least, it was submitted, his trenchantly expressed views supported a reasonable apprehension that he had quite a different motivation.<sup>2326</sup>
- 12.405. The NSWPF submitted, in the June NSWPF Submissions, that there was no basis to conclude that Mr Lehmann’s findings were “anything other than an honest record of the views he reached on the basis of a review of the material at that time”.<sup>2327</sup> I consider that Counsel Assisting had made no such suggestion; rather, it was the fact that those *were* his honest views which may give rise to concern.<sup>2328</sup>
- 12.406. The NSWPF also initially submitted, in the June NSWPF Submissions, that it was “astonishing” that Counsel Assisting sought to impugn Mr Lehmann’s professional conduct, and sought to allege Mr Lehmann was motivated to pervert the course of justice, and that he may have done so, without giving Mr Lehmann the opportunity to give evidence.<sup>2329</sup>
- 12.407. Mr Lehmann ultimately did give evidence in the September/October 2023 hearings.
- 12.408. Mr Lehmann rejected any suggestion that one of the motivations of Strike Force Neiwand was directed to minimising the potential involvement of “gay hate”.<sup>2330</sup> Mr Lehmann gave evidence, reflected in the Lehmann Submissions, that any suggestion that the UHT was “working against the theory of gay hate bias and against the findings of Coroner Milledge”<sup>2331</sup> was scurrilous, wrong and offensive.<sup>2332</sup>
- 12.409. Mr Lehmann submitted that his views, as expressed in the 2013 Issue Paper, were objective and reasonable. He also submitted, inaccurately, that the Inquiry “has made significantly similar findings”, that the statements contained in the media were exaggerated, and that this “does away with any case theory that Mr Lehmann was either biased or otherwise dismissive of the phenomenon [of ‘gay hate’ related murders]”.<sup>2333</sup>
- 12.410. However, putting aside the accuracy of that submission, the following oral evidence of Assistant Commissioner Crandell underlined the problem:<sup>2334</sup>

<sup>2326</sup> Submissions of Counsel Assisting, 7 June 2023, [627] (SCOI.84380).

<sup>2327</sup> Submissions of NSWPF, 28 June 2023, [278] (SCOI.84211).

<sup>2328</sup> Supplementary Submissions of Counsel Assisting, 16 October 2023, [61(g)] (SCOI.86243).

<sup>2329</sup> Submissions of NSWPF, 28 June 2023, [350] (SCOI.84211).

<sup>2330</sup> Transcript of the Inquiry, 26 September 2023, T6111.19–24 (TRA.00091.00001).

<sup>2331</sup> Submissions of John Lehmann, 23 October 2023, [32] (SCOI.86376).

<sup>2332</sup> Transcript of the Inquiry, 26 September 2023, T6109.29–33 (TRA.00091.00001).

<sup>2333</sup> Submissions of John Lehmann, 23 October 2023, [19]–[20] (SCOI.86376).

<sup>2334</sup> Transcript of the Inquiry, 6 December 2022, T676.32–46 (TRA.00011.00001).

*Q. What is your view of the suitability of DCI Lehmann, having expressed that view, for the role of supervising a reinvestigation of three of the deaths in question?*

*A. Yes, look, I - I think that his - what he has expressed in terms of his understanding of those cases would probably exclude him from that investigation.*

*Q. Do you think he might have been chosen precisely because he held those views?*

*MR TEDESCHI: I object.*

*THE COMMISSIONER: I allow it.*

*THE WITNESS: I can't say. I don't know.*

- 12.411. Assistant Commissioner Crandell agreed that the choice of Mr Lehmann was a “very striking choice”, and an “unfortunate choice”. He agreed with the proposition I put that “it certainly doesn’t aid the notion of objectivity”.<sup>2335</sup>
- 12.412. He also agreed that “one possibility” was that “the objective of someone” was “to support a contention that all four... deaths – namely the North Head death and the three Bondi deaths – were not or may not have been gay hate-related”.<sup>2336</sup> Assistant Commissioner Crandell later sought to withdraw any evidence that could be perceived as critical of Mr Lehmann.<sup>2337</sup>
- 12.413. The NSWPF submitted there was no proper evidentiary basis for these assertions, and that there is no probative value in the fact that Assistant Commissioner Crandell agreed with the proposition I put that selecting Mr Lehmann did not aid the notion of objectivity.<sup>2338</sup> Indeed, the NSWPF submitted that Mr Lehmann’s evidence that matters such as “[r]ace, sexual preference, religious or political leanings, the criminality or otherwise of victims, had no bearing on [his] duties and decisions at the UHT...” clearly refuted the suggestion he was afflicted with any kind of prejudice.<sup>2339</sup>
- 12.414. The NSWPF submitted that there is absolutely nothing at all to suggest that, at the time of Strike Force Neiwand’s creation, Mr Lehmann considered that a conclusion that departed from Senior Deputy State Coroner Milledge’s findings should be reached.<sup>2340</sup>

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<sup>2335</sup> Transcript of the Inquiry, 6 December 2022, T676.32–677.21 (TRA.00011.00001).

<sup>2336</sup> Transcript of the Inquiry, 6 December 2022, T678.43–679.11 (TRA.00011.00001).

<sup>2337</sup> Transcript of the Inquiry, 12 December 2022, T1066.2–16 (TRA.00015.00001).

<sup>2338</sup> Submissions of NSWPF, 28 June 2023, [351] (SCOI.84211).

<sup>2339</sup> Supplementary Submissions of NSWPF, 23 October 2023, [72]–[73] (SCOI.86378).

<sup>2340</sup> Submissions of NSWPF, 28 June 2023, [353] (SCOI.84211).

12.415. Although there is no doubt that Mr Lehmann expressed strong views in the 2013 Issue Paper, I do not consider that Mr Lehmann controlled the ultimate direction of Strike Force Neiwand. I accept Mr Lehmann’s evidence concerning what he believed about the purpose of Strike Force Neiwand. Save where I have indicated otherwise in this Report, I also broadly accept Mr Lehmann’s evidence, although note that his memory of some events was incomplete. His evidence was provided in a straightforward manner, and I consider that he did his best to assist the Inquiry.

### **Role of Detective Sergeant Morgan and Mr Leggat**

12.416. In oral evidence, Detective Sergeant Morgan denied that an obvious focus of Strike Force Neiwand was finding fault with Operation Taradale wherever possible, but he accepted that Strike Force Neiwand made criticisms of Operation Taradale.<sup>2341</sup>

12.417. When asked directly whether the object of the attacks by Strike Force Neiwand on Operation Taradale and Mr Page was to undermine the force of Senior Deputy State Coroner Milledge’s analysis and findings, Detective Sergeant Morgan stated, “[i]t threw doubt on those findings, yes”.<sup>2342</sup> However, Detective Sergeant Morgan said that finding fault with Operation Taradale “wasn’t something we deliberately set out to do”.<sup>266</sup>

12.418. Detective Sergeant Morgan did accept that whether or not the objective was to do so, Strike Force Neiwand put far more effort into finding evidence that might indicate suicide or misadventure as opposed to evidence that might indicate homicide.<sup>2343</sup>

12.419. When asked why the UHT would permit Strike Force Neiwand to contradict the findings of a coroner, Detective Sergeant Morgan said, “I think there were concerns that the investigation had not been all that objective”.<sup>2344</sup> When pressed about who held these concerns, he couldn’t recall a specific person, then admitted “but certainly having read material, I became concerned myself”.<sup>2345</sup> Detective Sergeant Morgan went on to say that:<sup>2346</sup>

*I think ultimately, Strike Force Neiwand had concerns about the Taradale – the objectivity of the Taradale investigation, which obviously would influence the findings that her Honour came to.*

<sup>2341</sup>Transcript of the Inquiry, 23 February 2023, T1955.42–1956.3 (TRA.00026.00001).

<sup>2342</sup>Transcript of the Inquiry, 23 February 2023, T1959.24–36 (TRA.00026.00001).

<sup>2343</sup>Transcript of the Inquiry, 23 February 2023, T1955.27–40 (TRA.00026.00001).

<sup>2344</sup> Transcript of the Inquiry, 22 February 2022, T1921.21–25 (TRA.00025.00001).

<sup>2345</sup> Transcript of the Inquiry, 22 February 2022, T1921.27–1922.8 (TRA.00025.00001).

<sup>2346</sup> Transcript of the Inquiry, 23 February 2023, T1959.24–45 (TRA.00026.00001).

- 12.420. Mr Leggat gave evidence that when he became involved in Strike Force Neiwand in March 2017, he was not even aware of Detective Sergeant Brown’s spreadsheet of POIs, although “at all relevant times” he was aware that Operation Taradale Inquiry had been completed by Mr Page, that Senior Deputy State Coroner Milledge had presided over the Milledge Inquest and that a large number of POIs had been identified.<sup>2347</sup>
- 12.421. Mr Leggat agreed that a deliberate decision was made that Strike Force Neiwand would focus on victimology and not “gay hate homicide”.<sup>2348</sup>
- 12.422. He ultimately conceded that in relation to all three cases, Strike Force Neiwand did not investigate the possibility of homicide at the hands of “gay hate assailants” at all.<sup>2349</sup> He said that shortly after starting in the team, Mr Chebl informed him that further targeting of the POIs, the subject of Operation Taradale, was thought to have a “very low likelihood of success”.<sup>2350</sup>
- 12.423. Mr Leggat gave evidence that (subject to the possibility of referring something to a superior) it was Detective Sergeant Morgan’s call as Investigation Supervisor, not that of Mr Chebl as OIC, as to how Strike Force Neiwand would approach its task and the issues, including the change of direction away from investigating POIs.<sup>2351</sup>
- 12.424. Mr Leggat accepted that he “could have asked those conducting Strike Force Neiwand to change that decision” (to focus on victimology and not “gay hate homicide”) but he did not do so.<sup>2352</sup> He accepted the advice he was given and “agreed with the decision”.<sup>2353</sup>
- 12.425. Mr Leggat went on further to say that:<sup>2354</sup>

*In making the decision to undertake such a wide scale operation, the decision to deploy such resources must be made while weighing up the probative value of the evidence that might have been collected by such an operation. The decision not to pursue the targeting of the Taradale POIs had been made prior to my involvement with SF Neiwand. At the time I joined the UHT, I did not regard the targeting of the Taradale POIs to be an effective deployment of the resources of the UHT.*

<sup>2347</sup> Transcript of the Inquiry, 25 September 2023, T5953.47–5954.17, 5967.20–25 (TRA.00090.00001).

<sup>2348</sup> Transcript of the Inquiry, 25 September 2023, T5968.9–12 (TRA.00090.00001).

<sup>2349</sup> Transcript of the Inquiry, 25 September 2023, T5969.45–5970.1 (TRA.00090.00001).

<sup>2350</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [37] (SCOI.85707).

<sup>2351</sup> Transcript of the Inquiry, 25 September 2023, T5970.3–39 (TRA.00090.00001).

<sup>2352</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [39] (SCOI.85707).

<sup>2353</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [39] (SCOI.85707).

<sup>2354</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [40] (SCOI.85707).

- 12.426. In response to questions regarding the recommendation by Detective Sergeant Taylor, approved by Mr Lehmann, that the NSWPF re-engage with POIs by means of an undercover operation, Mr Leggat stated that the recommendation was wrong.<sup>2355</sup>
- 12.427. Mr Leggat later submitted that a “clear inference”, that the undercover branch would not have agreed to participate in such an operation in those circumstances, can be drawn from his evidence.<sup>2356</sup> He submitted that the fact the “persons of interest had already exercised their right to silence at the time of the recommendation would have been material to any decision to pursue an investigative undertaking”.<sup>2357</sup>
- 12.428. Mr Leggat acknowledged that Detective Sergeant Taylor recommended that surveillance (being telephone intercepts and listening devices) be employed.<sup>2358</sup> However, Mr Leggat submitted that the resources available to the UHT were limited and, at the time, the UHT was tasked with many other investigations.<sup>2359</sup> Ultimately, Mr Leggat submitted that although this was a possible strategy, it was not necessarily practical.<sup>2360</sup>
- 12.429. When Mr Leggat was asked why, upon receiving the advice that it was not feasible to investigate the known POIs, he did not bring a stop to Strike Force Neiwand, Mr Leggat said that he “saw other lines of inquiry that they could conduct”.<sup>2361</sup> Mr Leggat accepted that those “lines of inquiry” amounted to “looking at the backgrounds of [Mr Mattaini, Mr Warren and Mr Russell] to see whether anything randomly might turn up”.<sup>2362</sup>
- 12.430. Contrary to this evidence of Mr Leggat, the NSWPF submitted that “it appears likely” that the decision to change the focus of Strike Force Neiwand away from POIs was “primarily driven by DSC Chebl”.<sup>2363</sup> In this respect, the NSWPF relied on the evidence of Detective Sergeant Morgan and the proposition that it would be “entirely in keeping with the conventional and well known-role played by the officer-in-charge of an investigation”.<sup>2364</sup>

<sup>2355</sup> In support of this proposition, Mr Leggat cites *R v Swaffield; Pavic v The Queen* [1998] HCA 1; 192 CLR 159; Submissions of Stewart Leggat, 23 October 2023, [15] (SCOI.86381); Transcript of the Inquiry, 25 September 2023, T5956.18–5960.45 (TRA.00090.00001).

<sup>2356</sup> Submissions of Stewart Leggat, 23 October 2023, [16] (SCOI.86381); Transcript of the Inquiry, 25 September 2023, T5961.14–17 (TRA.00090.00001).

<sup>2357</sup> Submissions of Stewart Leggat, 23 October 2023, [21] (SCOI.86381).

<sup>2358</sup> Submissions of Stewart Leggat, 23 October 2023, [22] (SCOI.86381); Transcript of the Inquiry, 25 September 2023, T5962.22–26 (TRA.00090.00001).

<sup>2359</sup> Submissions of Stewart Leggat, 23 October 2023, [22]–[23] (SCOI.86381).

<sup>2360</sup> Submissions of Stewart Leggat, 23 October 2023, [22] (SCOI.86381); Transcript of the Inquiry, 26 September 2023, T6091.16–6092.07 (TRA.00091.00001).

<sup>2361</sup> Transcript of the Inquiry, 25 September 2023, T5965.9–10 (TRA.00090.00001).

<sup>2362</sup> Transcript of the Inquiry, 25 September 2023, T5965.35–46 (TRA.00090.00001).

<sup>2363</sup> Submissions of NSWPF, 28 June 2023, [324] (SCOI.84211).

<sup>2364</sup> Supplementary Submissions of NSWPF, 23 October 2023, [320] (SCOI.86378).

- 12.431. In my view, this submission is not supported by the evidence, including that of both Mr Leggat and Mr Lehmann as to the role of an Investigation Supervisor. I consider that Detective Sergeant Morgan was at least one of the people responsible for the direction of Strike Force Neiwand and that Mr Leggat, in being fully aware of its direction, endorsing it, and failing to stop it, is also amongst those who bear responsibility for it.
- 12.432. In my view, Mr Leggat and Detective Sergeant Morgan were, and should be seen to be, responsible for the direction and written conclusions of Strike Force Neiwand.
- 12.433. The NSWPF also sought to rely on the evidence of Detective Sergeant Morgan that finding fault with Operation Taradale “wasn’t something we deliberately set out to do”, and his denial that Strike Force Neiwand sought to undermine Senior Deputy State Coroner Milledge’s findings.<sup>2365</sup> The NSWPF urged me to accept that it cannot be sensibly contested that Detective Sergeant Morgan gave anything other than candid and forthright evidence during the course of the Inquiry, including acknowledging shortcomings where appropriate. The NSWPF submitted that there is nothing to suggest his evidence was anything other than truthful.<sup>2366</sup>
- 12.434. Detective Sergeant Morgan’s attempts to minimise his involvement in, and responsibility for, the direction and conclusions of Strike Force Neiwand, and the submissions of the NSWPF consistent with that attempt, are rejected. Given the preponderance of evidence available to me, I also consider Detective Sergeant Morgan’s evidence, that he did not deliberately set out to criticise Mr Page and undermine Senior Deputy State Coroner Milledge’s findings, to be fanciful.
- 12.435. However, I also consider that Mr Leggat bears a significant amount of responsibility for Strike Force Neiwand.
- 12.436. As Counsel Assisting submitted, given Mr Leggat’s stated concern about the resource constraints of the UHT, the decision to deploy limited UHT resources in such a way (“looking at the backgrounds of [Mr Mattaini, Mr Warren and Mr Russell] to see whether anything randomly might turn up”) was remarkable to say the least.<sup>2367</sup>
- 12.437. Counsel Assisting submitted further that the “lines of inquiry” that were actually conducted by Strike Force Neiwand were almost entirely unrelated to homicide at all, in all three cases, and instead were substantially directed to criticising Operation Taradale and Mr Page, and rejecting the findings of Senior Deputy State Coroner Milledge, and that the use of limited UHT resources in that way is even more extraordinary.<sup>2368</sup> I agree.

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<sup>2365</sup> Transcript of the Inquiry, 23 February 2023, T1955.45 (TRA.00026.00001); Submissions of NSWPF, 28 June 2023, [329] (SCOI.84211).

<sup>2366</sup> Submissions of NSWPF, 28 June 2023, [330] (SCOI.84211).

<sup>2367</sup> Supplementary Submissions of Counsel Assisting, 16 October 2023, [275] (SCOI.86243).

<sup>2368</sup> Supplementary Submissions of Counsel Assisting, 16 October 2023, [275] (SCOI.86243).

- 12.438. It follows that I reject the submission of the NSWPF that Strike Force Neiwand, in deciding not to focus on POIs, would have considered the resources available and whether expending such resources would be proportionate to the importance of the information uncovered from such strategies.<sup>2369</sup> Such a submission fails to grapple with the obvious question: if the resources were not available to fulfil the purported mission of the strike force, i.e., identifying suspects and ultimately laying charges, why was it created, or continued, at all?
- 12.439. Mr Leggat submitted there is no evidence that he had an intention or design to criticise Operation Taradale and Mr Page and reject the findings of Senior Deputy State Coroner Milledge.<sup>2370</sup> Mr Leggat also submitted that the Inquiry ought to accept that if information had come to light (for example, when investigating the last known movements of any of the deceased persons) in the nature of “gay hate”, “it certainly would have been investigated”.<sup>2371</sup>
- 12.440. I reject Mr Leggat’s submissions. At the time Strike Force Neiwand was established and commenced, there was no indication, or any additional evidence, that the Taradale deaths were not homicides, or that they should not be investigated as such in the ordinary course of the UHT’s operations. The devotion of UHT resources to seeing whether something else “randomly” would come up, other than “gay hate homicide”, is unacceptable, and entirely inexplicable given the lengths to which the NSWPF as well as current and former serving officers have gone to emphasise that the UHT has finite resources.
- 12.441. Likewise, I consider Mr Leggat’s assurances that a “gay hate” line of inquiry would have been investigated had “information come to light”<sup>2372</sup> very hollow in circumstances when absolutely nothing was done to pursue it. No positive credible explanation has been provided by the NSWPF or Mr Leggat for the conduct of Strike Force Neiwand.
- 12.442. Finally, in relation to Detective Sergeant Morgan’s evidence generally, I consider it striking that at the end of his evidence, Detective Sergeant Morgan stood obdurately defiant and unapologetic as to the spurious conclusions of Strike Force Neiwand, notwithstanding his concessions about the numerous factual errors and indefensible accusations it had made. His evidence was untenable and his defiance in the face of the evidence presented to him bespeaks gross ignorance, incompetence, and a closed mind, certainly not stoicism. For Detective Sergeant Morgan to maintain that the conclusions of Strike Force Neiwand were sound is contrary to objective evidence and of serious concern. His evidence in that regard only fortifies my conclusion, already reached, that he played a substantial role in the direction of, and conclusions reached, by Strike Force Neiwand.

<sup>2369</sup> Supplementary Submissions of NSWPF, 23 October 2023, [312] (SCOI.86378); Transcript of the Inquiry, 26 September 2023, T6111.14 (TRA.00091.00001).

<sup>2370</sup> Submissions of Stewart Leggat, 23 October 2023, [25] (SCOI.86381).

<sup>2371</sup> Submissions of Stewart Leggat, 23 October 2023, [26] (SCOI.86381); Transcript of the Inquiry, 25 September 2023, T5968.3–4 (TRA.00090.00001).

<sup>2372</sup> Submissions of Stewart Leggat, 23 October 2023, [26] (SCOI.86381).

12.443. Mr Leggat, on the other hand, at least had the good grace in the end to apologise to Mr Page.<sup>2373</sup> However, I have absolutely no doubt that Mr Leggat and Detective Sergeant Morgan would have been able to provide evidence about Strike Force Neiwand with greater candour than they did.

### Role of Mr Chebl

12.444. Throughout the written submissions of the NSWPF, the submission is separately made that certain findings are not open to me because of the “failure” of the Inquiry to call Mr Chebl. It was even asserted, quite falsely, that Counsel Assisting had made a deliberate decision not to call Mr Chebl.<sup>2374</sup>

12.445. For example, the NSWPF submitted that, in the absence of evidence from Mr Chebl, the submission by Counsel Assisting that Strike Force Neiwand “deliberately approached Mr Russell’s matter with a view to bolstering a misadventure hypothesis in preference to Coroner Milledge’s finding of homicide”<sup>2375</sup> was “premised on speculative inferences”.<sup>2376</sup> The NSWPF quite incorrectly claimed that such a “finding” was “tantamount to a suggestion that officers of [Strike Force] Neiwand sought to pervert the course of justice”.<sup>2377</sup>

12.446. The NSWPF also submitted, at least initially, that Mr Chebl had not been afforded procedural fairness.<sup>2378</sup> The question of procedural fairness in this context is dealt with in **Chapters 1 and 9** of this Report and below I consider the impact of the absence of Mr Chebl on my ability make findings in relation to Strike Force Neiwand.

12.447. The first matter to note is that even though, in September 2022, the Inquiry requested that the NSWPF provide a statement in relation to Strike Force Neiwand from “Detective Sergeant Morgan ... and/or former Detective Senior Constable Michael Chebl”,<sup>2379</sup> no such statement from Mr Chebl was provided. Rather, the NSWPF simply chose to provide a statement from Detective Sergeant Morgan.

12.448. Mr Chebl (in respect of whom the NSWPF subsequently informed the Inquiry it might have a conflict of interest) was also afforded the opportunity to make a statement and/or to make submissions as part of the September/October 2023 hearings.<sup>2380</sup> As explained above, he was excused from giving evidence, for reasons known to both the Inquiry and the NSWPF.

<sup>2373</sup> Transcript of the Inquiry, 25 September 2023, T5991.30–5992.6 (TRA.00090.00001).

<sup>2374</sup> Submissions of NSWPF, 28 June 2023, [363]–[364], [392] (SCOI.84211).

<sup>2375</sup> Submissions of Counsel Assisting, 7 June 2023, [720] (SCOI.84380).

<sup>2376</sup> Submissions of NSWPF, 28 June 2023, [418] (SCOI.84211).

<sup>2377</sup> Submissions of NSWPF, 28 June 2023, [418] (SCOI.84211).

<sup>2378</sup> Submissions of NSWPF, 28 June 2023, [300], [360], [364], [450] (SCOI.84211); Supplementary Submissions of NSWPF, 23 October 2023, [50] (SCOI.86378).

<sup>2379</sup> Exhibit 6, Tab 533, Letter from Enzo Camporeale to Patrick Hodgetts, 20 September 2022, 1 (SCOI.82096).

<sup>2380</sup> Exhibit 6, Tab 437, Letter from Katherine Garaty to Enzo Camporeale, 25 August 2023 (SCOI.85258).



- 12.449. The second matter to note is that throughout the evidence of Detective Sergeant Morgan and throughout the submissions of the NSWPF, both were at pains to attribute virtually all responsibility for Strike Force Neiwand to Mr Chebl. Detective Sergeant Morgan's stance seemed to be that Mr Chebl did everything and he simply failed to properly check Mr Chebl's work.<sup>2381</sup> Even if this is true (about which I have serious doubts), given that the contents of the Neiwand Summaries contain very grave opinions and criticisms, senior officers should have ensured that the sorts of allegations being made in the Neiwand Summaries were true or could be reasonably made. Instead, both the NSWPF and Detective Sergeant Morgan have attempted to shift blame on to a man who is unable to give evidence to this Inquiry. The evidence of Mr Leggat and Mr Lehmann is fatal to this stance and to the submissions flowing from it.
- 12.450. The attempt by the NSWPF to blame Mr Chebl for the conduct of Strike Force Neiwand is glaringly unacceptable. It ill-behoves the NSWPF to disclaim responsibility for the conduct of its own officers. Such a submission amounts to no more than convenient conjecture in circumstances where the NSWPF was aware, long before the Inquiry was made aware, that Mr Chebl was unlikely to be able to give evidence.
- 12.451. Ultimately, however, I do not propose to make any adverse findings about Mr Chebl. It is my view that I do not need to hear from Mr Chebl to make the following conclusions based on the evidence that is available to me.
- 12.452. First, there is no basis for supposing that Mr Chebl played a driving or pivotal role in the preparation of the Neiwand Summaries, nor was there any evidence to suggest that Mr Chebl had the authority to change the focus and direction of Strike Force Neiwand. Indeed, the evidence pointed to the contrary, making it more than likely that Mr Chebl was following the orders of others, namely Detective Sergeant Morgan and/or Mr Leggat and/or one or more officers senior to both of them.
- 12.453. Secondly, it cannot be gainsaid that both Mr Leggat and Detective Sergeant Morgan were senior to Mr Chebl, and were either aware of, or signed off on, every relevant report or work product produced by Mr Chebl. As such, Mr Leggat and Detective Sergeant Morgan must take responsibility for the conduct of Strike Force Neiwand. I do not need to hear from Mr Chebl to determine what part Mr Leggat and Detective Sergeant Morgan each played in Strike Force Neiwand. My findings in this respect, as outlined above, can be drawn from the evidence that they, and other witnesses, provided to the Inquiry along with the documentary evidence.

### Conclusion in relation to the purpose of Strike Force Neiwand

- 12.454. Strike Force Neiwand was highly critical of Operation Taradale and of Mr Page, and it reached a radically different view in each death to the findings of Senior Deputy State Coroner Milledge.

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<sup>2381</sup> Transcript of the Inquiry, 24 February 2023, T2075.26–36 (TRA.00027.00001); Transcript of the Inquiry, 27 February 2023, T2274.16–22 (TRA.00028.00001).

- 12.455. Mr Willing denied that the purpose of Strike Force Neiwand was to undermine or contradict the findings of Senior Deputy State Coroner Milledge.<sup>2382</sup> However, he agreed that “the course of action that ultimately seems to have evolved” was that Strike Force Neiwand was focused on analysing Operation Taradale and criticising it where possible.<sup>2383</sup> Mr Willing said he could not comment on whether this was deliberate, and if so, whose motivations this reflected.<sup>2384</sup>
- 12.456. Mr Willing denied that Strike Force Neiwand “purposely” undermined or contradicted the findings of Senior Deputy State Coroner Milledge, and said that this was not part of his “mindset” in establishing Strike Force Neiwand.<sup>2385</sup>
- 12.457. Mr Lehmann submitted that any suggestion that the UHT team was working against the theory of “gay hate bias” and against the findings of Senior Deputy State Coroner Milledge was “scurrilous”, “totally wrong” and offensive.<sup>2386</sup> Mr Lehmann denied that anybody senior to him suggested this was the goal of Strike Force Neiwand.<sup>2387</sup> Mr Lehmann stated that he understood the objective of Strike Force Neiwand to be to “investigate as thoroughly as possible and bring them ultimately to justice”.<sup>2388</sup> In other words, according to Mr Lehmann, the purpose of Strike Force Neiwand was to *support* the findings of Senior Deputy State Coroner Milledge.<sup>2389</sup>
- 12.458. Detective Senior Constable Rullo, an investigator with Strike Force Neiwand, stated that he “saw no bias from my colleagues on Strike Force NEIWAND” and that he found the suggestion that they were biased or had an agenda offensive.<sup>2390</sup> The NSWPF submitted that Detective Senior Constable Rullo’s evidence was not challenged by Counsel Assisting.<sup>2391</sup>
- 12.459. The NSWPF echoed these sentiments in the June and October NSWPF Submissions, stating that the investigation was not to undermine Senior Deputy State Coroner Milledge’s analysis.<sup>2392</sup> The NSWPF reiterated Mr Lehmann’s observations as to the limited resources within the UHT, which on his account meant he “didn’t have the luxury” to allocate resources with a view to doing anything other than pursuing a genuine resolution of that case.<sup>2393</sup>

<sup>2382</sup> Transcript of the Inquiry, 20 February 2023, T1710.4–1711.8 (TRA.00023.00001).

<sup>2383</sup> Transcript of the Inquiry, 21 February 2023, T1803.24–31 (TRA.00024.00001).

<sup>2384</sup> Transcript of the Inquiry, 21 February 2023, T1803.33–36 (TRA.00024.00001).

<sup>2385</sup> Transcript of the Inquiry, 20 February 2023, T1710.4–1711.8 (TRA.00023.00001).

<sup>2386</sup> Submissions of John Lehmann, 23 October 2023, [32] (SCOI.86376); Transcript of the Inquiry, 26 September 2023, T6109.23–33 (TRA.00091.00001).

<sup>2387</sup> Transcript of the Inquiry, 26 September 2023, T6109.35–37 (TRA.00091.00001).

<sup>2388</sup> Transcript of the Inquiry, 26 September 2023, T6109.39–43 (TRA.00091.00001).

<sup>2389</sup> Transcript of the Inquiry, 26 September 2023, T6109.45–6110.1 (TRA.00091.00001).

<sup>2390</sup> Exhibit 6, Tab 520, Statement of Detective Senior Constable Paul Rullo, 22 September 2023, [48] (SCOI.85772).

<sup>2391</sup> Supplementary Submissions of NSWPF, 23 October 2023, [304] (SCOI.86378).

<sup>2392</sup> Submissions of NSWPF, 28 June 2023, [148] (SCOI.84211); Transcript of the Inquiry, 23 February 2023, T1955.42–46, 1960.11–20 (TRA.00026.00001).

<sup>2393</sup> Transcript of the Inquiry, 26 September 2023, T6110.16 (TRA.00091.00001); Supplementary Submissions of NSWPF, 23 October 2023, [302] (SCOI.86378).

12.460. For reasons explained further below, I do not accept the evidence, or any submission, to the effect that the conduct of Strike Force Neiwand proceeded—without direction and through happenstance—to focus on disproving the findings of Senior Deputy State Coroner Milledge. This accords with neither the preponderance of evidence nor with common sense. Furthermore, and given the baselessness of the findings of Strike Force Neiwand, I also reject any suggestion that the strike force, and those involved in it, did not seek to deliberately undermine Operation Taradale and to criticise the work of Mr Page.

### Informing the Coroners Court

12.461. Counsel Assisting submitted that Strike Force Neiwand was clearly aimed at discrediting both the work of Operation Taradale and Mr Page personally and discrediting the findings of the Milledge Inquest.<sup>2394</sup> It is readily apparent that considerable efforts and resources, over some two years, were utilised in an attempt to build a case for contradicting and overturning those findings.

12.462. Assistant Commissioner Crandell gave evidence, in relation to the purpose of Strike Force Neiwand, that “questioning a coroner’s finding I don’t think would be appropriate”.<sup>2395</sup> Where police undertook a new investigation “off our own instigation”, Assistant Commissioner Crandell said he “would expect that to be to find the perpetrator rather than question the coroner’s finding”.<sup>2396</sup> Assistant Commissioner Crandell also gave evidence, in relation to Strike Force Parrabell and coronial findings generally, that his view was that “if a coroner made a finding, that we should be bound by that finding on that basis”.<sup>2397</sup>

12.463. To similar effect, Mr Willing gave evidence that when a Coroner makes a finding that a death is a homicide, the police are not “at liberty to just proceed as though that finding hadn’t been made and treat it as not a homicide”.<sup>2398</sup> However, it was submitted by Counsel Assisting that the evidence overall establishes that that is just what Strike Force Neiwand did.<sup>2399</sup> Indeed, Mr Willing conceded that this was so,<sup>2400</sup> and I am satisfied that this was the case.

12.464. In the ordinary course, in the event that the NSWPF uncovered evidence that brought into question a coronial finding, the NSWPF would inform the Coroners Court. The NSWPF accepted that the findings of Strike Force Neiwand should have been conveyed to the State Coroner.<sup>2401</sup>

<sup>2394</sup> Submissions of Counsel Assisting, 7 June 2023, [576] (SCOI.84380).

<sup>2395</sup> Transcript of the Inquiry, 6 December 2022, T679.26–28 (TRA.00011.00001).

<sup>2396</sup> Transcript of the Inquiry, 6 December 2022, T679.32–41 (TRA.00011.00001).

<sup>2397</sup> Transcript of the Inquiry, 6 December 2022, T686.18–26 (TRA.00011.00001).

<sup>2398</sup> Transcript of the Inquiry, 20 February 2023, T1709.34–41 (TRA.00023.00001).

<sup>2399</sup> Submissions of Counsel Assisting, 27 June 2023, [182] (SCOI.84160).

<sup>2400</sup> Transcript of the Inquiry, 20 February 2023, T1710.4–8 (TRA.00023.00001).

<sup>2401</sup> Submissions of NSWPF, 28 June 2023, [441] (SCOI.84211); Supplementary Submissions of NSWPF, 23 October 2023, [315] (SCOI.86378).

- 12.465. As to why the Coroners Court was not informed of the conclusions of Strike Force Neiwand, Mr Leggat said that he had intended to approach the Coroners Court to ascertain their views on Strike Force Neiwand’s findings, but he wanted to wait until the new State Coroner was appointed because any further inquest would be conducted at their direction.<sup>2402</sup> Mr Leggat said:<sup>2403</sup>

*That the reference [to the State Coroner] was not made is deeply regrettable. However, it was only the product of oversight...*

- 12.466. Mr Leggat admitted that, now that he knew the true position about the unwarranted conclusions arrived at by Strike Force Neiwand, it was highly likely that it would have been an embarrassment for the NSWPF if Detective Sergeant Morgan’s views had been ventilated before the new State Coroner.<sup>2404</sup> He agreed that, “pretty much”, “it was luck that saved [the police] in the end”.<sup>2405</sup> Mr Leggat submitted that, nonetheless, he regrets the failure to refer the conclusions of Strike Force Neiwand to the Coroners Court.<sup>2406</sup>

- 12.467. After Mr Leggat gave evidence in the September/October hearings, the Inquiry identified additional documents relevant to the question of why the Coroners Court was not informed about the outcomes of Strike Force Neiwand.

- 12.468. On 18 October 2017, a “team meeting” was held in relation to Strike Force Neiwand. The recorded attendees were “Detective Inspector Leggat, Detective Sgt Morgan, Detectives Killani, Rullo, Chebl and Tierney”.<sup>2407</sup> A record of the meeting contains the following note:<sup>2408</sup>

*After discussions with the team it was agreed that there was no forensic purpose in a further inquest into this matter. Following the completion and review of Detective Chebl’s summaries contact will be made with the Manager of Coronial Services – His Honour Donald McLelland with a view a conference to discuss the most appropriate course of action.*

- 12.469. However, in a “Weekly Operational Summary” dated 11 December 2017, which was circulated by email to various NSWPF staff including Mr Leggat,<sup>2409</sup> it was recorded that:<sup>2410</sup>

*Upon further consideration, the question as to whether to request a further Coronial inquest in relation to the WARREN & RUSSELL (in view of recent finding handed down by State Coroner Mr. BARNES in S/F*

<sup>2402</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [47]–[50] (SCOI.85707).

<sup>2403</sup> Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [60] (SCOI.85707).

<sup>2404</sup> Transcript of the Inquiry, 25 September 2023, T5983.4–19 (TRA.00090.00001).

<sup>2405</sup> Transcript of the Inquiry, 25 September 2023, T5983.21–23 (TRA.00090.00001).

<sup>2406</sup> Submissions of Stewart Leggat, 23 October 2023, [27] (SCOI.86381).

<sup>2407</sup> Exhibit 6, Tab 574, Strike Force Neiwand, ‘Team 11 Meeting re SF Neiwand’, 18 October 2017 (NPL.0115.0001.0237).

<sup>2408</sup> Exhibit 6, Tab 574, Strike Force Neiwand, ‘Team 11 Meeting re SF Neiwand’, 18 October 2017 (NPL.0115.0001.0237).

<sup>2409</sup> Exhibit 6, Tab 548, Email from Christopher Olen to Connie Tse and Scott Cook, 11 December 2017 (NPL.0115.0002.8398).

<sup>2410</sup> Exhibit 6, Tab 548A, Unsolved Homicide Team, ‘Team 11 Weekly Operational Summary’, 1 December 2017, 1 (NPL.0115.0002.8416).

*MacNAMIR-JOHNSON matter) will now become a matter for the incoming Homicide Commander, D/Supt. S. COOK.*

- 12.470. Mr Leggat was provided with these additional documents and invited to make submissions in relation to these additional documents, but he declined to do so.
- 12.471. The additional documents discovered by the Inquiry are of significance, in my view, in relation to why the results of Strike Force Neiwand were never reported to the Coroners Court. Although there is no evidence from any persons to whom the Neiwand Summaries and/or the POA were circulated as to their views upon receiving them, I assume the senior NSWPF officers who received them would have read them carefully. This would have done immense damage to Mr Page's reputation within the NSWPF.
- 12.472. However, even without these additional documents, I would have rejected Mr Leggat's evidence that the failure to inform the Coroners Court about the outcomes of Strike Force Neiwand simply fell between the cracks. It defies belief that a senior member of the UHT simply forgot to inform the Coroners Court about the results of a significant strike force that was conducted by the UHT over some two years.
- 12.473. The NSWPF and Mr Leggat conceded that the families should also have been told about the findings of Strike Force Neiwand.<sup>2411</sup> Mr Leggat could not provide an explanation for why the public generally were never told about the results of Strike Force Neiwand.<sup>2412</sup> In light of the significance of the Strike Force Neiwand findings, baseless as they were, the families should have been told of the outcome of Strike Force Neiwand.
- 12.474. The NSWPF accepted, that in line with Mr Leggat's evidence, the findings of the Strike Force Neiwand should have been conveyed both to the State Coroner and to the families of each of the three men.<sup>2413</sup>
- 12.475. In my view, the fact that the findings of Strike Force Neiwand were made and disseminated to high-ranking officers without informing either the Coroners Court, or Mr Page, or the families of the three deceased men about whom the earlier public findings of the Milledge Inquest had been made, or the public generally, speaks to the totally untenable nature of its findings.

## Conclusions of the Inquiry

- 12.476. The actual (as distinct from documented) objective of Strike Force Neiwand, as exemplified by what it actually did, was to attack and rebut the work of Operation Taradale and the findings of Senior Deputy State Coroner Milledge.

<sup>2411</sup> Transcript of the Inquiry, 25 September 2023, T5983.40–5985.7 (TRA.00090.00001); Submissions of NSWPF, 28 June 2023, [442] (SCOI.84211); Supplementary Submissions of NSWPF, 23 October 2023, [315] (SCOI.86378).

<sup>2412</sup> Transcript of the Inquiry, 25 September 2023, T5986.26–5987.20 (TRA.00090.00001).

<sup>2413</sup> Supplementary Submissions of NSWPF, 23 October 2023, [315] (SCOI.86378).

- 12.477. Strike Force Neiwand was highly critical of Operation Taradale and of Mr Page, and it reached a radically different view in each death to the findings of Senior Deputy State Coroner Milledge.
- 12.478. According to the NSWPF, although the “findings” of Strike Force Neiwand differed from those arrived at by Senior Deputy State Coroner Milledge, the fact that “UHT detectives might, on a reinvestigation of a matter, arrive at conclusions different to a Coroner more than a decade earlier was not, *per se*, inappropriate; in certain circumstances, the results of further investigations may well warrant a departure from a previous Coronial finding”.<sup>2414</sup> The NSWPF also submitted: “Coronial findings are reached only on the balance of probabilities and at a particular point in time; a finding as to the manner and cause of death is not an unimpeachable and unchanging determination as to what transpired in a particular case”.<sup>2415</sup>
- 12.479. So much can be accepted. However, once again, the NSWPF has sought to elide the essential problem: Strike Force Neiwand was by no means an ordinary investigation that uncovered additional evidence that had not previously been available to a Coroner. It was an exercise aimed at attacking the basis for the Coroner’s findings (namely the work of Operation Taradale) and overturning those findings.
- 12.480. It is clear that one of the allegations made, expressly, is that Mr Page misled Senior Deputy State Coroner Milledge by deliberately withholding evidence from her Honour about Mr Mattaini’s suicidal ideation and his previous attempts at suicide.<sup>2416</sup> This amounts to an accusation that Mr Page perverted the course of justice. It is inconceivable that if such an allegation was taken seriously by senior NSWPF officers, it would not have been referred to the relevant authorities.
- 12.481. During his oral evidence, Mr Leggat agreed with the proposition that it would have been embarrassing for the NSWPF if the findings of Strike Force Neiwand had been provided to the State Coroner, because there was no basis in fact for the criticisms contained therein.<sup>2417</sup> He also agreed with the proposition that it was “luck”, in the sense that the failure to inform the State Coroner was an oversight rather than a deliberate choice, that saved the NSWPF from this embarrassment.<sup>2418</sup> I simply do not accept that as a plausible response.
- 12.482. The NSWPF accepted that:<sup>2419</sup>

*...should a conclusion be reached that is contrary to a previous Coronial finding, the appropriate course would usually be to notify the State Coroner, who may wish to consider holding a further Inquest. The evidence discloses*

<sup>2414</sup> Submissions of NSWPF, 28 June 2023, [401]–[402] (SCOI.84211).

<sup>2415</sup> Submissions of NSWPF, 28 June 2023, [403] (SCOI.84211).

<sup>2416</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [60] (SCOI.74881).

<sup>2417</sup> Transcript of the Inquiry, 25 September 2023, T5983.10–19 (TRA.00090.00001).

<sup>2418</sup> Transcript of the Inquiry, 25 September 2023, T5983.21–23 (TRA.00090.00001).

<sup>2419</sup> Submissions of NSWPF, 28 June 2023, [404] (SCOI.84211).

*that such a course of action was contemplated but did not ultimately occur. It should have.*

- 12.483. For the most part the NSWPF has, in this Inquiry, distanced itself from Strike Force Neiwand. The NSWPF submitted the “investigation conducted by Mr Page and the officers he directed was plainly careful, and comprehensive. Mr Page (and the officers he led) should be commended for their efforts”.<sup>2420</sup> I agree.
- 12.484. According to the NSWPF, there is no evidence about why Strike Force Neiwand failed to live up to its original goals.<sup>2421</sup> I agree that the evidence is not clear about why Strike Force Neiwand did not reinvestigate the Taradale deaths as homicides. However, that evidence could only have been provided to the Inquiry by the NSWPF, and it was not provided. No one from the NSWPF was prepared to accept responsibility for the creation of the strike force, and the NSWPF never was prepared to nominate anyone. Various police witnesses claimed to have had no idea when and why Strike Force Neiwand’s direction dramatically changed. The vagueness of the evidence on this issue was extraordinary. Decisions were made, but no one knew by whom.
- 12.485. It is disturbing to say the least, and I consider it difficult to accept, that neither any witness nor the NSWPF was capable of providing the Inquiry with the facts about who set up Strike Force Neiwand, why it was set up, and why its focus changed when it did. If that the position truly is that no such explanation is available, I consider there is a substantial gap in the corporate knowledge of the NSWPF in relation to a substantial strike force.
- 12.486. Although I do not consider that the NSWPF deliberately set out to deceive this Inquiry it did not attempt to assist the Inquiry to work out the facts or the truth about Strike Force Neiwand, including why it was created and why it changed direction. I have had to deduce that the blame for Strike Force Neiwand is unlikely to lie with Mr Lehmann or Detective Sergeant Brown, but with, at least, Detective Sergeant Morgan and Mr Leggat. The extent to which others within the NSWPF bear responsibility for this debacle is not clear. The approach taken by the NSWPF in this respect is extremely disappointing, and I am not satisfied that I have been provided with a true account of what happened and why.

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<sup>2420</sup> Submissions of NSWPF, 28 June 2023, [439] (SCOI.84211).

<sup>2421</sup> Submissions of NSWPF, 28 June 2023, [367]–[369] (SCOI.84211).

- 12.487. The NSWPF also submitted that there was no benefit for the NSWPF in seeking to reverse the “glowing commendation” of Operation Taradale given by the Senior Deputy State Coroner Milledge.<sup>2422</sup> Yet, the evidence points to the NSWPF having done just that. One hypothesis, which would fit the known facts, is that a “benefit” for the NSWPF would be to erode the extent to which the findings of the Milledge Inquest lent support to the possibility that the death of Scott Johnson was a homicide—a possibility at all times resisted by some senior officers. The evidence is not sufficient for me to make any such finding. However, I am of the view, consistent with the submission made by Counsel Assisting, that Strike Force Neiwand had no proper or reasonable basis for contradicting the coronial findings in any way. Those findings should be confirmed. The NSWPF agree that it is open to me to conclude that her Honour’s formal findings were correct.<sup>2423</sup>
- 12.488. Ultimately, I consider that Strike Force Neiwand was an intellectually dishonest and entirely unsatisfactory attack on Mr Page and the reliability and viability of the Milledge Inquest and findings. It is an unfortunate episode in the troubled history of the NSWPF’s approach to LGBTIQ bias crime and one that I hope is never repeated.

### **Recommendation 17**

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

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<sup>2422</sup> Submissions of NSWPF, 28 June 2023, [369] (SCOI.84211).

<sup>2423</sup> Submissions of NSWPF, 28 June 2023, [438] (SCOI.84211).





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# Chapter 13: Strike Force Parrabell

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## STRIKE FORCE PARRABELL

### A. Introduction

- 13.1. This Chapter of the Report examines Strike Force Parrabell, which was conducted by the NSWPF between August 2015 and June 2018.
- 13.2. Strike Force Parrabell, in summary, was a review, on the papers, of some 88 deaths between 1976 and 2000, which had been identified by Ms Sue Thompson and others as possibly involving LGBTIQ bias.
- 13.3. A total of up to 13 officers participated in the work of the strike force. The methodology included the use of a “Bias Crimes Indicators Review Form” (**BCIF**, also referred to as a **BCIRF**), in order to arrive at a view as to whether each death involved a bias crime.
- 13.4. The work and conclusions of the Strike Force Parrabell officers were reviewed by a team of academics, two from Flinders University in South Australia and one from Deakin University in Victoria (**the academic team**).
- 13.5. In late June 2018, the findings of Strike Force Parrabell were published in the form a report (**the Parrabell Report**). It was in two parts, the first by the Strike Force Parrabell officers (**the Police Report**) and the second by the academic team (**the Academic Report**).

### B. Origins and Beginnings

- 13.6. On 30 August 2015, Strike Force Parrabell was formally established under the direction of Assistant Commissioner Crandell.<sup>2424</sup>
- 13.7. Before I examine the details of how Strike Force Parrabell operated and the reasons for its creation, it is useful to set out some of the relevant events in the lead up to its establishment.

### Background

- 13.8. As discussed in **Chapter 11**, a second inquest was held in June 2012 into the death of Scott Johnson at North Head in 1988. In her findings, Deputy State Coroner Forbes departed from the 1989 suicide finding, and instead made an open finding.
- 13.9. On 11 February 2013, Strike Force Macnamir was established to re-investigate the circumstances of Scott Johnson’s death at North Head in 1988, and on the evening of that day an episode of the *Australian Story* program about Scott Johnson’s life and death (also referred to in **Chapter 11**) aired on the ABC.

<sup>2424</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 19 (SCOI.02632).

- 13.10. In March 2013, and again in July and August 2013, a series of articles about “gay hate deaths”, by Paul Sheehan and Rick Feneley, was published in *The Sydney Morning Herald* and *The Sun Herald*, including:
- a. On 4 March 2013, an article by Mr Sheehan titled “Gay Hate: The Shameful Crime Wave”. Mr Sheehan’s article described an “unacknowledged crime wave”, in which “thousands of men were stalked, savagely assaulted and, in at least 50 cases, murdered”. It referred to the work of Ms Thompson and Professor Tomsen, suggested that the police investigation of the death of Scott Johnson was inadequate, and praised the work of Detective Sergeant McCann in 1991 and Detective Sergeant Page in Operation Taradale.<sup>2425</sup>
  - b. On 7 March 2013, an article by Mr Sheehan, titled “Digging Up Past to Reveal Scale of Gay-Hate Deaths”. Mr Sheehan suggested in this article that the scale of LGBTIQ hate-related violence and deaths was much greater than previously believed, with as many as 70 gay men murdered between 1986 and 2002 in NSW. The article argued that the NSWPF had had “an overt and institutional distaste of gay men” at that time.<sup>2426</sup>
  - c. Over the weekend of 27–28 July 2013, three feature articles by Mr Feneley concerning an “epidemic” of up to 80 murders of gay men, of which it was said up to 30 could be unsolved. These articles were titled, “Up to 80 Men Murdered, 30 Cases Unsolved”, “Murderous Rampage of Gay-Hate Gangs” and “Breaking the Silence Over Gay Killings”.<sup>2427</sup> A follow-up article on 29 July 2013 titled, “Easy Game, Not Only for Vicious Gang but for Police Intimidation”, explored the violence experienced by men at beats, including at Marks Park.<sup>2428</sup>
  - d. On 9 August 2013, an article by Mr Feneley titled, “Public help sought with evidence of gay-hate killings”. In this article, Mr Feneley noted that NSW homicide detectives had appealed to the public for assistance in identifying POIs in connection to the deaths of Mr Russell, Mr Warren and Mr Mattaini. He quoted Mr Willing (then, Homicide Commander) as saying:<sup>2429</sup>

*I know I’ve been quiet until this point and there is a reason for that – and that’s because we’re quietly working away on it.*

<sup>2425</sup> Exhibit 6, Tab 208, Paul Sheehan, ‘Gay Hate: The Shameful Crime Wave’, *The Sydney Morning Herald* (online, 4 March 2013) (SCOI.82031).

<sup>2426</sup> Exhibit 6, Tab 209, Paul Sheehan, ‘Digging Up Past to Reveal Scale of Gay–Hate Deaths’, *The Sydney Morning Herald* (online, 7 March 2013) (SCOI.82027).

<sup>2427</sup> Exhibit 6, Tab 210, Rick Feneley, ‘Up to 80 Men Murdered, 30 Cases Unsolved’ *The Sydney Morning Herald* (Sydney, 27 July 2013) (SCOI.77369); Exhibit 6, Tab 211, Rick Feneley, ‘Murderous Rampage of Gay–Hate Gangs’, *The Sydney Morning Herald* (Sydney, 27–28 July 2013) (SCOI.77373); Exhibit 6, Tab 212, Rick Feneley, ‘Breaking the Silence Over Gay Killings’, *The Sun Herald* (Sydney, 28 July 2013) (SCOI.82025).

<sup>2428</sup> Exhibit 6, Tab 213, Rick Feneley, ‘Easy Game, Not Only for Vicious Gang but for Police Intimidation’, *The Sydney Morning Herald* (online, 29 July 2013) (SCOI.82029).

<sup>2429</sup> Exhibit 6, Tab 214, Rick Feneley, ‘Public Help Sought with Evidence of Gay–Hate Killings’, *The Sydney Morning Herald* (Sydney, 9 August 2013) (SCOI.82026).

- 13.11. This succession of articles in the mainstream media provoked several responses by the NSWPF.
- 13.12. One of those responses was the 2013 Issue Paper, prepared by Mr Lehmann and Ms Young, which reviewed most of the 30 cases referred to as “unsolved” by Ms Thompson.<sup>2430</sup> Another was the instigation by Sergeant Steer, as Bias Crimes Coordinator, of Operation Parrabell in about August 2013. I discuss Operation Parrabell further below.
- 13.13. In about late 2013, Alex Greenwich MP wrote to the Premier seeking “advice” and ‘additional investigation into’ several alleged ‘gay hate killings’ in Sydney since the 1980s.<sup>2431</sup> The Department of Premier and Cabinet, it appears, forwarded that letter to the Ministry for Police and Emergency Services for a response.<sup>2432</sup>
- 13.14. An Issue Paper of 10 January 2014 by Mr Willing appears to have been prepared for the purpose of providing the response sought.
- 13.15. In that Issue Paper, Mr Willing endorsed the views expressed in the 2013 Issue Paper including: first, that only eight of those 30 cases were “probable” or even “possible” “gay hate”-motivated murders; second, that the death of Scott Johnson was not one of those eight; and third, that the suggestion of 30 unsolved “gay hate” related murders was a “gross exaggeration”.<sup>2433</sup>
- 13.16. Mr Willing’s Issue Paper was circulated to various senior officers including the then Commander of State Crime Command and the then Director of the Serious Crime Directorate, State Crime Command. The latter officer noted that Mr Willing’s Issue Paper “provides details that negate the assertions of 30 gay hate murders ...”.<sup>2434</sup>
- 13.17. In his oral evidence, Assistant Commissioner Crandell agreed that, having regard to the views of Mr Lehmann and Ms Young in September 2013, and the views of Mr Willing in January 2014, there was as at 2014, “a widely-held view at senior levels of the police that claims relating to the numbers of gay hate-related murders and bashings, especially in the 80s and 90s, were exaggerated and unfounded” and that such claims “needed to be publicly refuted”.<sup>2435</sup>
- 13.18. By mid-late 2014, Operation Parrabell had been suspended. The reasons for this suspension are discussed further below.

<sup>2430</sup> Exhibit 6, Tab 47, Issue Paper of Detective Chief Inspector John Lehmann re: *Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team (UHT) to determine if any bias motivation existed*, 25 September 2013 (SCOI.74906).

<sup>2431</sup> Exhibit 6, Tab 48, Advice of Detective Superintendent Michael Willing re: *Correspondence received from the DPC relating to ‘Alleged Gay–Hate Killings in Sydney 1980’s onwards’*, 10 January 2014, 3 (NPL.0113.0001.0156).

<sup>2432</sup> Exhibit 6, Tab 48, Advice of Detective Superintendent Michael Willing re: *Correspondence received from the DPC relating to ‘Alleged Gay–Hate Killings in Sydney 1980’s onwards’*, 10 January 2014, 1 (NPL.0113.0001.0156).

<sup>2433</sup> Exhibit 6, Tab 48, Advice of Detective Superintendent Michael Willing re: *Correspondence received from the DPC relating to ‘Alleged Gay–Hate Killings in Sydney 1980’s onwards’*, 10 January 2014, 1, 3 (NPL.0113.0001.0156).

<sup>2434</sup> Exhibit 6, Tab 48, Advice of Detective Superintendent Michael Willing re: *Correspondence received from the DPC relating to ‘Alleged Gay–Hate Killings in Sydney 1980’s onwards’*, 10 January 2014, 13 (NPL.0113.0001.0156).

<sup>2435</sup> Transcript of the Inquiry, 6 December 2022, T663.33–47 (TRA.00011.00001).

- 13.19. On 22 October 2014, Mr Greenwich MP submitted a Question without Notice to the Minister for Police and Emergency Services. The question was in four parts, two of which were as follows:<sup>2436</sup>
- a. How many of the NSWPF’s UHT cases relating to gay hate crimes from the 1980s and 1990s will be reinvestigated?
    - i. What new rewards have been offered for information contributing to these investigations?
    - ii. How many of these cases have had new evidence or information provided?
    - iii. What resources are available to the UHT for this work?
  - b. How will the Government ensure a full review of possible gay hate crimes?
- 13.20. In an Issue Paper dated 25 February 2015, Ms Sharma stated that Operation Parrabell “has currently been put on hold due to resourcing issues and competing priorities”.<sup>2437</sup> She further stated:<sup>2438</sup>

*LGBTI community and media sensitivities are likely to be heightened at present, particularly with Mardi Gras approaching in under a week. Therefore, any suggestion that Operation Parrabell is not a current priority will undoubtedly receive adverse reactions. Making any public statement about police investigation of gay hate crimes at the present time raises the risk of managing negative media commentary.*

- 13.21. On 13 April 2015, State Coroner Barnes decided to hold a third inquest into the death of Scott Johnson, and on that evening the *Lateline* program was broadcast, which led to the removal of Ms Young from the Scott Johnson investigation (see **Chapter 11**).
- 13.22. Assistant Commissioner Crandell agreed in his oral evidence that following the events of 13 April 2015 (including the *Lateline* interview), there was another wave of publicity about “gay hate” murders and related matters. As to whether such publicity was a factor in the establishment of Strike Force Parrabell, he said:<sup>2439</sup>

*[M]y recollection was that Parrabell wasn’t necessarily just because of that, it wasn’t motivated by that Lateline interview, because when I think back now, I think of - there were questions being asked in parliament by Alex Greenwich. There was a lot of political interest and the 88 list kept getting referred to, and it just struck me that, as a policing organisation who specialise in investigation, we should be looking at.*

<sup>2436</sup> Exhibit 6, Tab 50, Memorandum to Commissioner of Police re: *Questions on Notice No. 6370 in the Legislative Assembly: Gay Hate Crimes (raised by Alex Greenwich MP)*, 27 October 2014 (SCOI.77313).

<sup>2437</sup> Exhibit 6, Tab 52, Issue Paper of Shobha Sharma re: *Correspondence from Mr Alex Greenwich MP re ‘Police Investigation of Gay Hate Crime’*, 25 February 2015, 1 (SCOI.74083).

<sup>2438</sup> Exhibit 6, Tab 52, Issue Paper of Shobha Sharma re: *Correspondence from Mr Alex Greenwich MP re ‘Police Investigation of Gay Hate Crime’*, 25 February 2015, 2 (SCOI.74083).

<sup>2439</sup> Transcript of the Inquiry, 6 December 2022, T632.35–45 (TRA.00011.00001).

- 13.23. On 22 April 2015, Assistant Commissioner Crandell met with Mr Greenwich MP. In anticipation of this meeting, Ms Sharma wrote to Assistant Commissioner Crandell by email, informing him that “[n]othing is happening with Parrabell at present, which is something Alex [Mr Greenwich] will not like to hear”.<sup>2440</sup>
- 13.24. One of the documents that Ms Sharma attached to her 22 April 2015 email to Assistant Commissioner Crandell was the 2013 Issue Paper.<sup>2441</sup>
- 13.25. In May 2015, Detective Inspector Grace drafted the Investigation Plan for Strike Force Parrabell.<sup>2442</sup>
- 13.26. In his statement, Detective Inspector Grace recalled that:<sup>2443</sup>

*I am aware that prior to the commencement of [Strike Force] Parrabell in August 2015, Assistant Commissioner Anthony Crandell ... had been involved in consultations with stakeholders (including Alex Greenwich MP and ACON) about the NSWPF’s response to allegations of LGBTIQ hate crimes and concerns regarding a deterioration in the relationship between the LGBTIQ community and the NSWPF...*

*I understand that of particular concern in the LGBTIQ community at the time was a number of media publications concerning 88 historical deaths that were considered by some to be potentially “gay hate” motivated. In response to those community concerns, I understand that there were discussions with Mr Greenwich and ACON to explore whether it was feasible to review each of the 88 cases identified as potential LGBTIQ hate crimes in order to determine whether they had involved an element of anti-LGBTIQ bias.*

## Operation Parrabell

- 13.27. Operation Parrabell, instigated by Sergeant Steer in around August 2013, was in some respects a precursor to Strike Force Parrabell.
- 13.28. Sergeant Steer emphasised, in both his ‘Project Proposal Development Form’<sup>2444</sup> and his ‘Bias Crimes Investigation Agreement’<sup>2445</sup> for Operation Parrabell, the negative impact of the media articles and the need to generate a “positive media story” and “stop further negative media coverage on this issue”.<sup>2446</sup> Sergeant Steer intended Operation Parrabell to be a “comprehensive hate crime assessment of the identified homicides to address concerns from the LGBTIQ+ community and attempt to make a final determination as to whether these crimes were hate

<sup>2440</sup> Exhibit 6, Tab 54, Email from Shoba Sharma to Anthony Crandell, 22 April 2015 (SCOI.74081).

<sup>2441</sup> Exhibit 6, Tab 54, Email from Shoba Sharma to Anthony Crandell, 22 April 2015 (SCOI.74081); Transcript of the Inquiry, 6 December 2022, T654.22–655.10 (TRA.00011.00001).

<sup>2442</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [47] (NPL.9000.0024.0012).

<sup>2443</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [23]–[24] (NPL.9000.0024.0012).

<sup>2444</sup> Exhibit 6, Tab 10, Operation Parrabell Project Proposal Form, Undated (SCOI.75072).

<sup>2445</sup> Exhibit 6, Tab 12, Operation Parrabell Bias Crime Investigation Agreement, Undated (SCOI.75056).

<sup>2446</sup> Exhibit 6, Tab 10, Operation Parrabell Project Proposal Form, Undated (SCOI.75072).

crimes”.<sup>2447</sup> The “comprehensive” approach would involve interviewing offenders and witnesses, geographic profiling, scene visits, offender profiling, reviewing NSWPF holdings, and inviting community feedback.<sup>2448</sup> Operation Parrabell’s Terms of Reference, as proposed by Sergeant Steer, were:<sup>2449</sup>

*To review suicides and suspicious deaths that occurred in the Northern Beaches and Central Metropolitan Region areas between 1976–2000, to determine if an anti-gay bias motivation was a factor in any of the deaths.*

- 13.29. As Sergeant Steer appreciated, the operation was approved “with the proviso” that it would focus on hate crime assessment only and would not be a review of the “criminal component (homicide)”.<sup>2450</sup>
- 13.30. By contrast, Assistant Commissioner Crandell’s understanding seems to have been that Operation Parrabell was actually “seeking to re-investigate several historical suspected gay-hate homicides”, including the death of Scott Johnson.<sup>2451</sup> It was partly for that reason that Assistant Commissioner Crandell considered that the scope of the task was beyond the capacity of Operation Parrabell.<sup>2452</sup>
- 13.31. Sergeant Steer said that Operation Parrabell reviewed the list of 88 deaths provided by Ms Thompson (which he said “identified 91 [not 88] homicides between 1980 and 1999”).<sup>2453</sup> By additional inquiries, Senior Sergeant Jo Kenworthy, who was on secondment with the BCU at the time, also identified an additional 51 homicides from the same period.<sup>2454</sup>
- 13.32. In October 2013, Sergeant Steer and Senior Sergeant Kenworthy prepared a “Bias Crime Assessment” on the North Head beat, specifically by way of assistance to Strike Force Macnamir.<sup>2455</sup> In May 2014, a comparative assessment was conducted in relation to the Marks Park beat.<sup>2456</sup> Operation Parrabell also took steps to obtain the “archived briefs of evidence for the identified homicides ... from State Archives”.<sup>2457</sup> At this point, the scale of the undertaking and the lack of resources of Operation Parrabell became apparent to Sergeant Steer. The only resources allocated to the operation were himself and Senior Sergeant Kenworthy, who was on secondment for a limited time. With those resources, Sergeant Steer estimated it would take at least three, and up to five, years to complete the review of the identified homicides.<sup>2458</sup> The NSWPF submitted that the “far-more expansive

<sup>2447</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [34] (SCOI.82080).

<sup>2448</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [34] (SCOI.82080).

<sup>2449</sup> Exhibit 6, Tab 11, Operation Parrabell Terms of Reference, Undated (SCOI.75090).

<sup>2450</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [34] (SCOI.82080).

<sup>2451</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [27] (SCOI.76961).

<sup>2452</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [26]–[28] (SCOI.76961).

<sup>2453</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [36] (SCOI.82080).

<sup>2454</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [36] (SCOI.82080).

<sup>2455</sup> Exhibit 6, Tab 13, Bias Crime Assessment – North Head Beat, 8 October 2013 (SCOI.74085).

<sup>2456</sup> Exhibit 6, Tab 231, Bias Crime Assessment – Comparison Between Marks Park Beat & North Head Beat, 27 May 2014, (NPL.0116.0001.0001).

<sup>2457</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [39] (SCOI.82080).

<sup>2458</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [39] (SCOI.82080).

- process” contemplated by Sergeant Steer would have taken even longer than the three to five years estimated.<sup>2459</sup>
- 13.33. Ms Sharma agreed that Operation Parrabell was under-resourced,<sup>2460</sup> and that it was “too big a job” for two people.<sup>2461</sup>
- 13.34. By mid-late 2014, Sergeant Steer had made the decision to suspend Operation Parrabell, due to insufficient resources<sup>2462</sup> and competing priorities.<sup>2463</sup> On the evidence available to the Inquiry, the actual work of Operation Parrabell was limited to the two Bias Crime Assessments in relation to North Head in October 2013 and Marks Park in May 2014.
- 13.35. In October 2014, Sergeant Steer considered that even had more staff been available, Operation Parrabell would have remained on hold as “anti-Muslim OHG [organised hate groups], Skin crews, Squadron 88 and the o/s intel for review [would have been] be the priority”.<sup>2464</sup> Similarly, Ms Sharma, in the Issue Paper of 25 February 2015, said there had been a shift in “operational focus” to “the current threats posed by organised hate groups and their activities”.<sup>2465</sup> In her oral evidence, Ms Sharma said that Operation Parrabell was suspended due to both “resourcing issues” and “competing priorities”, namely such a shift in focus to the activities of organisations such as Reclaim Australia and race-based terrorism.<sup>2466</sup>

### Establishment of Strike Force Parrabell

- 13.36. By August 2015, Assistant Commissioner Crandell (then Superintendent, Commander of the Surry Hills LAC (also referred to as the Surry Hills PAC by some of the witnesses) and the NSWPF Corporate Sponsor for SGDI),<sup>2467</sup> had formed the view that a further consideration of the list of 88 deaths identified by Ms Thompson was warranted.<sup>2468</sup> However, he considered that the BCU “was not resourced or equipped to conduct investigations of that type”.<sup>2469</sup>
- 13.37. On 30 August 2015, Strike Force Parrabell was formally established.<sup>2470</sup>

<sup>2459</sup> Submissions of NSWPF, 28 June 2023, [456] (SCOI.84211).

<sup>2460</sup> Transcript of the Inquiry, 13 December 2022, T1187.3–6 (TRA.00016.00001).

<sup>2461</sup> Transcript of the Inquiry, 13 December 2022, T1187.3–13 (TRA.00016.00001).

<sup>2462</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [39] (SCOI.82080). See also Exhibit 6, Tab 51, Email from Jacqueline Braw to Geoffrey Steer, 29 October 2014 (SCOI.74080).

<sup>2463</sup> Exhibit 6, Tab 52, Issue Paper of Shobha Sharma, *Correspondence from Mr Alex Greenwich MP re ‘Police Investigation of Gay Hate Crime’*, 25 February 2015, 1 (SCOI.74083).

<sup>2464</sup> Exhibit 6, Tab 51, Email from Jacqueline Braw to Geoffrey Steer, 29 October 2014 (SCOI.74080).

<sup>2465</sup> Exhibit 6, Tab 52, Issue Paper of Shobha Sharma, *Correspondence from Mr Alex Greenwich MP re ‘Police Investigation of Gay Hate Crime’*, 25 February 2015, 1 (SCOI.74083).

<sup>2466</sup> Transcript of the Inquiry, 13 December 2022, T1187–8 (TRA.00016.00001). See also Exhibit 6, Tab 53, Issue Paper of Nathan Corbett, *Operational Programs response to correspondence received from Mr Alex Greenwich MP re ‘Police Investigation of Gay Hate Crime’*, 25 February 2015 (SCOI.74082).

<sup>2467</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [15], [22], [38] (SCOI.76961).

<sup>2468</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [33] (SCOI.76961).

<sup>2469</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [30] (SCOI.76961).

<sup>2470</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 19 (SCOI.02632).



- 13.38. Superintendent Middleton (then Crime Manager at Surry Hills LAC) and Detective Inspector Grace (then Acting Investigations Manger at Surry Hills LAC)<sup>2471</sup> were involved in planning discussions with Assistant Commissioner Crandell regarding the establishment and logistics of Strike Force Parrabell.<sup>2472</sup>
- 13.39. The evidence of Detective Sergeant Brown was that Strike Force Parrabell was established by Mr Willing, with the “endorsement of Assistant Commissioner Crandell ... in response to the media attention being directed towards crimes involving sexuality or gender bias”.<sup>2473</sup> Detective Sergeant Brown recalled having conversations with Mr Willing to this effect.<sup>2474</sup>
- 13.40. Mr Willing denied having had any involvement in the establishment of Strike Force Parrabell.<sup>2475</sup> I discuss the establishment of Strike Force Parrabell further below.

### Rationale and objectives

- 13.41. The Inquiry received a substantial amount of evidence as to the reasons or rationales or objectives for the establishment of Strike Force Parrabell. I set out some of the key documents and oral evidence in this regard below.
- 13.42. A number of different rationales for the establishment of Strike Force Parrabell were suggested in the evidence before me. Two in particular recurred in different parts of the evidence. One was that the strike force was intended to “counter” claims in the media about large numbers of LGBTIQ bias motivated homicides and inadequate police investigations into those deaths. The other was the aim to bring the NSWPF and the LGBTIQ community closer together.
- 13.43. On one view, those two objectives would appear to be inconsistent, if not mutually exclusive.
- 13.44. On 12 February 2016, early in the life of the strike force, in an email to Dr Chris Devery, Assistant Commissioner Crandell described the genesis and objectives of Strike Force Parrabell this way (emphasis added):<sup>2476</sup>

*Below is some information regarding an investigative review by detectives from the Central Metropolitan Region into 88 alleged gay-hate homicides between the years 2000 and 1979. Publicity surrounding these cases was quite intense on the back of a now pending Coronial hearing into the death of Scott Johnson, who was a gay man that died as a result of falling from a cliff top at a known gay beat. Scott’s family alleged police corruption by*

<sup>2471</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [23] (NPL.9000.0024.0012).

<sup>2472</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [26] (NPL.9000.0029.0001); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [29] (NPL.9000.0024.0012).

<sup>2473</sup> Exhibit 6, Tab 519, Statement of Detective Sergeant Penelope Brown, 20 September 2023, [8] (SCOI.85747).

<sup>2474</sup> Transcript of the Inquiry, 3 October 2023, T6465.34–46 (TRA.00095.00001).

<sup>2475</sup> Transcript of the Inquiry, 6 October 2023, T6798.22–43 (TRA.00098.00001).

<sup>2476</sup> Exhibit 6, Tab 36, Email correspondence between Dr Christopher Devery and Anthony Crandell, 12 February–7 March 2016, 3 (SCOI.74172).

*not investigating the matter competently and assert that Scott did not take his life as recommended by police to the Coroner.*

*The publicity impacts negatively on the NSWPF within the gay, lesbian, bisexual, transgender and intersex (LGBTI) community.*

*To counter these allegations ..., I activated Strike Force Parrabell to investigate claims that 87 other deaths between 2000 and 1979 were gay-hate crimes, and that police did not investigate these matters competently.*

*... In essence, although there is some way to go investigatively, there is clear contrary evidence to earlier published research by Sue Thompson and Stephen Thompsen [sic] (AIC) that assert[sic] prevalence of gay-hate crimes and inactivity of the NSWPF.*

- 13.45. However, 10 months later on 12 December 2016, Assistant Commissioner Crandell wrote in an email to Superintendent Middleton:<sup>2477</sup>

*Whilst the purpose of [Strike Force] Parrabell is to provide the LGBTI community with comfort around the proposition of 88 gay hate deaths from the late 70's to 2000, it should also, wherever possible assist guidance for NSW police officers seeking to classify bias crimes.*

- 13.46. In the Parrabell Report itself, in June 2018, the “ultimate objective” of Strike Force Parrabell was expressed as follows:<sup>2478</sup>

*To bring the NSW Police Force and the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer community closer together by doing all that is possible from this point in history.*

- 13.47. In his statement dated 31 October 2022, Assistant Commissioner Crandell said that the establishment of Strike Force Parrabell was “a way of attempting to offer some form of resolution to or otherwise give support to the community concerns, which I considered to be valid”.<sup>2479</sup>

- 13.48. But then, during questioning of Assistant Commissioner Crandell by Senior Counsel Assisting in December 2022, the following exchange took place:<sup>2480</sup>

*Q. ... You would agree that it's clear from many of the documents that we have looked at over the course of the last day and a half that the driving reason, perhaps the main driving reason but certainly one driving reason, for the establishment of Strike Force Parrabell was the perceived need for the police to be seen to be responding to the list of the 88 deaths?*

<sup>2477</sup> Exhibit 6, Tab 79, Email correspondence between Anthony Crandell and Craig Middleton, 12–13 December 2016, 1 (SCOI.74394).

<sup>2478</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 18 (SCOI.02632).

<sup>2479</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [38] (SCOI.76961).

<sup>2480</sup> Transcript of the Inquiry, 7 December 2022, T794.42–795.12 (TRA.00012.00001).

A. Yes.

Q. And to be responding to all the publicity relating to the list?

A. Yes, and respond to those community calls.

Q. And to be seen to be responding to the suggestion that the police had not done enough to solve cases where LGBTIQ people were the victims?

A. Yes.

- 13.49. At the end of his oral evidence, in answer to questions from Senior Counsel for the NSWPF, Assistant Commissioner Crandell reverted to a reiteration of his wish to bring the NSWPF and the LGBTIQ community together:<sup>2481</sup>

*I was actually most interested in the families of the deceased people, particularly those families that I believed had been let down by the police in the past, and I also had regard to the community. I genuinely wanted to bring the community closer to the police.*

...

*I thought that I could give peace of mind to family members, surviving family members. That wasn't always the case, but that was the intention. I thought that it would be good for the Police Force to be seen to have changed, in terms of a different era and a different period of time, and I thought that by making acknowledgments of truth, that that would bring both the police and the community, LGBTIQ community, closer together, and also increase that reporting standard.*

- 13.50. In their written statements, Detective Acting Sergeant Bignell, Detective Inspector Grace and Superintendent Middleton also addressed the reasons for the establishment of Strike Force Parrabell.

- 13.51. Detective Inspector Grace said:<sup>2482</sup>

*I recall that in the early discussions that culminated in the establishment of [Strike Force] Parrabell that [Assistant Commissioner] Crandell was adamant that something needed to be done to determine whether the 88 cases contained an element of anti-LGBTIQ bias. I recall that [Assistant Commissioner] Crandell expressed the view that the facts of each matter should be reviewed using an evidence-based approach and methodology which could arrive at a determination of whether the crime was motivated by anti LGBTIQ bias in a meaningful and respectful way.*

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<sup>2481</sup> Transcript of the Inquiry, 12 December 2022, T1016.7–12, 1016.33–41 (TRA.00015.00001).

<sup>2482</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [28] (NPL.9000.0024.0012).

13.52. Superintendent Middleton stated:<sup>2483</sup>

*I remember around that time or prior there was significant media interest, and concerns from the LGBTIQ community, regarding the adequacy of previous NSWPF investigations of suspected gay hate motivated homicides.*

*From my discussions with [Assistant Commissioner] Crandell, I understood the purpose of [Strike Force] Parrabell was a genuine and good faith attempt to respond to the concerns I have identified ... above, to demonstrate that NSWPF took these investigations seriously, and, were applying significant resources on these issues and improving investigations of bias crimes and engagement with the LGBTIQ community.*

13.53. Detective Acting Sergeant Bignell stated:<sup>2484</sup>

*I always understood [Strike Force] Parrabell to be a genuine and good faith attempt at responding to community concerns regarding the prevalence of LGBTIQ hate crimes in NSW.*

13.54. However, Detective Acting Sergeant Bignell's oral evidence included the following exchange:<sup>2485</sup>

*Q. And you say, do you, that given that that was the appreciation of the list of 88 that was abroad, you just have no idea why the police wanted to check the list themselves and review them?*

*A. Not definitively, no. I can draw certain assumptions as to why –*

*...*

*Q. Not so much what would you draw, what did you draw?*

*A. That the list of 88 names that was out there, that was in the community, was, in fact, being, I suppose, advocated that it was, you know, a short-falling of police, that's all of these people died as a result of gay bias, and so, you know, there's an issue within the State of New South Wales of gay bias, and that we needed to look at each of those cases and make a determination whether or not that was the case.*

*Q. Because there was a view inside the police that those accusations were wrong?*

*A. I suppose, yes.*

*Q. That's what you knew, didn't you?*

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<sup>2483</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [27]–[28] (NPL.9000.0029.0001).

<sup>2484</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, [28] (NPL.9000.0026.0007).

<sup>2485</sup> Transcript of the Inquiry, 21 September 2023, T5881.30–5882.23 (TRA.00089.00001).

*A. That's my opinion, yes.*

- 13.55. Thereafter, in succeeding questions and answers, as the NSWPF emphasised in the October NSWPF submissions,<sup>2486</sup> Detective Acting Sergeant Bignell moved to a position of saying that the aim was not to show that the media claims were wrong, but only to look at the list of 88 deaths in an essentially neutral and objective way.<sup>2487</sup>
- 13.56. I am not persuaded that is an accurate account of what in fact occurred.

**Personnel**

- 13.57. In the course of its existence, up to 13 officers, of varying rank and experience, participated in Strike Force Parrabell.
- 13.58. Assistant Commissioner Crandell personally chose three officers from the Surry Hills LAC for the strike force, namely:
- a. Superintendent Middleton (then Detective Inspector, and the Crime Manager at the Surry Hills LAC).<sup>2488</sup> Superintendent Middleton participated in Strike Force Parrabell “from early 2015 until its completion, by overseeing or supervising the strike force as part of my role as the Crime Manager”.<sup>2489</sup>
  - b. Detective Inspector Grace (then a Detective Sergeant and acting Investigations Manager of Surry Hills LAC).<sup>2490</sup> Detective Inspector Grace was the Investigations Manager of Strike Force Parrabell, a role he held in conjunction with his full-time position at Surry Hills LAC.<sup>2491</sup>
  - c. Detective Acting Sergeant Bignell (then a Detective Senior Constable, and also a GLLO). Detective Acting Sergeant Bignell was the Officer in Charge of Strike Force Parrabell, which was a full-time role.<sup>2492</sup>
- 13.59. Of those three officers, only Detective Acting Sergeant Bignell was assigned full-time to Strike Force Parrabell.<sup>2493</sup> He was at that time 26 years old.<sup>2494</sup>

<sup>2486</sup> Supplementary Submissions of NSWPF, 23 October 2023, [337]–[339] (SCOI.86378).

<sup>2487</sup> Transcript of the Inquiry, 21 September 2023, T5882.25–5883.33 (TRA.00089.00001).

<sup>2488</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [21] (NPL.9000.0029.0001).

<sup>2489</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [29] (NPL.9000.0029.0001).

<sup>2490</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [33] (NPL.9000.0024.0012).

<sup>2491</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [30] (NPL.9000.0029.0001).

<sup>2492</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [30] (NPL.9000.0029.0001).

<sup>2493</sup> Transcript of the Inquiry, 21 September 2023, T5781.18–24 (TRA.00089.00001).

<sup>2494</sup> Transcript of the Inquiry, 21 September 2023, T5791.26–27 (TRA.00089.00001).

- 13.60. Both Detective Inspector Grace and Detective Acting Sergeant Bignell considered that they had expertise relevant to Strike Force Parrabell.<sup>2495</sup> Superintendent Middleton said “it was considered important” that the Officer in Charge of Strike Force Parrabell had the GLO background and training.<sup>2496</sup>
- 13.61. Superintendent Middleton reported to Assistant Commissioner Crandell.<sup>2497</sup> Both Detective Inspector Grace and Detective Acting Sergeant Bignell reported to Superintendent Middleton.<sup>2498</sup> The day-to-day management of the wider investigation team was the responsibility of Detective Inspector Grace and Detective Acting Sergeant Bignell.<sup>2499</sup> However, neither Superintendent Middleton nor Detective Inspector Grace was allocated to work full-time on Strike Force Parrabell, nor were they located in the same room as the investigators.<sup>2500</sup>
- 13.62. In March or April 2016, Superintendent Middleton and/or Detective Inspector Grace made a request to Assistant Commissioner Crandell for additional resourcing.<sup>2501</sup> At that time, Strike Force Parrabell had only two detectives attached to Surry Hills LAC, as well as Detective Acting Sergeant Bignell (as the Senior Investigator).<sup>2502</sup>
- 13.63. These additional resources needed to be drawn from the Central Metropolitan Region generally.<sup>2503</sup> Assistant Commissioner Crandell approached the region commander (Mr Fuller), who made such personnel resources available without hesitation.<sup>2504</sup>
- 13.64. The evidence of Superintendent Middleton was that it was not until sometime after June 2016 that the team was expanded to 10–12 investigators.<sup>2505</sup>

<sup>2495</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [33] (NPL.9000.0024.0012); Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [23] (NPL.9000.0026.0007).

<sup>2496</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [30] (NPL.9000.0029.0001).

<sup>2497</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [30] (NPL.9000.0029.0001); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [35] (NPL.9000.0024.0012).

<sup>2498</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [30] (NPL.9000.0029.0001); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [35] (NPL.9000.0024.0012).

<sup>2499</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [67] (NPL.9000.0029.0001).

<sup>2500</sup> Transcript of the Inquiry, 21 September 2023, T5782.23–35 (TRA.00089.00001).

<sup>2501</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [42] (NPL.9000.0029.0001); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [40] (NPL.9000.0024.0012).

<sup>2502</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [42] (NPL.9000.0029.0001); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [38] (NPL.9000.0024.0012).

<sup>2503</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [64] (SCOI.76961).

<sup>2504</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [64]–[65] (SCOI.76961).

<sup>2505</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [46] (NPL.9000.0029.0001).

- 13.65. However, by about September 2016 (five months after the Induction Package came into existence, and prior to the Coordinating Instructions coming into existence), all of the investigators other than Detective Acting Sergeant Bignell had left Strike Force Parrabell.<sup>2506</sup> Accordingly, it appears that none of the additional eight investigators who came from the Central Metropolitan Region were with Strike Force Parrabell for any longer than three to six months.
- 13.66. By November/December 2016, the bulk of the work of Strike Force Parrabell was completed.<sup>2507</sup>
- 13.67. Assistant Commissioner Crandell had no involvement in the selection of the other personnel allocated to Strike Force Parrabell. They were selected by the Commanders of various other LACs.<sup>2508</sup> Assistant Commissioner Crandell was not aware whether any particular criteria were used for the selection of those personnel.<sup>2509</sup> He agreed that it was “really just a matter of accepting whoever was presented to [him] as available”.<sup>2510</sup> According to Detective Inspector Grace, he had discussed with Assistant Commissioner Crandell in general terms their preferences for staff with full-time criminal investigation experience.<sup>2511</sup>
- 13.68. In the end, nine of the 13 staff involved in Strike Force Parrabell had a background in criminal investigations, being either “Detectives” or “Plain Clothes” officers.<sup>2512</sup> The other four staff were confirmed constables, with standard investigative experience and formal training in policing practice.<sup>2513</sup> Detective Inspector Grace considered that all members of the Strike Force Parrabell team “had appropriate backgrounds and had investigated suspicious deaths and coronial matters”.<sup>2514</sup>
- 13.69. None of the personnel selected for Strike Force Parrabell was from the Homicide Squad or the UHT.<sup>2515</sup> Indeed, Assistant Commissioner Crandell considered that experience in homicide investigations was not necessary.<sup>2516</sup>

<sup>2506</sup> Exhibit 6, Tab 68, Email from Craig Middleton to Anthony Crandell, 7 September 2016 (SCOI.74312); Transcript of the Inquiry, 21 September 2023, T5786.14–5787.21 (TRA.00089.00001).

<sup>2507</sup> Transcript of the Inquiry, 21 September 2023, T5781.7–11 (TRA.00089.00001).

<sup>2508</sup> While Assistant Commissioner Crandell considered that 10 officers had been selected from outside the Surry Hills LAC, this evidence was given prior to the evidence of Detective Inspector Grace and Superintendent Middleton that two investigators were appointed from within the Surry Hills LAC: Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [66] (SCOI.76961); Transcript of the Inquiry, 7 December 2022, T746.18–26 (TRA.00012.00001); Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [42] (NPL.9000.0029.0001); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [38] (NPL.9000.0024.0012).

<sup>2509</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [66] (SCOI.76961).

<sup>2510</sup> Transcript of the Inquiry, 7 December 2022, T747.21–38 (TRA.00012.00001).

<sup>2511</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [40] (NPL.9000.0024.0012).

<sup>2512</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [42] (NPL.9000.0024.0012).

<sup>2513</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [42] (NPL.9000.0024.0012).

<sup>2514</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [42] (NPL.9000.0024.0012).

<sup>2515</sup> Transcript of the Inquiry, 7 December 2022, T748.34–42 (TRA.00012.00001).

<sup>2516</sup> Transcript of the Inquiry, 7 December 2022, T748.47–749.12 (TRA.00012.00001).

- 13.70. Assistant Commissioner Crandell agreed that some knowledge of bias crimes would have been a useful or relevant criterion by which to assess the suitability of Strike Force Parrabell personnel, and that knowledge of the LGBTIQ community was also important.<sup>2517</sup> However, he did not recall whether the assigned personnel had such qualities.<sup>2518</sup> He thought that Superintendent Middleton, Detective Inspector Grace, and Detective Acting Sergeant Bignell were likely to have had some experience in that regard.<sup>2519</sup>
- 13.71. By contrast, Detective Acting Sergeant Bignell—who *did* have “involvement and knowledge of the LGBTIQ community”—did not consider that such experience was necessary for the investigators on Strike Force Parrabell to perform their duties competently.<sup>2520</sup>

## Sergeant Steer

- 13.72. In his statement, Assistant Commissioner Crandell said that “[d]uring the planning of Strike Force Parrabell”, he “approached and obtained general advice from the BCU (through Sergeant Geoffrey Steer) in relation to the assessment of “bias crimes””.<sup>2521</sup> He said that Sergeant Steer was “not involved in the scope of the strike force”, but was invited to the “initial planning meetings”.<sup>2522</sup> Similarly, Detective Inspector Grace recalled that Sergeant Steer was involved in the very beginning of the process of developing Strike Force Parrabell.<sup>2523</sup>
- 13.73. Assistant Commissioner Crandell said that Sergeant Steer “advised on use and rationale regarding the bias/hate crime indicator tool”, but that “aside from a brief advisory role” he was not involved in the daily operations of Strike Force Parrabell.<sup>2524</sup>
- 13.74. For his part, Sergeant Steer’s recollection was that:<sup>2525</sup>
- a. He had “minimal” involvement in Strike Force Parrabell;
  - b. He offered to assist Strike Force Parrabell but was told that the strike force would seek his assistance if required;
  - c. No assistance was ever sought from him;
  - d. He was not shown any draft of the BCIF or consulted about its form or content, and saw the BCIF for the first time when he was provided with some

<sup>2517</sup> Transcript of the Inquiry, 7 December 2022, T747.12–15 (TRA.00012.00001).

<sup>2518</sup> Transcript of the Inquiry, 7 December 2022, T747.17–19, 749.16–23 (TRA.00012.00001).

<sup>2519</sup> Transcript of the Inquiry, 7 December 2022, T749.16–23 (TRA.00012.00001).

<sup>2520</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [25] (NPL.9000.0026.0007).

<sup>2521</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [48] (SCOI.76961).

<sup>2522</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [48] (SCOI.76961).

<sup>2523</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [36] (NPL.9000.0024.0012).

<sup>2524</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [49] (SCOI.76961). See also Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [36] (NPL.9000.0024.0012).

<sup>2525</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [40] (SCOI.82080); Transcript of the Inquiry, 12 December 2022, T1090.34–1098.25, 1103.33–1104.21, 1106.8–46 (TRA.00015.00001).



- completed forms during the course of the “dip sample” exercise in December 2016–January 2017;
- e. He gave a presentation to Strike Force Parrabell in June 2016, which included reference to the indicators being used by the BCU for its purposes;
  - f. He was not consulted in relation to the cases, except to the extent that, after raising concerns about the lack of consultation, he was allowed to conduct a dip sample of 12 cases; and
  - g. He recalled only three meetings in relation to Strike Force Parrabell at which he was present, including: an initial meeting in 2015 when Assistant Commissioner Crandell spoke of his intention to set up the strike force, his presentation in June 2016, and the dip sample meeting in January 2017.
- 13.75. He also accepted, in the course of his oral evidence, that he was present at a meeting in December 2016 that Dr Dalton also attended.<sup>2526</sup>
- 13.76. The reason for Sergeant Steer’s concern about the lack of consultation with him included the fact that under the two-tier model embodied in the 2015 SOPs, the BCU (and ultimately Sergeant Steer as the Bias Crimes Coordinator) “was to have the final say as to if incidents were hate motivated, due to the expertise held within the unit”.<sup>2527</sup>
- 13.77. Indeed, on 16 June 2016, in a meeting between “the Parrabell team” and Ms Sharma’s Operational Programs team, it had been agreed that, after the Parrabell team had assessed and classified the cases, those reviewed cases would be sent to the BCU for review, prior to being sent to the academic team.<sup>2528</sup>
- 13.78. Such a procedure was duly spelt out in the Request for Quotation (**RFQ**) sent to the academic teams in July 2016.<sup>2529</sup>
- 13.79. In November 2016, Sergeant Steer’s Team Leader, Ms Sharma, pointed out that the BCU should by then have been consulted, having regard to the agreement to do so.<sup>2530</sup>
- 13.80. Superintendent Middleton replied to Ms Sharma that he did not understand the reasoning behind such a procedure but would be happy to send the completed review forms “for your information”.<sup>2531</sup>

<sup>2526</sup> Transcript of the Inquiry, 9 December 2022, T962.1–963.37, 980.40–981.1 (TRA.00014.00001).

<sup>2527</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [40] (SCOI.82080).

<sup>2528</sup> Exhibit 6, Tab 76, Email correspondence between Craig Middleton, Shoba Sharma and others, 10–16 November 2016 (SCOI.74377).

<sup>2529</sup> Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project – RFQ Number: 001286, 22 July 2016, [3.3] (SCOI.76961.00007).

<sup>2530</sup> Exhibit 6, Tab 76, Email correspondence between Craig Middleton, Shoba Sharma and others, 10–16 November 2016 (SCOI.74377).

<sup>2531</sup> Exhibit 6, Tab 76, Email correspondence between Craig Middleton, Shoba Sharma and others, 10–16 November 2016 (SCOI.74377).

- 13.81. However, on the evidence, apart from the dip sample of 12 cases in December 2016–January 2017, even that did not happen.<sup>2532</sup>
- 13.82. Rather, Assistant Commissioner Crandell proposed (and Superintendent Middleton agreed with) a different arrangement, as set out in an email of 12 December 2016, which included (as two points among six made in the email):<sup>2533</sup>
- a. That Sergeant Steer review certain “specific” cases (evidently a reference to the “dip sample” of 12 cases); and
  - b. That Sergeant Steer would also (in the future) review “specific” cases “where agreement cannot be reached between Operation Parrabell investigators and the Research Team to enhance further discussion around appropriate classifications”.
- 13.83. However, again, on the evidence, the arrangement set out in the second of those points was not implemented either.
- 13.84. Dr Dalton considered that “having the Bias Crime team make determinations about the cases strikes me as really important”.<sup>2534</sup> Assistant Commissioner Crandell said that it had not struck him that way.<sup>2535</sup>
- 13.85. In his oral evidence, Assistant Commissioner Crandell gave various responses to questions about why Sergeant Steer was not utilised more than he was, including that:<sup>2536</sup>
- a. Sergeant Steer had too much to do;
  - b. Sergeant Steer had access to all the completed forms, and indeed all the thousands of documents comprising the Strike Force Parrabell material, on e@gle.i;
  - c. “consultation” with Sergeant Steer was constituted by his presence at one stakeholder meeting in late 2015 and by the one dip sample meeting more than a year later; and
  - d. the Strike Force Parrabell officers had sufficient expertise to do the job themselves.
- 13.86. In addition, Detective Inspector Grace stated that he understood that if Sergeant Steer was in a position to comment on the progress of the completion of the BCIFs and Strike Force Parrabell, he would do so. Detective Inspector Grace

<sup>2532</sup> See, e.g., Transcript of the Inquiry, 7 December 2022, T739.5–740.29, 743.41–744.47 (TRA.00012.00001).

<sup>2533</sup> Exhibit 6, Tab 79, Email correspondence between Anthony Crandell and Craig Middleton, 12–13 December 2016 (SCOI.74394).

<sup>2534</sup> Exhibit 6, Tab 246, Email from Derek Dalton to Sergeant Geoffrey Steer, 12 December 2016 (SCOI.79856).

<sup>2535</sup> Transcript of the Inquiry, 7 December 2022, T741.9–21 (TRA.00012.00001).

<sup>2536</sup> Transcript of the Inquiry, 7 December 2022, T730.21–745.31 (TRA.00012.00001).

initially expected that Sergeant Steer would be more active and assumed he was unable to do so due to workload.<sup>2537</sup>

- 13.87. Assistant Commissioner Crandell said that the choice not to utilise Sergeant Steer more was not because Sergeant Steer might have expressed views or made assessments that Assistant Commissioner Crandell preferred not to receive.<sup>2538</sup>

## Constituent documents

- 13.88. At various points in time, four documents were created that stated, in similar but different ways, the objectives and approach of Strike Force Parrabell. Those four documents were the:
- a. Terms of Reference;<sup>2539</sup>
  - b. Investigation Plan;<sup>2540</sup>
  - c. Coordinating Instructions;<sup>2541</sup> and
  - d. Induction Package.<sup>2542</sup>

## Terms of Reference

- 13.89. No document constituting the Terms of Reference was produced to the Inquiry.
- 13.90. Each of Assistant Commissioner Crandell, Superintendent Middleton, Detective Inspector Grace and Detective Acting Sergeant Bignell confirmed that they had not been able to find any document recording the strike force's Terms of Reference, but "knew" or "recalled" that one did exist.<sup>2543</sup> Detective Inspector Grace recalled that he had drafted the Terms of Reference.<sup>2544</sup>
- 13.91. The Parrabell Report itself sets out, at pages 20–21, what is said to have been the content of the Terms of Reference. That content is quite brief, consisting of six short paragraphs:<sup>2545</sup>

*Assess each of the 88 deaths identified as involving potential gay-hate bias between 1976 and 2000*

*The timeframe for review is 18 months from 30 August 2015*

<sup>2537</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [37] (NPL.9000.0024.0012).

<sup>2538</sup> Transcript of the Inquiry, 7 December 2022, T742.18–36 (TRA.00012.00001).

<sup>2539</sup> See Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 20 (SCOI.02632).

<sup>2540</sup> Exhibit 6, Tab 14, Strike Force Parrabell Investigation Plan, 3 August 2015 (SCOI.74385).

<sup>2541</sup> Exhibit 6, Tab 15, Strike Force Parrabell Coordinating Instructions, Undated, 3 (SCOI.75071).

<sup>2542</sup> Exhibit 6, Tab 59, Strike Force Parrabell Induction Package, April 2016 (SCOI.77317).

<sup>2543</sup> Transcript of the Inquiry, 6 December 2022, T602.18–36 (TRA.00011.00001). See also Transcript of the Inquiry, 6 December 2022, T682.40–43 (TRA.00011.00001); Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [35] (NPL.9000.0029.0001); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [46] (NPL.9000.0024.0012); Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [36] (NPL.9000.0026.0007).

<sup>2544</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [46] (NPL.9000.0024.0012).

<sup>2545</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 20–21 (SCOI.02632).

*If during the assessment suspects are identified, that information will be forwarded to the Unsolved Homicide Team for information and further inquiries/investigation*

*After each assessment, a detailed report outlining the bias classification of each incident and justifying material will be prepared and presented to prominent representatives of the GLBTIQ community*

*Each incident will be filtered through the NSW Police Force 10 bias crime indicators as a general guide to identify direct or circumstantial evidence of bias motivation*

*Examine and report upon evidence capable of identifying suspected bias of the original police investigator.*

- 13.92. I note that what was proposed in the fourth paragraph of these Terms of Reference did not in fact occur. Indeed, even the Parrabell Report itself did not set out the “bias classification of each incident”, instead choosing to publish only (anonymised) overall statistics.

### **Investigation Plan**

- 13.93. An Investigation Plan for Strike Force Parrabell was produced to the Inquiry. It was unsigned but had spaces for signatures of Detective Inspector Grace and Superintendent Middleton dated 25 May and 3 August 2015 respectively.<sup>2546</sup>
- 13.94. Detective Inspector Grace said that it was also he who prepared the Investigation Plan, which he did in or around May 2015 with input from Assistant Commissioner Crandell and review by Superintendent Middleton.<sup>2547</sup> Superintendent Middleton could not recall the preparation of the Investigation Plan but believed that he reviewed it shortly before or on 3 August 2015. He thought that he spoke to Detective Inspector Grace about the content of the document prior to it being provided to him for review.<sup>2548</sup>
- 13.95. The objective of Strike Force Parrabell was described in the May 2015 Investigation Plan as follows:<sup>2549</sup>

*To conduct a review of current NSWPF holdings of the cases, previously identified by the [sic] Ms Sue Thompson and Bias Crime Unit, to determine if there is any evidence of sexuality or gender bias involvement which may have contributed to the death. This review will relate to police investigations conducted between 1976 and 2000. The purpose of the review is to determine if any sexuality or gender bias was involved in any of the deaths.*

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<sup>2546</sup> Exhibit 6, Tab 14, Strike Force Parrabell Investigation Plan, 3 August 2015 (SCOI.74385).

<sup>2547</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [47] (NPL.9000.0024.0012).

<sup>2548</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [39] (NPL.9000.0029.0001).

<sup>2549</sup> Exhibit 6, Tab 14, Strike Force Parrabell Investigation Plan, 3 August 2015 (SCOI.74385).

## Induction Package

- 13.96. The Induction Package, dated April 2016, was also produced to the Inquiry.<sup>2550</sup>
- 13.97. Again, it was Detective Sergeant Grace who drafted the Induction Package in or around April 2016.<sup>2551</sup>
- 13.98. By that time, the strike force had been under way for some eight months, and (as noted above) additional personnel were being sought. The evidence of Superintendent Middleton was that it was not until sometime after June 2016 that the team was expanded to 10–12 investigators.<sup>2552</sup>
- 13.99. According to Detective Sergeant Grace, the Induction Package was designed to provide an introduction to new staff and set out the expectations of them in their roles in Strike Force Parrabell. He described it as “in effect, an earlier version of the Coordinating Instructions”, and said it was available to all Strike Force Parrabell officers on e@gle.i.<sup>2553</sup>
- 13.100. Detective Acting Sergeant Bignell recalled seeing the Induction Package once it had been drafted, but said that he did not refer back to it on a regular basis. Nor did he recall providing it to the investigators; he too said it was available to them on e@gle.i.<sup>2554</sup>
- 13.101. Superintendent Middleton was “unaware if the Induction Package was in fact used by the investigation team”, and he did not recall being involved in “the initial briefing of the team”.<sup>2555</sup>

## Coordinating Instructions

- 13.102. The Coordinating Instructions for Strike Force Parrabell were also produced to the Inquiry.<sup>2556</sup>
- 13.103. They were undated. However, Detective Inspector Grace’s evidence was that they were drafted “in or around October 2016”.<sup>2557</sup>
- 13.104. According to Detective Inspector Grace:<sup>2558</sup>

*The Coordinating Instructions were drafted ... to reflect the evolving thinking of the review team ([Detective Chief Inspector] Middleton, me and [Detective Senior Constable] Bignell), particularly in respect of the categorisation of bias crime. We considered that a Coordinating Instructions document would be helpful in summarising the scope, form and*

<sup>2550</sup> Exhibit 6, Tab 59, Strike Force Parrabell Induction Package, April 2016 (SCOI.77317).

<sup>2551</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [48] (NPL.9000.0024.0012).

<sup>2552</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [46] (NPL.9000.0029.0001).

<sup>2553</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [43], [48] (NPL.9000.0024.0012).

<sup>2554</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [39] (NPL.9000.0026.0007).

<sup>2555</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [43] (NPL.9000.0029.0001).

<sup>2556</sup> Exhibit 6, Tab 15, Strike Force Parrabell Coordinating Instructions, Undated, 3 (SCOI.75071).

<sup>2557</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [49] (NPL.9000.0024.0012).

<sup>2558</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [49]–[50] (NPL.9000.0024.0012).

*chain of command of [Strike Force] Parrabell given additional resources would be allocated. These instructions were formulated over a series of meetings, and they were ultimately drafted by me.*

*The Coordinating Instructions were not a standard template document, but rather they were created as a brief for new staff joining [Strike Force] Parrabell to convey the reference and scope of [Strike Force] Parrabell and to ensure all staff took a consistent approach to their work on the Strike Force. I used the information from the Investigation Plan to draft the Coordinating Instructions (with relevant updates to reflect the movement in our thinking and understanding of the issues) so as to ensure those working on [Strike Force] Parrabell were aware of the updates.*

- 13.105. Superintendent Middleton’s recollection was that the Coordinating Instructions were prepared by Detective Inspector Grace “due to the decision to make material changes to the BCIF ... and to brief investigators”.<sup>2559</sup>
- 13.106. However, in fact, by October 2016—when the Coordinating Instructions were drafted—the only investigator left working on Strike Force Parrabell was Detective Acting Sergeant Bignell. All the others had already left.<sup>2560</sup>
- 13.107. It would therefore appear that none of the investigators, other than Detective Acting Sergeant Bignell, ever saw the Coordinating Instructions.

### **Content of constituent documents**

- 13.108. There are many differences of expression in the Investigation Plan, Induction Package and Coordinating Instructions. Some of those are significant, as outlined later in this Chapter. However, in general terms what was conveyed by each of them was as follows:<sup>2561</sup>
- a. The strike force was to be a purely paper review of 88 deaths that had already been investigated by the NSWPF in the past;
  - b. There was to be no re-investigation of any of those deaths;
  - c. Rather, the strike force was simply to look at whatever material was available from previous investigations, and, from that material only, form an opinion as to whether a “sexuality or gender bias”, or “anti-gay bias”, or “gay hate bias”, or “bias crime”, or “gay hate crime”, had been involved in any of the deaths at the times they had occurred, many years earlier. All of these quoted expressions were used in different parts of the various documents;

<sup>2559</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [46] (NPL.9000.0029.0001).

<sup>2560</sup> Exhibit 6, Tab 68, Email from Craig Middleton to Anthony Crandell, 7 September 2016 (SCOI.74312); Transcript of the Inquiry, 21 September 2023, T5786.14–5787.21 (TRA.00089.00001).

<sup>2561</sup> See Exhibit 6, Tab 14, Strike Force Parrabell Investigation Plan, 3 August 2015 (SCOI.74385); Exhibit 6, Tab 15, Strike Force Parrabell Coordinating Instructions, Undated, (SCOI.75071); Exhibit 6, Tab 59, Strike Force Parrabell Induction Package, April 2016 (SCOI.77317).

- d. The method to be adopted was that the officers would review whatever historical material was available in each particular case, and then fill out a BCIF in respect of that case, by:
    - i. Providing responses to various “prompts”, in respect of 10 “indicators”, as set out in the Form; and
    - ii. Answering ‘Yes’ or ‘No’, to several possible alternative “findings”, in respect of each “indicator”; and
  - e. In the version of the BCIF which ultimately appeared in the Parrabell Report,<sup>2562</sup> there were four such alternative “findings”, expressed in the following terms (each of which was accompanied by a short description of what that option entailed):
    - i. “Evidence of bias crime”;
    - ii. “Suspected bias crime”;
    - iii. “No evidence of bias crime”; or
    - iv. “Insufficient information to establish a bias crime”.
- 13.109. As the evidence revealed in due course, there were several other (earlier and different) versions of the BCIF; and, in addition, each of the Investigation Plan, the Coordinating Instructions and the Induction Package was expressed differently in relation to the options, or the accompanying explanation of those options, or both.

### Creation and dissemination of constituent documents

- 13.110. As eventually emerged in the September/October 2023 hearings, it was Detective Inspector Grace who drafted each of the Terms of Reference, Investigation Plan, Induction Package and Coordinating Instructions, at the various different points in time noted above.<sup>2563</sup>
- 13.111. Assistant Commissioner Crandell accepted that the content of these documents would have “ultimately [been] my decision”,<sup>2564</sup> but thought that since his signature was not present on them, the senior detectives who authored the documents (which, as it ultimately emerged, was Detective Inspector Grace) may have decided it was appropriate to publish them prior to receiving his approval.<sup>2565</sup>

<sup>2562</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 122 ff (SCOI.02632).

<sup>2563</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [44], [46], [48]–[49] (NPL.9000.0024.0012); Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [34] (NPL.9000.0026.0007).

<sup>2564</sup> Transcript of the Inquiry, 7 December 2022, T705.7–8 (TRA.00012.00001).

<sup>2565</sup> Transcript of the Inquiry, 7 December 2022, T705.26–30 (TRA.00012.00001).

- 13.112. It appears that, in general, the constituent documents were made available to investigators only in the sense that they were part of the “administrative package” of documents located on e@gle.i.<sup>2566</sup>
- 13.113. Detective Acting Sergeant Bignell did not recall providing either the Coordinating Instructions or the Induction Package to investigators.<sup>2567</sup> However, he considered that the verbal briefings he provided to new staff members “covered much of the material in the Constituent Documents”.<sup>2568</sup>

### The Bias Crime Indicator Review Form

- 13.114. It was also Detective Inspector Grace who drafted the BCIF. He used indicators which were in use within the BCU at the time.<sup>2569</sup> The first nine had been drawn by Sergeant Steer from a curriculum document produced in Massachusetts, while the tenth had been added by Sergeant Steer.<sup>2570</sup>
- 13.115. Detective Sergeant Grace said that he sent the “initial BCIF” to Superintendent Middleton, who made numerous changes with which Detective Sergeant Grace agreed.<sup>2571</sup> The 10 bias crime “indicators” in the BCIF were:<sup>2572</sup>
- a. Differences;
  - b. Comments, Written Statements, Gestures;
  - c. Drawings, Markings, Symbols, Tattoos, Graffiti;
  - d. Organised Hate Groups;
  - e. Previous existence of Bias Crime Incidents;
  - f. Victim/Witness Perception;
  - g. Motive of Offender/s;
  - h. Location of Incident;
  - i. Lack of Motive; and
  - j. Level of Violence.

<sup>2566</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [35], [40] (NPL.9000.0026.0007); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [43], [48] (NPL.9000.0024.0012).

<sup>2567</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [39], [40] (NPL.9000.0026.0007).

<sup>2568</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [34] (NPL.9000.0026.0007).

<sup>2569</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [52] (NPL.9000.0024.0012).

<sup>2570</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [21] (SCOI.82080); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [52] (NPL.9000.0024.0012).

<sup>2571</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [52] (NPL.9000.0024.0012).

<sup>2572</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 67 (SCOI.02632).



- 13.116. In his statement, Assistant Commissioner Crandell said that the BCIF was a tool used by the BCU.<sup>2573</sup> However, in his oral evidence he accepted that that was not so, and that in fact, as Sergeant Steer testified,<sup>2574</sup> the BCIF had never been used by the BCU. Rather, it had been created by Strike Force Parrabell officers.<sup>2575</sup>

### Comparing the constituent documents, and the various versions of the BCIF

- 13.117. The Parrabell Report asserts that the BCIF used by the Strike Force Parrabell officers was the document comprising Appendix B to the Parrabell Report.<sup>2576</sup> Assistant Commissioner Crandell initially confirmed this assertion in his written statement to the Inquiry.<sup>2577</sup>
- 13.118. However, as the evidence gradually emerged, it became apparent to the Inquiry that the position was more complex than that. This emerged to some extent, first, in the course of Assistant Commissioner Crandell’s oral evidence in the December hearings, then further in detailed correspondence between the Inquiry and the NSWPF in May 2023,<sup>2578</sup> and finally the true position was more fully revealed in the evidence of Detective Acting Sergeant Bignell in September 2023.
- 13.119. The version of the BCIF found at Appendix B to the Parrabell Report required the Strike Force Parrabell officers to assess each of the 10 indicators as falling within one or other of four possible “findings”, expressed as follows (underline emphasis added):<sup>2579</sup>

**1. Evidence of Bias Crime** – *sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.*

**2. Suspected Bias Crime** – *evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.*

**3. No Evidence of Bias Crime** – *the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.*

**4. Insufficient Information** – *insufficient information has been recorded to make a determination in regards to bias motivation. This may*

<sup>2573</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [59] (SCOI.76961).

<sup>2574</sup> Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [21] (SCOI.82080).

<sup>2575</sup> Transcript of the Inquiry, 7 December 2022, T698.18–699.39 (TRA.00012.00001).

<sup>2576</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 67, 121–131 (SCOI.02632).

<sup>2577</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [62] (SCOI.76961).

<sup>2578</sup> Exhibit 6, Tab 385, Letter from Enzo Camporeale to Patrick Hodgetts, 10 May 2023 (SCOI.83387); Exhibit 6, Tab 386, Letter from Katherine Garaty to Enzo Camporeale, 19 May 2023 (SCOI.83388).

<sup>2579</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 121–131 (SCOI.02632).

*be due to a lack of detail recorded by police or a lack of information supplied by victims and/or witnesses.*

- 13.120. However, there had been at least two, perhaps three, significantly different previous versions.
- 13.121. The Investigation Plan (drafted in May 2015) did not contain or annex a version of the BCIF in full, but it did assert that the four available “findings” were in the following, different, terms (emphasis added):<sup>2580</sup>
- *There is evidence that sexuality or other bias was involved in the death.*
  - *It appears likely that sexuality or other bias was involved in the death.*
  - *It appears unlikely that sexuality or other bias was involved in the death.*
  - *There is no evidence that sexuality or other bias was involved in the death.*
- 13.122. As is apparent, that version (among other things):
- a. Contained no reference to any particular standard of proof;
  - b. Referred to “sexuality or other bias”;
  - c. Referred to “likely” or “unlikely” rather than “suspected”; and
  - d. Contained no “Insufficient Information” option.
- 13.123. Next, the Induction Package (drafted in April 2016) referred (in the body of the document, at the foot of page 3) to four available “findings”, which were in the same terms as set out in the Investigation Plan.<sup>2581</sup>
- 13.124. However, the Induction Package also contained, embedded within it at pages 4–10, another, different, version of the BCIF itself. In that version, only three categories, not four, were listed, namely:
1. *There is evidence that sexuality or other bias was involved in the death.*
  2. *It appears likely that sexuality or other bias was involved in the death.*
  3. *There is no evidence that sexuality or other bias was involved in the death.*
- 13.125. The “[i]t appears unlikely ...” category, as found both in the Investigation Plan and in the body of the Induction Package itself, was omitted.

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<sup>2580</sup> Exhibit 6, Tab 14, Strike Force Parrabell Investigation Plan, 3 August 2015, 3 (SCOI.74385).

<sup>2581</sup> Exhibit 6, Tab 59, Strike Force Parrabell Induction Package, April 2016, 3, 4–10 (SCOI.77317).

- 13.126. Superintendent Middleton was unable to explain why this indicator was omitted. To the best of his recollection, no cases were reviewed against only three rather than four categories.<sup>2582</sup>
- 13.127. Next, embedded within the Coordinating Instructions (drafted in October 2016) was another, slightly different, version of the BCIF.<sup>2583</sup> The four options for “findings” were the same as in the version at Appendix B of the Parrabell Report, but with two exceptions:
- a. The first category was described as “Bias Crime” rather than “Evidence of Bias Crime”; and
  - b. The third category was described as “Not Bias Crime” rather than “No Evidence of Bias Crime”.
- 13.128. In his oral evidence,<sup>2584</sup> Assistant Commissioner Crandell stated and/or accepted, *inter alia*, that:
- a. The Investigation Plan was in existence by some time prior to 30 August 2015;<sup>2585</sup>
  - b. Up until at least 9 June 2016, the Strike Force Parrabell officers were using the four categories as found within the Investigation Plan drafted in May 2015;<sup>2586</sup>
  - c. In June 2016, Sergeant Steer gave a presentation in relation to bias crime, which included the terms of five possible findings as to the presence or otherwise of bias crime;<sup>2587</sup>
  - d. On 29 June 2016, Detective Acting Sergeant Bignell informed Superintendent Middleton that Strike Force Parrabell was henceforth going to use four (out of the five) categories (findings) from Sergeant Steer’s presentation—instead of those found in the version embedded within the Investigation Plan;<sup>2588</sup>
  - e. Thus, the version of the BCIF as found in the Coordinating Instructions (which adopted those four alternative findings) did not come into existence until at least 29 June 2016.<sup>2589</sup> (In fact, as the evidence of Detective Inspector Grace subsequently revealed, the Coordinating Instructions did not come into existence until October 2016);

<sup>2582</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [57] (NPL.9000.0029.0001).

<sup>2583</sup> Exhibit 6, Tab 15, Strike Force Parrabell Coordinating Instructions, Undated, 4–13 (SCOI.75071).

<sup>2584</sup> Transcript of the Inquiry, 8 December 2022, T838–845 (TRA.00013.00001).

<sup>2585</sup> Transcript of the Inquiry, 8 December 2022, T841.1–5 (TRA.00013.00001).

<sup>2586</sup> Transcript of the Inquiry, 8 December 2022, T844.1–13 (TRA.00013.00001); Exhibit 6, Tab 63, Email correspondence between Shoba Sharma, Anthony Crandell and Craig Middleton, 8–10 June 2016 (SCOI.74237).

<sup>2587</sup> Exhibit 6, Tab 64, Email correspondence between Craig Middleton, Geoffrey Steer and others, 28–29 June 2016 (SCOI.74246); Tab 64A, Powerpoint presentation by Sergeant Geoffrey Steer – ‘Bias Crimes: Op Parrabell’, Undated (SCOI.77319).

<sup>2588</sup> Exhibit 6, Tab 64, Email correspondence between Craig Middleton, Geoffrey Steer and others, 28–29 June 2016 (SCOI.74246); Tab 64A, Powerpoint presentation by Sergeant Geoffrey Steer – ‘Bias Crimes: Op Parrabell’, Undated (SCOI.77319).

<sup>2589</sup> Transcript of the Inquiry, 8 December 2022, T844.15–47 (TRA.00013.00001).

- f. Prior to 29 June 2016, the Strike Force Parrabell officers had been using a different version of the BCIF, containing the four (differently expressed) alternative findings as found in the version embedded within the Investigation Plan;<sup>2590</sup> and
- g. The Strike Force Parrabell officers had by that time used that earlier version of the BCIF to review at least 28 of the 88 cases.<sup>2591</sup>
- 13.129. Assistant Commissioner Crandell also accepted that on or about 19 January 2017, there had been further changes to two of the four categories in the BCIF, namely:<sup>2592</sup>
- From ‘Bias Crime’ to ‘Evidence of a bias crime’; and
  - From ‘Not Bias Crime’ to ‘No evidence of a bias crime’.
- 13.130. Those two changes constituted the differences between the alternative findings as they appear in the Coordinating Instructions, and the alternative findings as they appear in Appendix B to the Parrabell Report.
- 13.131. Other evidence also indicated that at least three, if not four successive versions of the BCIF were used between mid-2015 and mid-2018 (when the Parrabell Report was published), as summarised in the following paragraphs.

### Possible original version of BCIF (‘Form 1’)

- 13.132. In an email of 12 February 2016 to Assistant Commissioner Crandell and others, Superintendent Middleton provided an “update” in relation to Strike Force Parrabell.<sup>2593</sup> The full content of the BCIF then in use is not set out in, or attached to, that email.
- 13.133. However, in describing the “2<sup>nd</sup> review” of 2 February 2016, Superintendent Middleton reported that 15 reviews of cases had been completed, with the results being (emphasis added):<sup>2594</sup>

*1 × case identified as involving a Gender or other Bias in the Crime*

*9 × cases identified as Likely to involve a Gender or other Bias in the Crime*

*3 × cases identified as Unlikely to involve a Gender or other Bias in the Crime*

<sup>2590</sup> Transcript of the Inquiry, 8 December 2022, T843–4 (TRA.00013.00001).

<sup>2591</sup> Transcript of the Inquiry, 8 December 2022, T843–4 (TRA.00013.00001); Exhibit 6, Tab 63, Email correspondence between Shoba Sharma, Anthony Crandell and Craig Middleton, 8–10 June 2016 (SCOI.74237).

<sup>2592</sup> Transcript of the Inquiry, 8 December 2022, T845–6 (TRA.00013.00001). See also, Exhibit 6, Tab 83, Minutes from Strike Force Parrabell/Bias Crimes Unit meeting, 19 January 2017, 3 (SCOI.74429).

<sup>2593</sup> Exhibit 6, Tab 58, Email from Craig Middleton to Daniel Doherty and Anthony Crandell, 12 February 2016 (SCOI.74152).

<sup>2594</sup> Exhibit 6, Tab 58, Email from Craig Middleton to Daniel Doherty and Anthony Crandell, 12 February 2016 (SCOI.74152).

*2 × cases identified as Not involving a Gender or other Bias in the Crime*

- 13.134. That email indicated, on its face, that what was being considered was not “sexuality”-related bias, but “gender”-related bias. Those are of course two different concepts.
- 13.135. The evidence therefore appeared to suggest that, until at least February 2016, the four alternative “findings” from which the Strike Force Parrabell officers were being asked to choose were those set out above (as underlined), and that a version of the BCIF, incorporating those alternatives, was in use at that time (**Form 1**).
- 13.136. Those four alternative “findings” are, as is again apparent, in different terms from those found in any of the Investigation Plan, the Induction Package, the Coordinating Instructions, or Appendix B to the Parrabell Report. In particular, the word “gender” does not appear in any of the “findings” found in any of those documents.
- 13.137. This first version of the form was not addressed by Assistant Commissioner Crandell in his statement. It seems that its possible existence only came to the attention of the NSWPF in a letter from the Inquiry dated 10 May 2023.
- 13.138. In a letter in response dated 19 May 2023, the NSWPF asserted that:<sup>2595</sup>
- a. The categories used by Superintendent Middleton in his email on 12 February 2016 were different from those which appeared in “the BCIF used by [Strike Force] Parrabell members at the outset”;
  - b. The BCIF used at the commencement of Strike Force Parrabell was attached to the Investigation Plan (i.e., Form 2, which is discussed below); and
  - c. Superintendent Middleton could not now recall why his email of 12 February 2016 did not adopt the categories set out in Form 2, nor in particular why he used the word “gender”.
- 13.139. Later, in the Middleton Statement, Superintendent Middleton gave evidence that:
- a. He could not say why his email of 12 February 2016 contained categories that were inconsistent to those that recorded in the Investigation Plan, or why he used the term “gender” instead of “sexuality”;<sup>2596</sup>
  - b. In his opinion, the four categories he used in the email were materially similar to the four categories used in the Form 2, except the interchange of the word “sexuality” for “gender”;<sup>2597</sup>

<sup>2595</sup> Exhibit 6, Tab 386, Letter from Katherine Garaty to Enzo Camporeale, 19 May 2023 (SCOI.83388).

<sup>2596</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [53] (NPL.9000.0029.0001).

<sup>2597</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [53] (NPL.9000.0029.0001).

- c. To his recollection, Strike Force Parrabell did not, at any time, use the four categories included in the email of 12 February 2016 (i.e., no reviews were completed by reference to “gender”);<sup>2598</sup>
  - d. From the time of its establishment, Strike Force Parrabell used the version of the BCIF included in the Investigation Plan (described as Form 2);<sup>2599</sup> and
  - e. He considered that, in practice, there was no Form 1 and—to the best of his recollection—what is described as Form 2 was the first version of the BCIF used by Strike Force Parrabell.<sup>2600</sup>
- 13.140. As recounted below, Detective Acting Sergeant Bignell also gave evidence that to his knowledge there were only ever three versions of the BCIF, namely those referred to by the Inquiry as Form 2, Form 3 and Form 4.

### Second version of BCIF ('Form 2')

- 13.141. On 9 June 2016, Superintendent Middleton informed Assistant Commissioner Crandell and others by email that 28 cases had been reviewed, by reference to four alternatives which he set out in that email.<sup>2601</sup> Those four alternatives correspond to the four in the Investigation Plan.
- 13.142. Evidently a version of the BCIF, as referred to in the Investigation Plan drafted in May 2015, was in use by that time (**Form 2**).
- 13.143. However, as noted above, both Superintendent Middleton and Detective Acting Sergeant Bignell believed that Form 2 was the *first* version of the BCIF used by Strike Force Parrabell, and that this version (Form 2) had actually been in use since the commencement of the strike force (i.e., in around August 2015).<sup>2602</sup>
- 13.144. Superintendent Middleton gave evidence in his statement of 8 September 2023 that, having reviewed some of the Strike Force Parrabell records available to him of the BCIFs where the “last modified date” was between December 2015 and January 2016, those BCIFs were consistent with Form 2.<sup>2603</sup>

<sup>2598</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [54] (NPL.9000.0029.0001).

<sup>2599</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [54] (NPL.9000.0029.0001).

<sup>2600</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [55] (NPL.9000.0029.0001).

<sup>2601</sup> Exhibit 6, Tab 63, Email correspondence between Shoba Sharma, Anthony Crandell and Craig Middleton, 8–10 June 2016 (SCOL.74237).

<sup>2602</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [44] (NPL.9000.0026.0007); Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [54]–[55] (NPL.9000.0029.0001).

<sup>2603</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [56] (NPL.9000.0029.0001).

### Third version of BCIF ('Form 3')

13.145. The third version of the BCIF, corresponding to the one set out in the Coordinating Instructions drafted in about October 2016, appears to have been implemented from sometime after 29 June 2016 (**Form 3**).<sup>2604</sup> As explained above, Superintendent Middleton and Detective Acting Sergeant Bignell both regarded this version as the second version of the BCIF.

13.146. Detective Acting Sergeant Bignell said that the need to introduce modifications to the BCIF became clear to him, Superintendent Middleton and Detective Inspector Grace “during the early stages of the review process”. He stated:<sup>2605</sup>

*I cannot now recall the exact reasons why we thought an amendment was required but recall that it was because the descriptions of bias did not accord with the task which we were undertaking, which was to consider anti-LGBTIQ bias rather than bias more generally. An additional category of “Insufficient evidence” was also added because the category of “Not Bias” would not capture the nuance of whether there is not sufficient information to determine whether there is or is not a motivation of anti-LGBTIQ bias. I recall that all cases were reviewed using this version of the BCIF and I recall that this was the version of the BCIF provided to the Flinders Academic Review team.*

13.147. Superintendent Middleton’s evidence was that he, Detective Inspector Grace, and Detective Acting Sergeant Bignell conferred and decided to update Form 2 following a presentation by Sergeant Steer in June 2016.<sup>2606</sup> According to Superintendent Middleton:<sup>2607</sup>

*I considered that the words “or other bias” in the categories used in Form 2 were vague and broad, and led to confusion amongst investigators because the task of [Strike Force] Parrabell was to identify evidence of a LGBTIQ hate bias, and not evidence of any other biases. There were also issues with the use of the word ‘sexuality’ in the categories as it was apparent in many of [the] cases reviewed the sexuality of the victim and offender was unknown or undetermined. Therefore, we came to the decision that the categories presented by [Sergeant] Steer and their accompanying descriptors, as recorded in the email from [Detective Senior Constable] Bignell ..., were more appropriate and adequately aligned to the proper discharge of the objectives of [Strike Force] Parrabell. Form 3 was subsequently prepared and used from around July/August 2016, and included the categories recorded in the email from [Detective Senior Constable] Bignell. Form 3 was also incorporated into the Coordinating Instructions.*

<sup>2604</sup> Exhibit 6, Tab 64, Email correspondence between Craig Middleton, Geoffrey Steer and others, 28–29 June 2016 (SCOI.74246).

<sup>2605</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [45] (NPL.9000.0026.0007).

<sup>2606</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [58]–[59] (NPL.9000.0029.0001).

<sup>2607</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [59] (NPL.9000.0029.0001).

- 13.148. The Inquiry’s review suggested that 21 cases were reviewed for the first time using Form 3.<sup>2608</sup> In its letter dated 19 May 2023, the NSWPF was unable to confirm the precise time period during which Form 3 was used, or whether 21 cases were reviewed for the first time using Form 3.<sup>2609</sup>

#### Fourth version of BCIF (‘Form 4’)

- 13.149. The fourth version of the BCIF is the one which appears as Appendix B in the Parrabell Report (**Form 4**). Form 4 was implemented following a meeting between the Strike Force Parrabell team and the BCU on 19 January 2017.<sup>2610</sup> Again, Superintendent Middleton and Detective Acting Sergeant Bignell regarded this version as the third version of the BCIF.
- 13.150. During that meeting, Assistant Commissioner Crandell suggested that the categories of “Bias Crime” and “Not Bias Crime” in Form 3 be further amended to “Evidence of bias crime” and “No evidence of a bias crime”, respectively.<sup>2611</sup> Superintendent Middleton believed that:<sup>2612</sup>

*the suggestion made by [Assistant Commissioner] Crandell was because he considered [Strike Force] Parrabell investigators, based on their review, would not be able to definitively determine whether a bias crime existed or not because there may be a possibility of new evidence coming to light or a case may be reinvestigated leading to a different finding. I agreed and accepted this suggestion.*

- 13.151. Detective Inspector Grace gave a similar explanation in his statement.<sup>2613</sup>
- 13.152. The Inquiry’s review of all the completed BCIFs produced by the NSWPF indicates that 13 cases were reviewed, for the first time, by reference to Form 4.<sup>2614</sup> In its letter to the Inquiry dated 19 May 2023, the NSWPF was unable to confirm definitively that this was the case.<sup>2615</sup>
- 13.153. Following this meeting, all cases that had already been reviewed using Form 3 were transferred over to the Form 4 template.<sup>2616</sup> According to Superintendent Middleton, the cases “were not re-reviewed or re-assessed” because “the changes were limited to the title of the category and did not alter the descriptors of the category. The burden of proof considered and applied remained the same between the forms (i.e., beyond reasonable doubt).”<sup>2617</sup>

<sup>2608</sup> Exhibit 6, Tab 385, Letter from Enzo Camporeale to Patrick Hodgetts, 10 May 2023, 4 (SCOI.83387).

<sup>2609</sup> Exhibit 6, Tab 386, Letter from Katherine Garaty to Enzo Camporeale, 19 May 2023 (SCOI.83388).

<sup>2610</sup> Exhibit 6, Tab 83, Minutes from Strike Force Parrabell/Bias Crimes Unit meeting, 19 January 2017, 3 (SCOI.74429).

<sup>2611</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [62] (NPL.9000.0029.0001).

<sup>2612</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [63] (NPL.9000.0029.0001).

<sup>2613</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [55] (NPL.9000.0024.0012).

<sup>2614</sup> Exhibit 6, Tab 385, Letter from Enzo Camporeale to Patrick Hodgetts, 10 May 2023, 4 (SCOI.83387).

<sup>2615</sup> Exhibit 6, Tab 386, Letter from Katherine Garaty to Enzo Camporeale, 19 May 2023 (SCOI.83388).

<sup>2616</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [66] (NPL.9000.0029.0001).

<sup>2617</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [65] (NPL.9000.0029.0001).



### “Re-reviews”

- 13.154. Superintendent Middleton said that, after Form 3 was prepared, cases that had been reviewed in accordance with Form 2 were subsequently returned to “investigators” to re-assess and if necessary, re-review in accordance with Form 3.<sup>2618</sup>
- 13.155. Superintendent Middleton said that following the meeting of 19 January 2017, all cases that had already been reviewed using Form 3 were transferred over to the Form 4 template,<sup>2619</sup> but that this time the cases “were not re-reviewed or re-assessed” because “the changes were limited to the title of the category and did not alter the descriptors of the category”.<sup>2620</sup>
- 13.156. Detective Acting Sergeant Bignell was the officer who actually carried out the “re-reviews”. He said that after the change from Form 2 to Form 3, all cases were “subsequently re-reviewed and a copy of the updated BCIF was populated”. Then, “at the conclusion” of Strike Force Parrabell, all cases were “reviewed” against Form 3. Following the further change from Form 3 to Form 4 in about January 2017, the “updated BCIFs” (i.e., Form 4) were “populated with the information” from Form 3.<sup>2621</sup>
- 13.157. Further, in his oral evidence, Detective Acting Sergeant Bignell clarified that those “reviews” were carried out by him personally, alone,<sup>2622</sup> and that (as to the last of the changes, i.e., from Form 3 to Form 4) all that happened was that the existing text of the BCIF responses was simply transferred across from one version of the document to the next.<sup>2623</sup>

### Differences in the standard of proof

- 13.158. Two very different standards of proof appeared in the different sections of Forms 3 and 4. (Forms 1 and 2 did not include any particular standard of proof.).
- 13.159. In Forms 3 and 4 (those versions of the BCIF found in the Coordinating Instructions and the Parrabell Report, respectively), the criminal standard (beyond reasonable doubt) was utilised, in respect of two of the four optional “findings”.<sup>2624</sup>
- 13.160. However, Strike Force Parrabell officers were also required to arrive at an overall conclusion, after choosing one of the four “findings” in respect of all the 10 indicators, and that overall conclusion was to be reached by reference to the lower, civil, standard (balance of probabilities).<sup>2625</sup>

<sup>2618</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [60] (NPL.9000.0029.0001).

<sup>2619</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [64]–[66] (NPL.9000.0029.0001).

<sup>2620</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [65] (NPL.9000.0029.0001).

<sup>2621</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [62]–[63] (NPL.9000.0026.0007).

<sup>2622</sup> Transcript of the Inquiry, 21 September 2023, T5811.19–24 (TRA.00089.00001).

<sup>2623</sup> Transcript of the Inquiry, 21 September 2023, T5849.30–36 (TRA.00089.00001).

<sup>2624</sup> Exhibit 6, Tab 15, Strike Force Parrabell Coordinating Instructions, Undated, 4 (SCOI.75071); Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 122 (SCOI.02632).

<sup>2625</sup> Exhibit 6, Tab 15, Strike Force Parrabell Coordinating Instructions, Undated, 4 (SCOI.75071).

- 13.161. Assistant Commissioner Crandell conceded that the standard of proof as found in those successive different parts of the BCIF appeared to be conceptually different. However, he maintained that the “tenet” of what investigators were required to do was the same, because they were looking for evidence of a bias crime.<sup>2626</sup> The criminal standard of proof was used because it was understood by criminal investigators.<sup>2627</sup>
- 13.162. As to the application of the lower, civil, standard of proof for the “overall conclusion”, after the higher (criminal) standard had been applied at the earlier “findings” stage, Assistant Commissioner Crandell could not say whether the investigators were provided with any guidance.<sup>2628</sup> He accepted that the attempted explanation which he gave in his oral evidence—namely, that he did not want investigators to exclude material for the purposes of classification because it did not reach “a certain standard”—looked like “putting the cart before the horse”.<sup>2629</sup>
- 13.163. Detective Acting Sergeant Bignell was the sole officer who actually filled out the BCIFs.<sup>2630</sup> The approach to the application of the standard of proof in practice is discussed below.

### How the constituent documents were used

- 13.164. The numerous differences between and among the various constituent documents, and the several successive iterations of the BCIF, gave rise to concern as to how such variations and inconsistencies were addressed and dealt with by the Strike Force Parrabell officers.
- 13.165. That concern flowed from, among other things, the Inquiry’s understanding, based on (*inter alia*) the Parrabell Report itself,<sup>2631</sup> and the evidence of Assistant Commissioner Crandell,<sup>2632</sup> that the BCIFs were initially completed by the various investigators assigned to each case. The Inquiry understood that the BCIFs were then reviewed by the review panel comprising the three senior officers, namely Superintendent Middleton, Detective Inspector Grace and Detective Acting Sergeant Bignell.
- 13.166. That understanding was reinforced by the June NSWPF submissions, which clearly proceeded on that basis.<sup>2633</sup>

<sup>2626</sup> Transcript of the Inquiry, 7 December 2022, T791.17–792.17 (TRA.00012.00001).

<sup>2627</sup> Transcript of the Inquiry, 8 December 2022, T829.45–47 (TRA.00013.00001).

<sup>2628</sup> Transcript of the Inquiry, 8 December 2022, T831.12 (TRA.00013.00001).

<sup>2629</sup> Transcript of the Inquiry, 8 December 2022, T832.20–25 (TRA.00013.00001).

<sup>2630</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [61] (NPL.9000.0026.0007); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [43] (NPL.9000.0024.0012); Transcript of the Inquiry, 21 September 2022, T5811.19–24 (TRA.00089.00001).

<sup>2631</sup> See, e.g., Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 67–69 (SCOI.02632).

<sup>2632</sup> See, e.g., Transcript of the Inquiry, 7 December 2022, T726.2–38, 753.16–754.8 (TRA.00012.00001); Transcript of the Inquiry, 8 December 2022, T860.17–46, 862.21–864.3 (TRA.00013.00001); Transcript of the Inquiry, 9 December 2022, T992.15–37 (TRA.00014.00001); Transcript of the Inquiry, 12 December 2022, T1030.17–1031.16, 11035.18–20 (TRA.00015.00001).

<sup>2633</sup> See for example Submissions of NSWPF, 28 June 2023, [508], [511], [516], [540], [551] (SCOI.84211).

- 13.167. Among the matters of concern for the Inquiry were: what guidance was given to those investigators as to how to deal with those differences, including issues relating to standard of proof; and how were disagreements among those investigators resolved.
- 13.168. Assistant Commissioner Crandell accepted that the senior leadership team of Strike Force Parrabell should have produced a consistent set of documents.<sup>2634</sup> However, he did not accept that any confusion had been created by the different versions of the “findings” categories as set out in the different documents.<sup>2635</sup> His evidence was that, in his view, any uncertainty as to approach would have been “corrected in any instructions given to [the investigators]”.<sup>2636</sup> However, he said that he had personally never had a conversation with any of the investigators about the differences among the documents.<sup>2637</sup>
- 13.169. Assistant Commissioner Crandell accepted that having documents that were inconsistent could be confusing for the investigators, particularly if they were given both the Investigation Plan and the Coordinating Instructions.<sup>2638</sup> However, to his mind, “it would be clear” that they ought to follow the Coordinating Instructions.<sup>2639</sup>
- 13.170. I pause to make some observations about that evidence. First, as is plain from the dates on which the various documents came into existence, none of the investigators could have been given the Coordinating Instructions, since all of them had left the strike force before that document was drafted. So, if they had (or were aware of) any of the constituent documents, it could only have been the Investigation Plan and/or the Induction Package. The discrepancies and inconsistencies between those two are summarised above. There is no suggestion, in the evidence of any of the three senior officers, that any of those differences was explained to or discussed with the investigators.
- 13.171. Secondly, Assistant Commissioner Crandell evidently believed (as the Parrabell Report, authored by him, stated) that the investigators themselves were involved in what that report called the “scoring” of the BCIF. However, as eventually became clear on receipt of the evidence of Detective Acting Sergeant Bignell, and as discussed further below, that belief on the part of Assistant Commissioner Crandell was simply wrong. In fact, none of the investigators actually had any involvement at all in the filling out of the BCIFs. It was Detective Acting Sergeant Bignell, alone, who filled out all the BCIFs.

<sup>2634</sup> Transcript of the Inquiry, 7 December 2022, T788.39 (TRA.00012.00001).

<sup>2635</sup> Transcript of the Inquiry, 7 December 2022, T788.11 (TRA.00012.00001).

<sup>2636</sup> Transcript of the Inquiry, 7 December 2022, T784.45–46 (TRA.00012.00001).

<sup>2637</sup> Transcript of the Inquiry, 7 December 2022, T793.30 (TRA.00012.00001).

<sup>2638</sup> Transcript of the Inquiry, 7 December 2022, T784.41 (TRA.00012.00001).

<sup>2639</sup> Transcript of the Inquiry, 7 December 2022, T784.7–8 (TRA.00012.00001).

- 13.172. That being so, Detective Acting Sergeant Bignell duly acknowledged that what was stated in both the Investigation Plan and Coordinating Instructions, as to the methodology of Strike Force Parrabell, was wrong in a number of respects, as was the evidence of Assistant Commissioner Crandell about those matters.<sup>2640</sup>
- 13.173. Detective Acting Sergeant Bignell did not believe the differences between the various constituent documents had “any material impact” on Strike Force Parrabell.<sup>2641</sup> He did not consider that the investigators were “greatly influenced” by the constituent documents, and gave evidence that they largely relied on verbal briefings and instructions from him.<sup>2642</sup>
- 13.174. At least in part, it can now be seen that those views of Detective Acting Sergeant Bignell may have reflected reality, as that reality was eventually revealed, by him, to the Inquiry.
- 13.175. Detective Acting Sergeant Bignell’s statement and oral evidence revealed to the Inquiry for the first time, in September 2023, that he alone, single-handedly, completed all the BCIFs. None of the other investigators played any part whatsoever in that process. Their role was confined to assembling the available documentary material for each case, making a selection from that material of any documents that might be relevant to the question of bias, and providing that selection to him.
- 13.176. Neither the Parrabell Report of June 2018, nor Assistant Commissioner Crandell in his written or oral evidence in 2022, nor the NSWPF letter of 19 May 2023, nor the June NSWPF Submissions, contained any indication of any awareness of that reality. It presumably follows that neither Assistant Commissioner Crandell, nor the author of the 19 May 2023 letter, nor those who composed the June NSWPF Submissions, knew any of these things.
- 13.177. That unfortunate state of affairs is highlighted and exacerbated by the further evidence of Detective Acting Sergeant Bignell that at no time in connection with this Inquiry, prior to about August 2023, had he ever been asked by the NSWPF for his recollection of these matters—even though he was the OIC of Strike Force Parrabell, its only full-time senior member, and the officer who single-handedly completed every single BCIF.

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<sup>2640</sup> Transcript of the Inquiry, 21 September 2023 T5845.28–30 (Coordinating Instructions), T5830.45–5831.40 (Investigation Plan) (TRA.00089.00001); Transcript of the Inquiry, 21 September 2023, T5824.14–5827.40 (TRA.00089.00001).

<sup>2641</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [47] (NPL.9000.0026.0007).

<sup>2642</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [47] (NPL.9000.0026.0007).

- 13.178. In particular: he was not consulted at the time when Assistant Commissioner Crandell prepared his statement (October 2022); nor at the time Assistant Commissioner Crandell gave his oral evidence (December 2022);<sup>2643</sup> nor at the time when the Inquiry wrote to the NSWPF expressly seeking detailed clarification as to such matters (May 2023).<sup>2644</sup>
- 13.179. In my view, as was submitted by Counsel Assisting, that is both remarkable in itself, and highly unsatisfactory from the perspective of the Inquiry. Had this evidence been brought forward earlier, as it should have been (see [13.232]–[13.252] below), a great deal of time on the part of both the Inquiry and interested parties, including the NSWPF, would have been saved, and resources could have been better allocated.

### Strike Force Parrabell and ACON

- 13.180. On 17 November 2015, Assistant Commissioner Crandell wrote to Nicolas Parkhill, the CEO of ACON, to inform him that Strike Force Parrabell had commenced and to invite him, along with “prominent community members”, to a presentation during which results of the first eight cases reviewed would be presented. Mr Parkhill was unable to attend, but another ACON representative did so.<sup>2645</sup>
- 13.181. Another “stakeholder” meeting was held a year later, on 19 December 2016, at which an ACON representative was present.<sup>2646</sup>
- 13.182. From 2016, Assistant Commissioner Crandell and Strike Force Parrabell were aware that ACON was also preparing a report, and thus that the two reports were being prepared “in tandem, as it were”.<sup>2647</sup>
- 13.183. ACON provided Strike Force Parrabell with the “dossiers” it had assembled in relation to all the cases.<sup>2648</sup>
- 13.184. However, Strike Force Parrabell did not provide to ACON any of the documents which showed the methodology that the strike force proposed to use. In particular, ACON was not shown or provided with either of:
- a. The Coordinating Instructions;<sup>2649</sup> or
  - b. The BCIF.<sup>2650</sup>

<sup>2643</sup> Transcript of the Inquiry, 21 September 2023, T5779.32–5780.15 (TRA.00089.00001).

<sup>2644</sup> See Exhibit 6, Tab 385, Letter from Enzo Camporeale to Patrick Hodgetts, 10 May 2023 (SCOI.83387); Exhibit 6, Tab–386, Letter from Katherine Garaty to Enzo Camporeale, 19 May 2023 (SCOI.83388).

<sup>2645</sup> Exhibit 6, Tab 141, Email correspondence between Superintendent Anthony Crandell and Nicolas Parkhill, 17–18 November 2015 (SCOI.77744).

<sup>2646</sup> Exhibit 6, Tab 143A, Draft minutes of LGBTI Stakeholder meeting held on 19 December 2016, 19 December 2016 (SCOI.77844).

<sup>2647</sup> Transcript of the Inquiry, 8 December 2022, T878.17–19 (TRA.00013.00001).

<sup>2648</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 57, 119–120 (SCOI.02632).

<sup>2649</sup> Transcript of the Inquiry, 8 December 2022, T878.41–44 (TRA.00013.00001).

<sup>2650</sup> Transcript of the Inquiry, 8 December 2022, T879.2–3 (TRA.00013.00001).

- 13.185. Assistant Commissioner Crandell accepted that “perhaps” ACON could have offered some insights as to whether the indicators being used were suitable, but said that that did not occur to him.<sup>2651</sup>

## Submissions of Counsel Assisting and the NSWPF and conclusions of the Inquiry

### Operation Parrabell

- 13.186. Beyond setting out the relevant evidence, Counsel Assisting did not propose any particular findings in relation to Operation Parrabell.
- 13.187. The NSWPF for its part, in its submissions, was at pains to contend:<sup>2652</sup>
- a. That it was not unreasonable for media attention to have played a part in the establishment of both Operation Parrabell and Strike Force Parrabell;
  - b. That there was no basis for a submission, attributed by the NSWPF to Counsel Assisting, that a shift in “operational focus”, to the activities of, and threats posed by, anti-Muslim organised hate groups, skin crews, race-based terrorism and organisations such as Reclaim Australia was inappropriate;
  - c. That the continuation of Operation Parrabell would have undermined the capacity of the BCU to address bias crimes generally, and to assist field officers in assessing crime trends; and
  - d. That an exercise of the type contemplated by Operation Parrabell (i.e., interviewing persons of interest and witnesses etc.) may have compromised the effectiveness of subsequent reinvestigations.
- 13.188. As to those submissions:
- a. What is noteworthy, in my view, is the acknowledgment by the NSWPF of the significance of “media attention” in the formation of Strike Force Parrabell;
  - b. Counsel Assisting had made no such submission at a shift in “operational” focus was inappropriate. The reaction by the NSWPF is another example of the unnecessary defensiveness I have referred to elsewhere;
  - c. I do not consider that there is evidence to support the suggestion that Operation Parrabell was curtailed due to such concerns;
  - d. Nor do I consider that the evidence indicates that that curtailment arose from concern within the NSWPF that the proposed operation would compromise subsequent re-investigations (and surely, there was just as strong a possibility

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<sup>2651</sup> Transcript of the Inquiry, 8 December 2022, T881.32–39 (TRA.00013.00001).

<sup>2652</sup> Submissions of NSWPF, 28 June 2023, [454]–[459] (SCOI.84211).

that any enquiries made by Operation Parrabell may have assisted, rather than hindered, subsequent reinvestigations).

### Establishment of Strike Force Parrabell

- 13.189. Assistant Commissioner Crandell’s evidence was that he was responsible for establishing Strike Force Parrabell. At the time he gave evidence, in late 2022, there was no suggestion that that was not so.
- 13.190. However, in the September/October 2023 hearings, Detective Sergeant Brown gave evidence that Strike Force Parrabell was “established by” Mr Willing with the “endorsement of Assistant Commissioner Crandell”.<sup>2653</sup> Mr Willing denied this, and both the NSWPF and Mr Willing submitted that this was not so.<sup>2654</sup> Detective Sergeant Brown did not address this aspect of her evidence in the Brown Submissions.
- 13.191. Overall the evidence points towards the probability that Assistant Commissioner Crandell was responsible for the establishment of Strike Force Parrabell, and that Detective Sergeant Brown was mistaken in her recollection.
- 13.192. However, as I have explained elsewhere, I have reservations about the reliability of Mr Willing’s evidence. Issues relating to the way the three strike forces (Parrabell, Macnamir and Neiwand) simultaneously converged on similar outcomes, including the views held by, and communications between, various senior officers including Mr Willing and Assistant Commissioner Crandell, are discussed in **Chapter 14**.

### Rationale and objectives

- 13.193. As outlined above, there was evidence of essentially two different rationales for the establishment of Strike Force Parrabell.
- 13.194. One was to “counter” claims in the media about large numbers of LGBTIQ homicides. In that regard, it will be recalled that in his email of 12 February 2016, Assistant Commissioner Crandell pinpointed the “quite intense” publicity surrounding the list of 88 deaths, “on the back of” the third coronial inquiry into the death of Scott Johnson, which “impacts negatively” on the NSWPF within the LGBTIQ community.<sup>2655</sup> He then said, in that email:<sup>2656</sup>

*To counter these allegations ... I activated Strike Force Parrabell ...*

<sup>2653</sup> Transcript of the Inquiry, 3 October 2023, T6465.29–32, 6514.9–13 (TRA.00095.00001).

<sup>2654</sup> Supplementary Submissions of NSWPF, 23 October 2023, [369] (SCOI.86378); Supplementary Submissions of Michael Willing, 23 October 2023, [439] (SCOI.86377).

<sup>2655</sup> Exhibit 6, Tab 36, Email correspondence between Dr Christopher Devery and Anthony Crandell, 12 February–7 March 2016, 3 (SCOI.74172).

<sup>2656</sup> Exhibit 6, Tab 36, Email correspondence between Dr Christopher Devery and Anthony Crandell, 12 February–7 March 2016, 3 (SCOI.74172).

... In essence, ... there is clear contrary evidence to earlier published research ... that assert prevalence of gay hate crimes and inactivity of the NSWPF.

- 13.195. The other suggested rationale was to bring the LGBTIQ community and the NSWPF closer together.<sup>2657</sup>
- 13.196. Counsel Assisting submitted that Assistant Commissioner Crandell may well have hoped or expected, as he said he did, that the Strike Force Parrabell exercise could improve the relationship between the NSWPF and the LGBTIQ community. However, Counsel Assisting further submitted that such a hope or expectation might be regarded as somewhat unrealistic given that, according to Assistant Commissioner Crandell's 12 February 2016 email, one of the aims of the strike force was to "counter" allegations of the "prevalence" of gay-hate crimes and of inactivity of the NSWPF.<sup>2658</sup>
- 13.197. Counsel Assisting also submitted that the evidence amply established that there were other reasons for the establishment of Strike Force Parrabell, and pointed to the events referred to at [13.8]–[13.24] above as relevant to those reasons. Those events included the articles by Mr Sheehan and Mr Feneley in 2013, the 2013 Issue Paper, the Issue Paper by Mr Willing on 10 January 2014, the inquiries made by Mr Greenwich MP, and the wave of publicity about "gay-hate murders" following the *Lateline* interview in April 2015.
- 13.198. As noted earlier, on 22 April 2015 Ms Sharma sent the 2013 Issue Paper (with its assertion that the suggestion of 30 unsolved "gay hate" murders was a "gross exaggeration") to Assistant Commissioner Crandell, and in May 2015 Detective Inspector Grace drafted the Investigation Plan for Strike Force Parrabell.
- 13.199. Counsel Assisting submitted that the evidence supports a finding that the rationale of Assistant Commissioner Crandell, and that of the NSWPF, for establishing Strike Force Parrabell, included at least the following factors:<sup>2659</sup>
- a. To combat negative publicity about the NSWPF, stemming from as far back as early 2013 and including publicity about the events of 13 April 2015;
  - b. To refute the suggestion, and perception, that there had been a significant number of "gay hate" motivated homicides, as found in the list of 88 deaths and publicity relating thereto;
  - c. To show that claims of 88 "gay hate" murders, 30 of them unsolved, were exaggerated;
  - d. To refute the suggestion that NSWPF had not adequately investigated "gay hate" crimes; and

<sup>2657</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 18 (SCOI.02632).

<sup>2658</sup> Exhibit 6, Tab 36, Email correspondence between Dr Christopher Devery and Anthony Crandell, 12 February–7 March 2016, 3 (SCOI.74172).

<sup>2659</sup> Submissions of Counsel Assisting, 7 June 2023, [817] (SCOI.84380).



- e. To assert that the true position was that only a small proportion of the 88 cases were “gay hate” murders, and that the number of those that were unsolved was much less than 30.
- 13.200. The NSWPF submitted that there was no dispute that Strike Force Parrabell was established as part of a response to: (i) community concern around the list of 88 deaths; (ii) the fact that police needed to be seen to be responding to those deaths; and (iii) a desire to improve the relationship between the LGBTIQ community and police.<sup>2660</sup>
- 13.201. However, the NSWPF argued that factors (b)–(e) above amounted to no more than “groundless speculation”, and to:<sup>2661</sup>
- little more than speculative inferences drawn by reference to the timing of events and the personnel involved (many of whom have not given evidence or otherwise been afforded an opportunity to respond to the very serious criticisms levelled at them).*
- 13.202. In the NSWPF October Submissions, the NSWPF submitted that the evidence obtained during the September/October 2023 hearings “only serve[d] to highlight the extent to which those submissions were misplaced”,<sup>2662</sup> pointing to the evidence of Superintendent Middleton, Detective Inspector Grace, and Detective Acting Sergeant Bignell set out above.
- 13.203. The NSWPF further submitted that Assistant Commissioner Crandell’s agreement with the proposition that, as at 2014, there was “a widely held view at senior levels of the police that claims relating to the numbers of gay-hate related murders and bashings, especially in the 80s and 90s, were exaggerated and unfounded” and that such claims “needed to be publicly refuted”<sup>2663</sup> is not evidence that he himself held such views, or that he initiated Strike Force Parrabell for any of the purposes set out above.<sup>2664</sup>
- 13.204. Rather, the NSWPF submitted, Assistant Commissioner Crandell “wanted to have some evidence that we had actually gone through a process to determine whether or not these deaths were homicides and were gay-hate related.”<sup>2665</sup> The NSWPF also emphasised Dr Dalton’s evidence that Assistant Commissioner Crandell had made it clear to him that, “[t]here is to be no fear or favour. You find what you find.”<sup>2666</sup> The NSWPF argued that the fact that there was no pressure directed at

<sup>2660</sup> Submissions of NSWPF, 28 June 2023, [465] (SCOI.84211).

<sup>2661</sup> Submissions of NSWPF, 28 June 2023, [466]–[478] (SCOI.84211).

<sup>2662</sup> Supplementary Submissions of NSWPF, 23 October 2023, [332] (SCOI.86378).

<sup>2663</sup> Transcript of the Inquiry, 6 December 2022, T663.33–47 (TRA.00011.00001).

<sup>2664</sup> Submissions of NSWPF, 28 June 2023, [471] (SCOI.84211).

<sup>2665</sup> Submissions of NSWPF, 28 June 2023, [472] (SCOI.84211), citing Transcript of the Inquiry, 6 December 2022, T664.36–39 (TRA.00011.00001).

<sup>2666</sup> Submissions of NSWPF, 28 June 2023, [473] (SCOI.84211), citing Transcript of the Inquiry, 2 March 2023, T2608.4–5 (TRA.00031.00001).

- the academic team is “a complete answer” to the alleged purposes set out by Counsel Assisting.<sup>2667</sup>
- 13.205. The NSWPF submitted that Strike Force Parrabell was also directed to the identification of opportunities for improvement both in relation to the investigation of bias crimes and in the way the NSWPF related to members of the community.<sup>2668</sup>
- 13.206. I do not accept the submissions of the NSWPF. There is a difference between “groundless speculation” on the one hand, and on the other hand an inference reasonably drawn both from evidence before me and from the broader context and circumstances of the time. In my view, the factors to which Counsel Assisting pointed are examples of the latter rather than the former.
- 13.207. In particular, I note the following aspects of the evidence:
- a. On 22 April 2015, Assistant Commissioner Crandell was provided with the 2013 Issue Paper, which asserted *inter alia* that the suggestion of 30 unsolved “gay hate” murders was a “gross exaggeration” and which had been circulated to senior NSWPF officers (see [13.15] and [13.24] above);
  - b. The Investigation Plan for Strike Force Parrabell was drafted the following month (see [13.25] above);
  - c. Assistant Commissioner Crandell acknowledged that as at 2014, there was a widely held view within the NSWPF that claims relating to the numbers of “gay hate”-related murders and bashings were exaggerated and unfounded, and that such claims needed to be publicly refuted (see [13.17] above);
  - d. Assistant Commissioner Crandell stated plainly in his email to Dr Devery on 12 February 2016 that the reason why he “activated” Strike Force Parrabell was “to counter” such allegations, and that already (six months after the strike force had commenced) there was “clear contrary evidence” (see [13.44] above); and
  - e. Assistant Commissioner Crandell acknowledged in his oral evidence that a “driving reason” for Strike Force Parrabell was for the NSWPF to be seen to be responding to all the publicity relating to the list of 88 deaths, including publicity which suggested that police had not done enough to solve cases where LGBTIQ people were the victims (see [13.48] above).
- 13.208. This evidence, in combination with the broader context within which Strike Force Parrabell was initiated, is more than sufficient for me to conclude, as I do, that each of the factors advanced by Counsel Assisting (see [13.199] above) was part of the rationale for the establishment of Strike Force Parrabell.

<sup>2667</sup> Submissions of NSWPF, 28 June 2023, [473] (SCOI.84211).

<sup>2668</sup> Submissions of NSWPF, 28 June 2023, [479] (SCOI.84211).

- 13.209. It is also significant, in my view, that Strike Force Parrabell did not substantively consult with ACON or other community organisations in relation to its proposed methodology, nor did it provide ACON with either the constituent documents or the BCIF.
- 13.210. According to the NSWPF, Strike Force Parrabell ought to be characterised as “a good faith attempt” on the part of the organisation to engage with the LGBTIQ community and to assuage their fears that the NSWPF was not taking allegations of “gay hate” crime seriously.<sup>2669</sup> The NSWPF submitted that the exercise was highly resource-intensive and that its clear intention was to understand the true position of how many “gay hate” crime murders had in fact occurred.<sup>2670</sup>
- 13.211. However, I consider that if an overriding purpose of the exercise had been to build better relations between the NSWPF and the LGBTIQ community, more effort would and should have been made by the NSWPF from the outset to involve community organisations in a meaningful way. Moreover, any such effort, if it was to be (as the NSWPF submitted) a “good faith attempt”, would have had to include, in my view, the candid disclosure that one objective of the strike force was to “counter” the allegations of large numbers of “gay hate” murders and the “negative publicity” about those allegations. In fact, no such disclosure was made. As will be seen, when the Parrabell Report was in due course published (with no forewarning to the LGBTIQ community of its contents),<sup>2671</sup> the reaction to the report by many in the LGBTIQ community was one of dismay.<sup>2672</sup>
- 13.212. In addition, if a principal objective was to understand the true position of how many LGBTIQ hate crime murders had in fact occurred, one obvious approach (instead of a paper-based “review” of a long list of deaths, most of which had already been solved) would, in my view, have been to actually re-investigate at least the unsolved deaths.
- 13.213. Rather than reflecting the values of openness and community engagement, Strike Force Parrabell seems to have been driven, at least to a significant extent, by a desire to justify the NSWPF’s position.

<sup>2669</sup> Supplementary Submissions of NSWPF, 23 October 2023, [333], [335] (SCOI.86378).

<sup>2670</sup> Submissions of NSWPF, 28 June 2023, [336] (SCOI.84211); Supplementary Submissions of NSWPF, 23 October 2023, [330], [333] (SCOI.86378).

<sup>2671</sup> See Exhibit 6, Tab 153, Email correspondence between Nicolas Parkhill and Anthony Crandell, 22 June 2018, 1 (SCOI.77728).

<sup>2672</sup> See, e.g., Exhibit 1, Tab 3, Legislative Council Standing Committee on Social Issues, *Parliament of NSW, Gay and Transgender hate crimes between 1970 and 2010* (Interim Report, Report 52, February 2019), [3.101–][3.108] (SCOI.02290). See also the evidence of Mr Willing at Transcript of the Inquiry, 20 February 2023, T1745.24–43 (IRA.00023.00001).

- 13.214. I do not agree with the NSWPF’s submission that the evidence of Superintendent Middleton, Detective Inspector Grace and Detective Acting Bignell (referred to above), to the effect that the strike force was a genuine and good faith attempt to take the concerns of the LGBTIQ community seriously, showed that the submissions of Counsel Assisting were misplaced. Counsel Assisting did not challenge any of that evidence, nor the similar evidence of Assistant Commissioner Crandell. The gravamen of Counsel Assisting’s submissions was not to cast doubt on the honesty of those witnesses, but to point to the objective evidence establishing that other factors were also involved in the establishment of Strike Force Parrabell.
- 13.215. Further, in my view, the oral evidence of Detective Acting Bignell, referred to above, tended to suggest that those other factors were indeed present to the minds of the strike force officers.
- 13.216. He went on to say that he did not agree that there was a view held within police, including by Strike Force Parrabell officers, that the accusations by Ms Thompson were “exaggerated or wrong”, but agreed that there was a view that Strike Force Parrabell “was designed to set out the true position” because the list of 88 deaths had not previously been “properly looked at” by the NSWPF.<sup>2673</sup>
- 13.217. While Detective Acting Sergeant Bignell articulated his opinion in a qualified manner, his evidence was clear that one of the purposes of Strike Force Parrabell was to set out “the true position” on these cases. In light of the other evidence before me as to what officers in the NSWPF considered that “true position” to be—that, is that the actual number of gay-hate homicides was likely to be significantly fewer than the number of 88 posited—I accept that one of the purposes of Strike Force Parrabell was to counter or clarify the list of 88 deaths and the findings of Ms Thompson and others.

## Personnel

- 13.218. I note that none of the eight officers recruited from other Commands had specific homicide experience, for instance in the Homicide Squad or UHT, and that none of the officers (including the senior team) appeared to have specific bias crimes experience.
- 13.219. Like Assistant Commissioner Crandell,<sup>2674</sup> I am of the view that some knowledge of bias crimes would have been a useful criterion by which to assess the suitability of Strike Force Parrabell personnel. That said, I accept that resources may have limited the number of officers available for the task and that for Assistant Commissioner Crandell, it was “really just a matter of accepting whoever was presented to [him] as available”.<sup>2675</sup>

<sup>2673</sup> Transcript of the Inquiry, 21 September 2023, T5882.34–43 (TRA.00089.00001).

<sup>2674</sup> See Transcript of the Inquiry, 7 December 2022, T747.12–15 (TRA.00012.00001).

<sup>2675</sup> Transcript of the Inquiry, 7 December 2022, T747.21–38 (TRA.00012.00001).

- 13.220. However, that reality makes it perhaps more regrettable that Sergeant Steer was not more comprehensively involved in Strike Force Parrabell, as I discuss further below.

### Sergeant Steer

- 13.221. Counsel Assisting submitted that none of the reasons given by Assistant Commissioner Crandell as to why Sergeant Steer was not utilised more was persuasive.
- 13.222. Counsel Assisting submitted that the reasoning behind that choice is difficult to fathom, given *inter alia*.<sup>2676</sup>
- a. The structures and processes embedded in the 2015 Bias Crimes SOPs;
  - b. The June 2016 agreement as reflected in the RFQ;
  - c. The use by Strike Force Parrabell of a BCIF which had been created by Strike Force Parrabell officers by adapting documents devised (for other purposes) by Sergeant Steer;
  - d. The unsurprising view of the academic team that participation by Sergeant Steer would have been valuable; and
  - e. The depth of bias crimes expertise which Sergeant Steer could have contributed to the work of Strike Force Parrabell (whose members had no such expertise).
- 13.223. As Counsel Assisting submitted, whether the greater involvement of Sergeant Steer would have made a difference to the fundamental validity and reliability of the Strike Force Parrabell exercise is a different question. Given his views that the strike force used the bias crime indicators inappropriately, perhaps one result of greater involvement on his part might have been a realisation of some of the deficiencies of the BCIF and some action being taken to address them. However, that is a matter of speculation.
- 13.224. The NSWPF said that “[i]t is accepted that it may have been *appropriate* for Sergeant Steer to have a more formal review role”, but that does not mean it was “*necessary*” (emphasis in original).<sup>2677</sup> The NSWPF added that in any case, if Sergeant Steer’s involvement could be considered “*necessary*”, this ceased to be the case once the academic team had been appointed.<sup>2678</sup>

<sup>2676</sup> Submissions of Counsel Assisting, 7 June 2023, [840] (SCOI.84380).

<sup>2677</sup> Submissions of NSWPF, 28 June 2023, [495] (SCOI.84211).

<sup>2678</sup> Submissions of NSWPF, 28 June 2023, [496] (SCOI.84211).

- 13.225. The NSWPF also submitted that Sergeant Steer held the “erroneous” view that Strike Force Parrabell used the BCIF as a “checklist” rather than as a “guide to assist in the identification of factors that would later inform an overall judgment reached by the senior investigators of [Strike Force] Parrabell”.<sup>2679</sup>
- 13.226. In my view, it would certainly have been preferable for Sergeant Steer and the BCU to be comprehensively involved in the exercise undertaken by Strike Force Parrabell. The exercise cried out for specific bias crimes experience, which none of the investigating officers possessed. In particular, it was not possessed by Detective Acting Sergeant Bignell, who was the sole officer (prior to the review by the review panel of which he was part) who actually made the decisions as to which “finding” to apply, to each of the 10 indicators, in all 86 cases. Nor do I consider that the case for Sergeant’s Steer’s involvement became less compelling once the academic team was appointed. The role of the academic team was quite distinct from, and subsequent to, that of the police investigators.
- 13.227. It is quite clear that it was originally agreed that cases reviewed by Strike Force Parrabell would be sent to the BCU for consideration, prior to being sent to the academic team.<sup>2680</sup> Apart from the dip sample of 12 cases in December 2016–January 2017, this simply did not happen. Nor was a different arrangement agreed upon in December 2016 (in accordance with which Sergeant Steer would consider cases where there was disagreement between the Strike Force Parrabell officers and the academic team)<sup>2681</sup> ever carried out either.
- 13.228. Instead, Sergeant Steer and the BCU appear to have been side-lined from the process, despite Sergeant Steer’s extensive experience in the area of bias crimes.
- 13.229. In my view, the evidence does not support the suggestion that Sergeant Steer’s involvement was limited due to concerns held by Assistant Crandell and others about Sergeant Steer’s workload. Rather, the strike force team simply did not follow either of the processes previously agreed. The choice by Strike Force Parrabell, and by Assistant Commissioner Crandell, to have such minimal engagement with Sergeant Steer and the BCU, appears on the evidence to have been a deliberate one, not by any means an oversight.

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<sup>2679</sup> Submissions of NSWPF, 28 June 2023, [502] (SCOI.84211), citing Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [21] (SCOI.82080) and Exhibit 6, Tab 248, Email correspondence between Geoffrey Steer, Derek Dalton and Danielle Tyson, 9 March 2017, 2 (SCOI.79391).

<sup>2680</sup> Exhibit 6, Tab 76, Email correspondence between Craig Middleton, Shobha Sharma and others, 10–16 November 2016, 1 (SCOI.74377).

<sup>2681</sup> Exhibit 6, Tab 79, Email correspondence between Anthony Crandell and Craig Middleton, 12–13 December 2016 (SCOI.74394).

- 13.230. Finally, I do not consider that the fact that Sergeant Steer held the view that the BCIF was being used as a “checklist” by Strike Force Parrabell officers is relevant to the question of whether his involvement may have resulted in some of the deficiencies of the BCIF being realised.<sup>2682</sup> Further, I am also not persuaded that such a view was incorrect. That view was shared and propagated by Dr Dalton as well.<sup>2683</sup>

### Constituent documents

- 13.231. Both parties made detailed submissions concerning the constituent documents and changes to the BCIF. The initial submissions made by the parties, based on the evidence of Assistant Commissioner Crandell in late 2022 and the correspondence between the Inquiry and the NSWPF in May 2023, have in many respects been superseded by the evidence of Detective Acting Sergeant Bignell in September 2023. Accordingly, it is not necessary for me to repeat or consider these submissions to a large extent.

### TIMING OF EVIDENCE

- 13.232. Before I turn to the conclusions that I propose to make about the constituent documents, it is important to address the submissions made by the parties in relation to the timing of evidence provided by Detective Acting Sergeant Bignell, Detective Inspector Grace and Superintendent Middleton.
- 13.233. As Counsel Assisting submitted in the October CAS, the questioning of Assistant Commissioner Crandell by Senior Counsel Assisting in the December 2022 hearings made it clear that the methodology of Strike Force Parrabell, including the form of, and changes to, the BCIF, was being closely examined by the Inquiry. Senior Counsel for the NSWPF also questioned Assistant Commissioner Crandell about such matters at that time.<sup>2684</sup>
- 13.234. The Inquiry took the additional step of writing to the NSWPF in May 2023 to seek clarification as to the differences between the several versions of the BCIF used in the course of Strike Force Parrabell.<sup>2685</sup>
- 13.235. I note that, even prior to this, in September 2022, the Inquiry wrote to the NSWPF and requested a statement from Assistant Commissioner Crandell on the following topics:<sup>2686</sup>

*The origins and history of the selection, creation and use, by the NSWPF, of the “Bias Crime Indicators Review Form” ... being the tool later utilised by Strike Force Parrabell (as set out in its Co-ordinating Instructions).*

<sup>2682</sup> Submissions of NSWPF, 28 June 2023, [502] (SCOI.84211).

<sup>2683</sup> See Exhibit 6, Tab 246, Email from Derek Dalton to Geoffrey Steer, 12 December 2016, 1 (SCOI.79856); Exhibit 6, Tab 248, Email correspondence between Geoffrey Steer, Derek Dalton and Danielle Tyson, 9 March 2017, 1–2 (SCOI.79391).

<sup>2684</sup> Supplementary Submissions of Counsel Assisting, 16 October 2023, [31] (SCOI.86243).

<sup>2685</sup> Exhibit 6, Tab 385, Letter from Enzo Camporeale to Patrick Hodgetts, 10 May 2023 (SCOI.83387).

<sup>2686</sup> Exhibit 6, Tab 533, Letter from Kate Lockery to Patrick Hodgetts, 20 September 2022, 3, 5 (SCOI.82096).

...

*The reasons for the selection of the BCIRF as the tool which Strike Force Parrabell was to use, and who made that selection.*

...

*The methodology, protocols and arrangements pursuant to which... the Strike Force Parrabell personnel... were to, and/or did, carry out their respective tasks.*

- 13.236. That letter included a proviso that “[i]f a particular topic falls outside the knowledge of Assistant Commissioner Crandell” the NSWPF was to “provide a statement from the appropriate officer to address that topic”.<sup>2687</sup>
- 13.237. The NSWPF duly produced a single statement, by Assistant Commissioner Crandell, in relation to those topics, with no indication to the Inquiry that he was not familiar with the methodology of the strike force or that another officer would be better placed to address these topics.
- 13.238. However, as it eventually emerged in September 2023, Assistant Commissioner Crandell’s knowledge of the methodology actually utilised by the strike force was both incomplete and in significant respects simply wrong. Those who knew what actually happened were Superintendent Middleton, Detective Inspector Grace and Detective Acting Sergeant Bignell. Accordingly, it is their evidence that I have set out in detail above, much of which supersedes or corrects the evidence initially given by Assistant Commissioner Crandell.
- 13.239. It is disappointing that it was not until late June 2023—*after* the evidence in Public Hearing 2 had concluded (as it was then thought), and at a time when the reporting date for the Inquiry was still 30 August 2023—that the NSWPF asserted, in the June NSWPF submissions, that those officers should have been called to give evidence about these topics.
- 13.240. Even in its letter to the Inquiry on 19 May 2023, the NSWPF did not give any indication that Detective Acting Sergeant Bignell was the person with knowledge of these matters, or that any of the evidence of Assistant Commissioner Crandell was not correct.<sup>2688</sup>
- 13.241. As Counsel Assisting outlined in the October CAS, “[h]ad this evidence been brought forward earlier ... a great deal of time on the part of both the Inquiry and interested parties, including the NSWPF, would have been saved”.<sup>2689</sup>

<sup>2687</sup> Exhibit 6, Tab 533, Letter from Kate Lockery to Patrick Hodgetts, 20 September 2022, 2 (SCOI.82096).

<sup>2688</sup> Exhibit 6, Tab 386, Letter from Katherine Garaty to Enzo Camporeale, 19 May 2023 (SCOI.83388).

<sup>2689</sup> Supplementary Submissions of Counsel Assisting, 16 October 2023, [298] (SCOI.86243).



- 13.242. Moreover, as was submitted by Counsel Assisting and as I have noted earlier, that unfortunate state of affairs is highlighted and exacerbated by the evidence of Detective Acting Sergeant Bignell that at no time prior to about August 2023 had he ever been asked to provide his recollection of these matters in connection with this Inquiry. Given the terms of the Inquiry’s letter of 20 September 2022, that is in my view both inexplicable and most unfortunate.
- 13.243. In the October NSWPF Submissions, the NSWPF asserted that:
- a. It “was apparent from the evidence he gave in December 2022, [that] [Assistant Commissioner] Crandell was not involved in the day-to-day running of [Strike Force] Parrabell”;<sup>2690</sup>
  - b. “[A]t no stage” did the Inquiry indicate to the NSWPF “that it wished to undertake a more detailed examination of the evidence in relation to [Strike Force] Parrabell than the evidence of [Assistant Commissioner] Crandell and the other witnesses that were called in December 2022 and February 2023 would permit”;<sup>2691</sup>
  - c. “[I]t was not until receipt of Counsel Assisting’s submissions” that those representing the NSWPF “considered it necessary” to approach Detective Acting Sergeant Bignell;<sup>2692</sup>
  - d. It “was at all times open” for Counsel Assisting to request a statement from Detective Acting Sergeant Bignell and, in turn, to call him to give evidence;<sup>2693</sup> and
  - e. To the extent that the Inquiry wished to “conduct a detailed exploration of the work of” Detective Acting Sergeant Bignell, Detective Inspector Grace and Superintendent Middleton, it was for those assisting the Inquiry to facilitate it.<sup>2694</sup>
- 13.244. I reject these submissions. From the plain terms of the 20 September 2022 letter, and as demonstrated further by the questioning of Assistant Commissioner Crandell in December 2022, it was made abundantly clear to the NSWPF that the Inquiry wished to conduct a detailed exploration of the methodology of Strike Force Parrabell. The specific focus of the 20 September 2022 letter was the proposed and actual “methodology, protocols and arrangements”, rather than how well or badly those protocols and arrangements were carried out.

<sup>2690</sup> Supplementary Submissions of NSWPF, 23 October 2023, [323] (SCOI.86378).

<sup>2691</sup> Supplementary Submissions of NSWPF, 23 October 2023, [326] (SCOI.86378).

<sup>2692</sup> Supplementary Submissions of NSWPF, 23 October 2023, [328] (SCOI.86378).

<sup>2693</sup> Supplementary Submissions of NSWPF, 23 October 2023, [328] (SCOI.86378).

<sup>2694</sup> Supplementary Submissions of NSWPF, 23 October 2023, [329] (SCOI.86378).

- 13.245. The Inquiry requested that the NSWPF provide a statement, dealing with that subject matter, from Assistant Commissioner Crandell. As he was the senior officer who established the strike force and authored its Report, the Inquiry anticipated that he was the person who was best placed to give such evidence. However, the Inquiry also explicitly asked the NSWPF to provide statements from one or more other officers if another officer was better placed to do so.
- 13.246. Although it is for the Inquiry to decide which witnesses are to be called or provide statements, the Inquiry necessarily and reasonably relies, and should be able to rely, on interested parties to assist it in performing its functions. Prior to, and at the time of, Assistant Commissioner Crandell's evidence, the Inquiry was not aware, and had no reason to suppose, that officers other than Assistant Commissioner Crandell may have better placed to give this evidence.
- 13.247. As to the submission by the NSWPF, in particular, that "at no stage" did the Inquiry indicate to the NSWPF that it "wished to undertake a more detailed examination of the evidence in relation to [Strike Force] Parrabell",<sup>2695</sup> I note that:
- a. Strike Force Parrabell is explicitly mentioned in the Terms of Reference, in both Paragraphs A and C;
  - b. In December 2022, I delivered a judgment on the issue of whether an examination of Strike Force Parrabell was within the Terms of Reference, after the NSWPF submitted to me that such an examination was not;<sup>2696</sup>
  - c. In September 2022, the Inquiry had requested a statement from Assistant Commissioner Crandell, or another suitable person, on various aspects of Strike Force Parrabell;<sup>2697</sup> and
  - d. In May 2023, the Inquiry wrote to the NSWPF to request its assistance in clarifying discrepancies in the evidence concerning the BCIF.<sup>2698</sup> It was clear, from the terms of that letter, that the Inquiry considered that further clarification of the evidence was necessary.
- 13.248. In light of these factors, it is unfathomable to me that "it was not until receipt of Counsel Assisting's submissions" that the NSWPF "considered it necessary" to approach Detective Acting Sergeant Bignell.

<sup>2695</sup> Supplementary Submissions of NSWPF, 23 October 2023, [326] (SCOI.86378).

<sup>2696</sup> Judgment of the Inquiry, 6 December 2022 (ORD.00001).

<sup>2697</sup> Exhibit 6, Tab 533, Letter from Kate Lockery to Patrick Hodgetts, 20 September 2022 (SCOI.82096).

<sup>2698</sup> Exhibit 6, Tab 385, Letter from Enzo Camporeale to Patrick Hodgetts, 10 May 2023 (SCOI.83387).

- 13.249. Each of Superintendent Middleton, Detective Inspector Grace and Detective Acting Sergeant Bignell was all in the employ of the NSWPF. They were presumably readily accessible and an available source of accurate information to those providing instructions in relation to the matters raised by the Inquiry. The NSWPF did eventually obtain statements from and represent all these officers in connection with Public Hearing 2. In my view, there is no evidence of any impediment to these officers being contacted earlier in the Inquiry's proceedings in order to ensure that the Inquiry had a full and accurate understanding of the intricacies of Strike Force Parrabell.
- 13.250. If, as the NSWPF now effectively contend, and as is now indeed quite obvious, Assistant Commissioner Crandell really did not know how the strike force actually organised itself, then:
- a. The NSWPF and Assistant Commissioner Crandell should have made appropriate enquiries in September–October 2022 of those who did know, in particular Detective Acting Sergeant Bignell, in order to be able to provide accurate information to the Inquiry in the statement of Assistant Commissioner Crandell; and/or
  - b. The NSWPF should have informed the Inquiry of the true position, and promptly provided an accurate statement from Detective Acting Sergeant Bignell.
- 13.251. It is both disappointing and entirely unsatisfactory that the NSWPF did neither of those things.
- 13.252. Ultimately, calling Detective Acting Sergeant Bignell provided the NSWPF with the opportunity to obtain the facts about the methodology of Strike Force Parrabell, of which they were previously unaware. This is an example of where the adversarial approach taken by the NSWPF to the Inquiry's work was inappropriate. Had a proactive approach been adopted by the NSWPF, rather than a reactive one, the NSWPF and the Inquiry would have discovered the true position much earlier.

#### CONCLUSIONS AS TO THE CONSITUENT DOCUMENTS AND BCIF

- 13.253. The evidence of Superintendent Middleton, Detective Inspector Grace and Detective Acting Sergeant Bignell, together with evidence previously available, establishes, among other things, the following:
- a. In about May 2015, Detective Inspector Grace prepared the Investigation Plan.
  - b. From on or around 30 August 2015, Detective Acting Sergeant Bignell was attached to Strike Force Parrabell, initially on a full-time basis.
  - c. Superintendent Middleton and Detective Inspector Grace were not full time on Strike Force Parrabell, nor were they located in the same room as the investigators.
  - d. The first version of the BCIF known to Detective Acting Sergeant Bignell was that attached to the Investigation Plan.

- e. In about April 2016, Detective Inspector Grace drafted the Induction Package.
  - f. The second version of the BCIF known to Detective Acting Sergeant Bignell was generated after Sergeant Steer's presentation in June 2016.
  - g. Apart from that presentation, Detective Acting Sergeant Bignell did not interact with Sergeant Steer in any substantial way.
  - h. By about September 2016 (five months after the Induction Package came into existence, and prior to the Coordinating Instructions coming into existence), all the investigators other than Detective Acting Sergeant Bignell had left Strike Force Parrabell.
  - i. The constituent documents were not proactively provided to investigators; rather they were available on e@gle.i if and when an investigator chose to seek out access to the documents.
  - j. In about October 2016, Detective Inspector Grace drafted the Coordinating Instructions.
  - k. By November/December 2016 the bulk of the work of the strike force was completed.
  - l. The third version of the BCIF known to Detective Acting Sergeant Bignell was generated in about January 2017.
- 13.254. I also make the following comments regarding the BCIFs:
- a. Contrary to the initial evidence of Assistant Commissioner Crandell that "all of the police officers who were conducting the [Strike Force Parrabell] review" used "the same" BCIF,<sup>2699</sup> in fact three different versions of the BCIF were successively used by Strike Force Parrabell during the review process.
  - b. Further, the different versions of the BCIF were not merely "slightly different" as characterised by the NSWPF in its submissions.<sup>2700</sup>
  - c. The first version of the BCIF used by Strike Force Parrabell was Form 2. This was the version of the BCIF found in the Investigation Plan. It was used from around August 2015 until June 2016.
  - d. It thus appears that at least 43 deaths (the 15 deaths referred to in Superintendent Middleton's email of 12 February 2016 and the 28 deaths referred to in Superintendent Middleton's email of 9 June 2016) were reviewed using Form 2.
  - e. From late June 2016 until January 2017, Form 3 was used by Strike Force Parrabell. This version of the BCIF corresponded to the one set out in the

<sup>2699</sup> Transcript of the Inquiry, 12 December 2022, T1035.18–20 (TRA.00015.00001).

<sup>2700</sup> Submissions of NSWPF, 28 June 2023, [509] (SCOI.84211).

Coordinating Instructions. It was introduced following a presentation by Sergeant Steer in June 2016.

- f. The number of deaths reviewed using Form 3 is unclear; however, it appears to include 21 deaths reviewed for the first time using Form 3, as well as the re-assessment and re-review (by Detective Acting Sergeant Bignell alone) of the 48 deaths previously reviewed using Form 2.
  - g. From about January 2017, Form 4 was used by Strike Force Parrabell. This was the BCIF found in Appendix B to the Parrabell Report. This form was introduced following a meeting between the Strike Force Parrabell team and Sergeant Steer in January 2017.
  - h. After each change to the BCIF (i.e., from Form 2 to Form 3 in about June 2016, and from Form 3 to Form 4 in about January 2017), all cases were reviewed by reference to that changed form. All of those “reviews” were carried out by Detective Acting Sergeant Bignell alone.
  - i. As to the changes in January 2017, all that happened was that the existing text of the BCIF responses was simply transferred across from one version of the document to the next.
- 13.255. I consider that the requirement to apply different standards of proof at different stages of the BCIF process was likely to lead to confusion and inconsistencies. Moreover, to engage the lower (civil) standard at the “overall” stage, after the higher (criminal) threshold had been imposed at an earlier stage, is likely to have added to that confusion.

## ACON

- 13.256. The NSWPF submitted that the fact that the it had engaged with ACON and invited it to stakeholder meetings and presentations in 2015 and 2016 is a clear reflection of the primary purpose of Strike Force Parrabell; that is, to demonstrate the seriousness with which the NSWPF regarded the hate crimes perpetrated against the members of the LGBTIQ community and, in so doing, facilitate a stronger and more trusting relationship with the LGBTIQ community.<sup>2701</sup>
- 13.257. Counsel Assisting submitted that it would have been preferable, and desirable, for Strike Force Parrabell to inform ACON of the processes and methodologies being adopted by Strike Force Parrabell. ACON may well have been able to offer insights as to the pros and cons of those processes and methodologies, including as to the appropriateness of the bias crimes indicators generally and of the contents of the BCIF in particular.<sup>2702</sup>

<sup>2701</sup> Submissions of NSWPF, 28 June 2023, [534] (SCOI.84211).

<sup>2702</sup> Submission of Counsel Assisting the Inquiry, 7 June 2023, [904] (SCOI.84380).

- 13.258. In my view, the interactions between ACON and the NSWPF during the Strike Force Parrabell process are by no means “a clear reflection”<sup>2703</sup> of an objective on the part of Strike Force Parrabell to facilitate a stronger and more trusting relationship with the LGBTIQ community. The evidence indicates very little sustained and meaningful engagement with ACON and other key bodies in the LGBTIQ community beyond the two stakeholder meetings in late 2015 and late 2016, other than some email correspondence between Jacqueline Braw and ACON in relation to the academic tender process in July 2016 (discussed later in this Chapter) and a meeting between the NSWPF and ACON in May 2017 to discuss the cases that ACON had examined.<sup>2704</sup>
- 13.259. Something of the way in which the NSWPF approached its relationship with ACON in 2016–2018 is exemplified by the following. Whereas ACON provided the NSWPF with a draft version of ACON’s *In Search of Truth and Justice Report*,<sup>2705</sup> and made changes to it at the request of the NSWPF, the NSWPF conspicuously chose not to provide a draft of the Parrabell Report to ACON, despite making representations to ACON that this would occur.<sup>2706</sup>
- 13.260. Indeed, ACON was not even informed in advance of the release date of the Parrabell Report, and learned about the Parrabell Report’s upcoming release from a journalist.<sup>2707</sup>
- 13.261. I agree with Counsel Assisting that it would have been desirable for Strike Force Parrabell to inform ACON of its processes and methodologies. Having regard to ACON’s extensive history and expertise in this area, including its efforts to conduct its own review of the list of 88 deaths, it is not in the least “speculative”, as the NSWPF submitted,<sup>2708</sup> that ACON would have been a valuable resource for Strike Force Parrabell.

<sup>2703</sup> Submissions of NSWPF, 28 June 2023, [534] (SCOI.84211).

<sup>2704</sup> Exhibit 6, Tab 101, Email from Craig Middleton to Anthony Crandell, 22–23 May 2017 (SCOI.74494).

<sup>2705</sup> See Exhibit 6, Tab 149, Email from Anthony Crandell to Nicolas Parkhill, 6 March 2018 (SCOI.77730); Exhibit 6, Tab 151, Email correspondence between Nicolas Parkhill and Anthony Crandell, 17–20 May 2018 (SCOI.77735).

<sup>2706</sup> Exhibit 6, Tab 149, Email from Anthony Crandell to Nicolas Parkhill, 6 March 2018, 4 (SCOI.77730).

<sup>2707</sup> Exhibit 6, Tab 153, Email correspondence between Nicolas Parkhill and Anthony Crandell, 22 June 2018, 1 (SCOI.77728).

<sup>2708</sup> Submissions of NSWPF, 28 June 2023, [537] (SCOI.84211).

## C. Police Methodology

- 13.262. This section of the Chapter sets out and discusses the methodology of Strike Force Parrabell in some detail. As I have considered the various constituent documents and changes to the BCIF in the ‘Origins and Beginnings’ section above, those matters are referred to only briefly in this section.
- 13.263. As noted earlier in this Chapter, evidence given by NSWPF officers in the September/October 2023 hearings contradicted earlier evidence including, in particular, Assistant Commissioner Crandell’s evidence as to Strike Force Parrabell’s methodology. Accordingly, I have focused my attention on the most relevant and accurate evidence for each topic, only noting any earlier (and, at times, inconsistent) evidence where it is necessary to do so.

### Overview

- 13.264. As previously discussed, Strike Force Parrabell had a number of constituent documents, including an Investigation Plan, an Induction Package and Coordinating Instructions.
- 13.265. The constituent documents outlined that, in summary, Strike Force Parrabell was to be a purely paper review. There was to be no re-investigation of any of the list of 88 deaths.<sup>2709</sup> As both Assistant Commissioner Crandell and Dr Dalton acknowledged, the restriction to reliance on the available historical material was a limitation of the methodology of Strike Force Parrabell.<sup>2710</sup>
- 13.266. After reviewing whatever historical material was available in each particular case (in some cases a great deal, in other cases hardly any), a BCIF was completed in respect of that death, by:
- a. Providing responses to various “prompts”, in respect of 10 “indicators”, as set out in the BCIF;<sup>2711</sup> and
  - b. Answering ‘Yes’ or ‘No’ to four possible alternative “findings” in respect of each “indicator”, namely (in the final version of the BCIF embedded in the Parrabell Report):<sup>2712</sup>
    - i. “Evidence of bias crime”;
    - ii. “Suspected bias crime”;
    - iii. “No evidence of bias crime”;
    - or
    - iv. “Insufficient information to establish a bias crime”.

<sup>2709</sup> Exhibit 6, Tab 15, Strike Force Parrabell Coordinating Instructions, Undated, 3 (SCOI.75071).

<sup>2710</sup> Transcript of the Inquiry, 7 December 2022, T707.12, (TRA.00012.00001); Transcript of the Inquiry, 28 February 2023, T2399.29–2400.10 (TRA.00029.00001).

<sup>2711</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 67 (SCOI.02632).

<sup>2712</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 121–131 (SCOI.02632).

- 13.267. At the inception of Strike Force Parrabell, it was anticipated that it would complete its work in a relatively short period of time.
- 13.268. On 12 August 2015, Superintendent Middleton sent an email to various officers of the NSWPF, including Assistant Commissioner Crandell, which explained the exercise being carried out by Strike Force Parrabell. At that point, Superintendent Middleton said that he was “hoping that the review ... [could] be completed within a 3 month time frame”.<sup>2713</sup>
- 13.269. By 7 May 2016, (well after three months had passed), Assistant Commissioner Crandell anticipated that Strike Force Parrabell would be completed in “approximately 4 months”.<sup>2714</sup>
- 13.270. In reality, the bulk of the work of Strike Force Parrabell was not completed until November/December 2016,<sup>2715</sup> after which the academic team’s review took place.

## Implementation

### A three-stage process

- 13.271. In his statement, Assistant Commissioner Crandell stated that the general methodology employed by Strike Force Parrabell was that the officers would obtain all available documents (both internal to NSWPF and external, such as from the State Archives) in relation to each death, allocate an examination of each case to one or more officers, form a view as to whether each case had any evidence of “bias”, complete a BCIF, and ensure that all material was uploaded to e@gle.i.<sup>2716</sup>
- 13.272. Both in his statement, and in his oral evidence, Assistant Commissioner Crandell plainly understood and believed that all the investigators were involved in the filing out of the BCIFs.<sup>2717</sup>
- 13.273. However, the evidence of Superintendent Middleton, Detective Acting Sergeant Bignell, and Detective Inspector Grace in September 2023, revealed for the first time that a three-stage process of Strike Force Parrabell was carried out as follows:<sup>2718</sup>
- a. Stage 1: Triage – during which the investigators would gather all the documents they could locate in relation to a particular case and provide a selection of them to Detective Acting Sergeant Bignell;

<sup>2713</sup> Exhibit 6, Tab 57, Email from Craig Middleton to Michael Fitzgerald and Damian Henry, 12 August 2015 (SCOI.74131).

<sup>2714</sup> Exhibit 6, Tab 60, Email correspondence between Anthony Crandell, Georgie Wells and Ainslie Blackstone, 6–7 May 2016 (SCOI.74209).

<sup>2715</sup> Transcript of the Inquiry, 21 September 2023, T5781.7–11 (TRA.00089.00001).

<sup>2716</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [85] (SCOI.76961).

<sup>2717</sup> See, e.g., Transcript of the Inquiry, 7 December 2022, T726.2–38; 753.16–754.8 (TRA.00011.00001); Transcript of the Inquiry, 8 December 2022, T860.17–46; 862.21–864.34 (TRA.00013.00001); Transcript of the Inquiry, 9 December 2022, T992.15–37 (TRA.00014.00001); Transcript of the Inquiry, 12 December 2022, T1030.17–1031.16; 11035.18–20 (TRA.00015.00001).

<sup>2718</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [31] (NPL.9000.0024.0012); Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [48]–[69] (NPL.9000.0026.0007).



- b. Stage 2: Filling out of the BCIF for each case – this was done single-handedly by Detective Acting Sergeant Bignell; and
- c. Stage 3: Review – comprising monthly meetings of Superintendent Middleton, Detective Inspector Grace and Detective Acting Sergeant Bignell, at which the draft BCIFs prepared by Detective Acting Sergeant Bignell would be discussed and finalised.

### STAGE 1: TRIAGE

- 13.274. At the triage stage of the review, the first step was for the investigators to locate and collate the available documents.<sup>2719</sup>
- 13.275. Generally speaking, one investigator was assigned to each case unless there was an exceptionally large volume of material connected with a single death.<sup>2720</sup> There were only two deaths which had more than one investigator allocated to them.<sup>2721</sup>
- 13.276. That investigator was responsible for making the necessary inquiries for documents for their allocated case. Creating the documents would usually involve searching e@gle.i and COPS and then sending a request to archives for relevant material.<sup>2722</sup>
- 13.277. Detective Acting Sergeant Bignell gave evidence that, following an initial meeting in which he explained the “types of records” Strike Force Parrabell would require, he relied on the expertise of employees of “Archives” (a section within the NSWPF)<sup>2723</sup> to “identify and retrieve all available documents”.<sup>2724</sup> In some circumstances, limited or no information was available from the Archives section. In those circumstances, investigators would “reach out” to the Coroners Court of NSW or the administrative staff of the PAC which carried out the original investigation to conduct a search on the system called “TRIM”.<sup>2725</sup> Detective Acting Sergeant Bignell did not recall any documents being located in response to the TRIM searches.<sup>2726</sup>

<sup>2719</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [31(a)] (NPL.9000.0024.0012); Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [51]–[56] (NPL.9000.0026.0007).

<sup>2720</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [51], [55] (NPL.9000.0026.0007).

<sup>2721</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [51], [55] (NPL.9000.0026.0007).

<sup>2722</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [51] (NPL.9000.0026.0007).

<sup>2723</sup> Transcript of the Inquiry, 21 September 2023, T5794.1–7 (TRA.00089.00001).

<sup>2724</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [52] (NPL.9000.0026.0007).

<sup>2725</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [53] (NPL.9000.0026.0007); Transcript of the Inquiry, 21 September 2023, T5799.17–5800.18 (TRA.00089.00001).

<sup>2726</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [54] (NPL.9000.0026.0007); Transcript of the Inquiry, 21 September 2023, T5794.39 (TRA.00089.00001).

- 13.278. Once all the available material had been collected for a particular case, the allocated investigator reviewed every document and extracted anything regarded by that investigator as relevant to the question of LGBTIQ bias.<sup>2727</sup> The investigator would make a copy of the documents so selected, return the originals to the case file, and upload a digital copy to e@gle.i. When uploading the material to e@gle.i, the investigator would also enter an overview of each document which could include notes marking “key sections of the document” for Detective Acting Sergeant Bignell to review. Investigators were expected to include “any information that offered up a suggestion of motive”, including a robbery motive.<sup>2728</sup>
- 13.279. Once all material had been reviewed, the investigator would prepare a summary or synopsis of the case.<sup>2729</sup> These provided “an overview [of the] time, date, place and [names of]... the involved parties”.<sup>2730</sup> These documents were separate to the BCIFs, which were completed by Detective Acting Sergeant Bignell (see [13.286] below).
- 13.280. Detective Acting Sergeant Bignell gave evidence that he coordinated and supervised the triage stage. This involved the creation of a progress tracker on a whiteboard in the central working area in the Surry Hills Detectives Office. Each of the 88 deaths being reviewed was listed on the whiteboard and colour coded based on the status of the review, for example, when the review was underway or when the review of the case had been completed.<sup>2731</sup>
- 13.281. Detective Acting Sergeant Bignell said that the investigators were given a copy of the BCIF and expected to familiarise themselves with the indicators and what type of material could be responsive to each of them.<sup>2732</sup> Prior to June 2016, according to Detective Acting Sergeant Bignell, the BCIF in use was Form 2, whereas from about late June 2016 until January 2017, the BCIF in use was Form 3.<sup>2733</sup> Form 4 only came into existence in January 2017, some months after all the other investigators had left the strike force.<sup>2734</sup>
- 13.282. As noted above, he gave the investigators “verbal briefings”. These did not include explanation of terms (used in some of the constituent documents) such as “gay hate”, “sexuality related bias” or “gender bias”.<sup>2735</sup>

<sup>2727</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [31(b)] (NPL.9000.0024.0012).

<sup>2728</sup> Transcript of the Inquiry, 21 September 2023, T5851.26–5853.41 (TRA.00089.00001).

<sup>2729</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [56], [57] (NPL.9000.0026.0007).

<sup>2730</sup> Transcript of the Inquiry, 21 September 2023, T5807.6–19, 5810.3–18 (TRA.00089.00001).

<sup>2731</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [49]–[50] (NPL.9000.0026.0007).

<sup>2732</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [58] (NPL.9000.0026.0007); Transcript of the Inquiry, 21 September 2023, T5808.8–43 (TRA.00089.00001).

<sup>2733</sup> Transcript of the Inquiry, 21 September 2023, T5785.28–5786.3, 5808.45–5809.6, 5811.45–5812.1, 5848.17–23 (TRA.00089.00001).

<sup>2734</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [63] (NPL.9000.0026.0007); Transcript of the Inquiry, 21 September 2023, T5787.41–5788.28, 5789.13–17, 5812.38–5813.2 (TRA.00089.00001).

<sup>2735</sup> Transcript of the Inquiry, 21 September 2023, T5850.44–5851.24 (TRA.00089.00001).

- 13.283. Detective Acting Sergeant Bignell said that he and the investigators engaged in a “collaborative” process; they all worked in a common area and there were many “informal discussions” regarding what materials should be included, with investigators often running specific documents past him for his opinion.<sup>2736</sup>
- 13.284. In oral evidence, he clarified that these discussions occurred “infrequently” and agreed that “by and large” the investigators made triage decisions themselves.<sup>2737</sup> He indicated that he “always encouraged investigators to be overinclusive with their upload to e@gle-i” as he could review the material to determine its relevance when completing the BCIF.<sup>2738</sup>
- 13.285. Detective Acting Sergeant Bignell believed that the investigators followed his instructions to be overinclusive, because there was a “considerable amount of material... which did not necessarily assist” him to complete the BCIF.<sup>2739</sup> Due to the “collaborative” process at the triage stage, he felt that it was unnecessary to check that material was not missed.<sup>2740</sup>

## STAGE 2: COMPLETION OF BCIFS

- 13.286. As to the second stage, the evidence of Detective Acting Sergeant Bignell was the only one who completed the BCIFs. It was his role, alone, to review whatever material the investigators had extracted, and to “populate the BCIF for each case”.<sup>2741</sup> This process was adopted to “ensure consistency in approach to the BCIF across all cases”.<sup>2742</sup>
- 13.287. The other investigators did not conduct any detailed analysis; assess the weight given to “any particular sign”; or determine whether any anti-LGBTIQ bias motivation was present.<sup>2743</sup>

<sup>2736</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [59] (NPL.9000.0026.0007).

<sup>2737</sup> Transcript of the Inquiry, 21 September 2023, T5810.22–5811.3 (TRA.00089.00001).

<sup>2738</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [59] (NPL.9000.0026.0007).

<sup>2739</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [60] (NPL.9000.0026.0007).

<sup>2740</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [61] (NPL.9000.0026.0007).

<sup>2741</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [61] (NPL.9000.0026.0007).

<sup>2742</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [61] (NPL.9000.0026.0007). See also Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [64] (NPL.9000.0024.0012).

<sup>2743</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [43] (NPL.9000.0024.0012).

- 13.288. This was a revelation in the September 2023 evidence. The previous evidence of Assistant Commissioner Crandell,<sup>2744</sup> as I have indicated, was that all the investigators were involved in the filling out of the BCIFs. The academic team evidently also had that understanding,<sup>2745</sup> as did the NSWPF, as is plain in both its letter of 19 May 2023,<sup>2746</sup> and the June NSWPF Submissions.<sup>2747</sup> As a consequence, the Inquiry’s experts had also proceeded on that footing.<sup>2748</sup>
- 13.289. Detective Inspector Grace said that the use of Detective Acting Sergeant Bignell as a “link” between the triage and review stages of Strike Force Parrabell also “allowed the senior team input into the triage process” to ensure the accuracy and effective population of the BCIFs and avoid misunderstandings between these two stages of the review.<sup>2749</sup> I note that in fact, on the evidence of Detective Acting Sergeant Bignell, neither Superintendent Middleton nor Detective Inspector Grace had any involvement in the triage process.<sup>2750</sup> Detective Acting Sergeant Bignell, however, did both supervise the triage process and participate in the review stage.<sup>2751</sup>
- 13.290. Detective Acting Sergeant Bignell believed that the investigators followed his instructions to be overinclusive because there was a “considerable amount of material... which did not necessarily assist” him to complete the BCIF.<sup>2752</sup> Due to the “collaborative” process at the triage stage, he felt that it was unnecessary to check that material was not missed.<sup>2753</sup>

<sup>2744</sup> See, e.g., Transcript of the Inquiry, 7 December 2022, T726.2–38, 753.16–754.8 (TRA.00011.00001); Transcript of the Inquiry, 8 December 2022, T860.17–46, 862.21–864.34 (TRA.00013.00001); Transcript of the Inquiry, 9 December 2022, T992.15–37 (TRA.00014.00001); Transcript of the Inquiry, 12 December 2022, T1030.17–1031.16, 11035.18–20 (TRA.00015.00001).

<sup>2745</sup> See, e.g., Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 67–69 (SCOI.02632); Transcript of the Inquiry, 28 February 2023, T2383.2–31 (TRA.00029.00001).

<sup>2746</sup> See, e.g., Exhibit 6, Tab 386, Letter from Katherine Garaty to Enzo Camporeale, 19 May 2023, 2–3 (SCOI.83388).

<sup>2747</sup> See, e.g., Submissions of NSWPF, 28 June 2023, [540]–[541], [560], [602]–[604] (SCOI.84211).

<sup>2748</sup> See, e.g., Exhibit 6 Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [91]–[92] (SCOI.82366.00001).

<sup>2749</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [64]–[65] (NPL.9000.0024.0012).

<sup>2750</sup> See, e.g., Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [49], [60] (NPL.9000.0026.0007); Transcript of the Inquiry, 21 September 2023, T5781.26–5782.3, 5815.17–28, 5842.6–25 (TRA.00089.00001). See also Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [31(b)] (NPL.9000.0024);

<sup>2751</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [31(b)–(c)] (NPL.9000.0024); Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [49], [66]–[67] (NPL.9000.0026.0007).

<sup>2752</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [60] (NPL.9000.0026.0007).

<sup>2753</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [61] (NPL.9000.0026.0007).

## STAGE 3: PANEL REVIEW

13.291. Once a month, Detective Acting Sergeant Bignell would meet with Superintendent Middleton and Detective Inspector Grace to discuss the BCIFs which he had completed.<sup>2754</sup> According to both Detective Acting Sergeant Bignell and Superintendent Middleton, these meetings often involved “robust discussion”.<sup>2755</sup> “Occasionally”, Assistant Commissioner Crandell or Jacqueline Braw would be present at these meetings.<sup>2756</sup>

13.292. In his statement, Detective Acting Sergeant Bignell stated:<sup>2757</sup>

*The meetings were approached with open minds and with a focus on achieving the correct identification of whether anti-LGBTIQ bias affected the relevant case. We capitalised on each other’s different life experiences, professional knowledge and skills throughout our discussions. These meetings were often full of robust discussion as we sought to challenge both our own and each other’s way of thinking to reach the most appropriate categorisation for each case.*

*I do not recall any instances where I felt pressured to change my opinion on the designation of a case, that my opinion had been unfairly shut down or that I had disagreed with the final designation selected. No member of the review team had “veto power” or the final say on how to categorise the case, nor was hierarchy determinative of outcome where views differed...*

13.293. Superintendent Middleton and Detective Inspector Grace would be given a completed BCIF, accompanied by all the material that had been relied on by Detective Acting Sergeant Bignell to complete that form. Detective Acting Sergeant Bignell would bring hard copies of this material to the meeting and would refer to it if necessary.<sup>2758</sup> Superintendent Middleton would also be provided with a “short progress report” outlining the status of the review, “staff resourcing”, and other issues including “any issues with document enquiries”.<sup>2759</sup>

13.294. For each case, the BCIF was relied upon, but the final (overall) classification made was made “[in] a general sense”. In other words, having reviewed the information, the three participants would determine whether they could arrive at an agreement regarding the most appropriate overall classification for that case.<sup>2760</sup>

<sup>2754</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [64], [66]–[68] (NPL.9000.0026.0007).

<sup>2755</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [68] (NPL.9000.0026.0007); Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [68(5)] (NPL.9000.0029.0001).

<sup>2756</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [64] (NPL.9000.0026.0007); Transcript of the Inquiry, 21 September 2023, T5816.9–18 (TRA.00089.00001).

<sup>2757</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [68]–[69] (NPL.9000.0026.0007).

<sup>2758</sup> Transcript of the Inquiry, 21 September 2023, T5814.1–20 (TRA.00089.00001).

<sup>2759</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [68(3)] (NPL.9000.0029.0001).

<sup>2760</sup> Transcript of the Inquiry, 21 September 2023, T5817.42–43 (TRA.00089.00001).

- 13.295. Critically, Detective Acting Sergeant Bignell’s evidence was that, of all the 80-plus deaths under consideration, changes were made to the BCIFs (as filled in by him) by the review committee in only a handful of cases, and even those changes were “pretty minor”, such as “context” or “spelling or grammatical issues”.<sup>2761</sup>
- 13.296. Detective Acting Sergeant Bignell acknowledged that some of Assistant Commissioner Crandell’s evidence was incorrect, including that Assistant Commissioner Crandell had testified that the various investigators filled out the forms and formed a view as to whether or not there had been bias, whereas in fact that was not so: only Detective Acting Sergeant Bignell himself performed those functions.<sup>2762</sup>
- 13.297. When asked about a situation when two or more officers were assigned to a death and arrived at different views as to the filling out of the BCIF, and how such a conflict would be resolved, Assistant Commissioner Crandell stated that the following “governance structures” would apply:<sup>2763</sup>
- a. A weekly review of the active investigations was conducted by Detective Inspector Grace;<sup>2764</sup>
  - b. A monthly review of all active investigations was conducted by Superintendent Middleton and Detective Inspector Grace;<sup>2765</sup>
  - c. Guidance was provided to teams as they went through the task of identifying whether or not bias was a factor;<sup>2766</sup> and
  - d. A discussion with senior investigators as to whether or not it was appropriate to assign that particular bias or not would occur.<sup>2767</sup>
- 13.298. Proposition (c) in the preceding paragraph, evidently, was simply wrong. The “teams” did not perform that exercise; only Detective Acting Sergeant Bignell, alone, did so.
- 13.299. The Parrabell Report itself asserted that a “reviewing detective” assessed each case and shared their findings with the “head detective”, that the head detective would then finalise the review, and then the team of three senior detectives would meet monthly to review all the accumulated cases.<sup>2768</sup> It is clear from the context that the “head detective” was a reference to Detective Acting Sergeant Bignell, and that a “reviewing detective” was a reference to one of the other investigators. That being so, in the light of Detective Acting Sergeant Bignell’s evidence, those assertions in the Parrabell Report were also wrong.

<sup>2761</sup> Transcript of the Inquiry, 21 September 2023, T5820.21–5821.7 (TRA.00089.00001).

<sup>2762</sup> Transcript of the Inquiry, 21 September 2023, T5824.14–5827.40 (TRA.00089.00001).

<sup>2763</sup> Transcript of the Inquiry, 7 December 2022, T754.5 (TRA.00012.00001).

<sup>2764</sup> Transcript of the Inquiry, 7 December 2022, T753.20–22 (TRA.00012.00001).

<sup>2765</sup> Transcript of the Inquiry, 7 December 2022, T753.22–25 (TRA.00012.00001).

<sup>2766</sup> Transcript of the Inquiry, 7 December 2022, T753.25–27 (TRA.00012.00001).

<sup>2767</sup> Transcript of the Inquiry, 7 December 2022, T754.5–8 (TRA.00012.00001).

<sup>2768</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 67 (SCOI.02632).

- 13.300. Assistant Commissioner Crandell said that he considered that the senior investigators would have a “power of veto” in determining whether or not they thought bias was present.<sup>2769</sup> As noted above, Detective Acting Sergeant Bignell’s evidence was that only in a handful of cases did the review panel (of which he was one of three members) make any changes to the BCIFs that he had compiled, and even then those changes were “pretty minor”.
- 13.301. As to the accuracy of the narratives written in the BCIFs, Assistant Commissioner Crandell stated that a “governance system” was used, whereby officers received input from Detective Acting Sergeant Bignell and Detective Inspector Grace and a weekly meeting was held to ensure that “there was consistency across the different views and that there was open discussion about those points”.<sup>2770</sup>
- 13.302. Again, that evidence can be seen to be wrong, in the light of Detective Acting Sergeant Bignell’s evidence. The other investigators played no part at all in the composition of the “narratives”.
- 13.303. Detective Inspector Grace and Superintendent Middleton clarified that the review panel had the capacity to direct the triage team to re-review material,<sup>2771</sup> for instance if there was insufficient information about an indicator.<sup>2772</sup> Detective Inspector Grace also stated that he had a “practice” of requesting re-review if he identified, on his review of a completed BCIF, that “the initial review may not have been comprehensive”.<sup>2773</sup>

### Who consulted the original files?

- 13.304. In December 2022, Assistant Commissioner Crandell gave evidence that he “did not believe” that Detective Acting Sergeant Bignell would have gone back over the original case material to determine whether he agreed with the narrative originally prepared.<sup>2774</sup> He did, however, have access to the files if he wished to confirm anything.<sup>2775</sup>
- 13.305. Once again, this evidence from Assistant Commissioner Crandell can now be seen to be quite incorrect. Detective Acting Sergeant Bignell did not have to consider whether he agreed with a narrative originally prepared by another officer. He himself prepared all the “narratives”, with no input from the other investigators.

<sup>2769</sup> Transcript of the Inquiry, 7 December 2022, T754.16–20 (TRA.00012.00001).

<sup>2770</sup> Transcript of the Inquiry, 12 December 2022, T1031.2–7 (TRA.00015.00001).

<sup>2771</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [66] (NPL.9000.0024.0012); Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [68(6)] (NPL.9000.0029.0001).

<sup>2772</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [68(6)] (NPL.9000.0029.0001).

<sup>2773</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [66] (NPL.9000.0024.0012).

<sup>2774</sup> Transcript of the Inquiry, 12 December 2022, T1031.9–16 (TRA.00015.00001).

<sup>2775</sup> Transcript of the Inquiry, 12 December 2022, T1031.21–32 (TRA.00015.00001).

- 13.306. In Detective Acting Sergeant Bignell’s opinion, the investigators who conducted the triage stage of the review (in accordance with his request to them) were over-inclusive in terms of what documents they included as relevant. For this reason, he did not go back to the original files himself to check the work of the investigators.<sup>2776</sup>
- 13.307. Detective Inspector Grace indicated that the strike force encountered “unexpected difficulties in locating and retrieving historical case files” due to “poor and inconsistent” filing practices in the past.<sup>2777</sup>
- 13.308. Detective Acting Sergeant Bignell took the view that in cases where there was extensive material located in the archives, that suggested to him that the archives possessed the full extent of the material available for a particular case.<sup>2778</sup> He said that his understanding was based on his experience as a police officer, and his hope that all the material had been provided.<sup>2779</sup>
- 13.309. He was unaware of the fact that in relation to historical cases, it was known, at least within the UHT, that many briefs of evidence and case file documents had not been stored or archived in the proper manner.<sup>2780</sup> He ultimately conceded that it “could have been the case” that Strike Force Parrabell may not have obtained all of the documents available for each particular matter.<sup>2781</sup>
- 13.310. As noted above, at the third stage of review Superintendent Middleton and Detective Inspector Grace would be given a completed BCIF, and all the material that had been relied on by Detective Acting Sergeant Bignell to complete that form.<sup>2782</sup> Therefore, it appears that they also did not consult the original case materials.
- 13.311. Detective Inspector Grace indicated that he would review the BCIF and “any particularly pertinent documents”<sup>2783</sup> prior to the panel review meetings.<sup>2784</sup> He would “ordinarily” review records of interview where they shed light on the victim or another person’s “sexuality or location during a period relevant to the crime” to ensure this was sufficiently reflected in the BCIF.<sup>2785</sup> He followed a similar process for “coronial reports where they were indicated on the BCIF for some

<sup>2776</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [59]–[60] (NPL.9000.0026.0007); Transcript of the Inquiry, 21 September 2023, T5806.33–40 (TRA.00089.00001).

<sup>2777</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [39] (NPL.9000.0024.0012).

<sup>2778</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [54] (NPL.9000.0026.0007).

<sup>2779</sup> Transcript of the Inquiry, 21 September 2023, T5794.41–5795.22 (TRA.00089.00001).

<sup>2780</sup> Transcript of the Inquiry, 21 September 2023, T5797.13–35; see also T5798.45–5799.4 (TRA.00089.00001).

<sup>2781</sup> Transcript of the Inquiry, 21 September 2023, T5802.30–35 (TRA.00089.00001).

<sup>2782</sup> Transcript of the Inquiry, 21 September 2023, T5814.1–20 (TRA.00089.00001).

<sup>2783</sup> Detective Acting Sergeant Bignell gave evidence that he understood Detective Inspector Grace to be referring to documents that he had specifically cited in the BCIF and provided a reference number to their location in the e@gle.i system: Transcript of the Inquiry, 21 September 2023, T5868.16–28 (TRA.00089.00001).

<sup>2784</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [67] (NPL.9000.0024.0012).

<sup>2785</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [66] (NPL.9000.0024.0012).



reason”.<sup>2786</sup> Detective Acting Sergeant Bignell recalled Detective Inspector Grace reviewing and/or discussing coronial reports and records of interview with him.<sup>2787</sup>

- 13.312. Superintendent Middleton would review the “completed BCIF” and progress reports; he did not address whether he also reviewed such documents.<sup>2788</sup>

### Subjectivity and intuition

- 13.313. The methodology adopted by Strike Force Parrabell was, ultimately, an entirely subjective one. As I have outlined above, the classification of each case came down to, ultimately, the opinion of Detective Acting Sergeant Bignell (and, in the “handful” of cases where Detective Acting Sergeant Bignell’s opinion may have been changed in “pretty minor” ways during the “panel review”, by Superintendent Middleton and/or Detective Inspector Grace).

- 13.314. The subjective nature of the exercise conducted by Strike Force Parrabell was acknowledged in various ways by Strike Force Parrabell officers, by Assistant Commissioner Crandell, by Dr Dalton, and in the Parrabell Report, including in the examples set out below.

- 13.315. In an email to Dr Dalton on 28 July 2017, Superintendent Middleton wrote (emphasis added):<sup>2789</sup>

*Even within the review team itself we had differences of opinion on cases and which category it was placed. In some respects, some of these matters could almost sit in 2 categories. But ultimately we had to make a choice, of which opinion played a part. If the truth be known alot [sic] of these matters were placed in their category based on our ‘collective opinion’. You already know this, hence why your results differ from ours, essentially those differences are based on your opinion as opposed to our opinion. Whose opinion is right? I would suggest both are.*

- 13.316. Assistant Commissioner Crandell accepted that, in Superintendent Middleton’s mind, these were ultimately questions of opinion.<sup>2790</sup> He initially asserted that it was not necessarily individual officers who were making “those final determinations”, but he then accepted that the individual officers did make the initial calls of judgements based on their own opinion, and that the governance or review process resulted in a “collective opinion” being arrived at.<sup>2791</sup> He further

<sup>2786</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [66] (NPL.9000.0024.0012).

<sup>2787</sup> Transcript of the Inquiry, 21 September 2023, T5867.43–5868.14 (TRA.00089.00001).

<sup>2788</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [68(2)] (NPL.9000.0029.0001). Detective Acting Sergeant Bignell was unsure whether Superintendent Middleton would review the material that had been extracted at the triage stage and relied on to complete the BCIFs prior to their monthly case review meetings: Transcript of the Inquiry, 21 September 2023, T5815.22–32, 5817.18–20, 5862.25–33 (TRA.00089.00001).

<sup>2789</sup> Exhibit 6, Tab 112, Email correspondence between Derek Dalton and Craig Middleton, 27–28 July 2017, 1 (SCOI.74554).

<sup>2790</sup> Transcript of the Inquiry, 7 December 2022, T804.29–30 (TRA.00012.00001).

<sup>2791</sup> Transcript of the Inquiry, 7 December 2022, T804.35–805.2 (TRA.00012.00001).

- accepted that this “collective opinion” was still an opinion and thus still subjective.<sup>2792</sup>
- 13.317. I pause to note that this evidence of Assistant Commissioner Crandell was again incorrect. The “individual officers” did not make the “initial calls”. Assistant Commissioner Crandell evidently believed or supposed, wrongly, that the BCIFs were completed by multiple investigators; whereas, as noted above, it was in fact Detective Acting Sergeant Bignell who completed all of the forms and made the initial calls of judgements based on *his* own opinion.
- 13.318. In the Academic Report, the academic team described their understanding of how the Strike Force Parrabell officers reached their “finding” in each case (an understanding presumably based on what they were told by one or more of those officers), as follows (emphasis added):<sup>2793</sup>
- ... the process was described as intuitive and relied on qualitative data in the form of contextual information derived from analysing each case.*
- 13.319. In his oral evidence, Assistant Commissioner Crandell agreed that the process was intuitive rather than objective, although he suggested that the relevant intuition might be that of the “experienced investigators” (as distinct from “each individual investigator”).<sup>2794</sup>
- 13.320. Dr Dalton’s understanding was that, having read the case material that they had, the Strike Force Parrabell officers would “arrive at a view”.<sup>2795</sup> (Again, that is incorrect, for the reasons referred to above.) They would do so “intuitively”, as referred to in the Academic Report.<sup>2796</sup> He agreed that this meant that ultimately what emerged was the “subjective” view of the relevant officer or officers, expressed as “a matter of opinion”.<sup>2797</sup>
- 13.321. It seems clear that Dr Dalton was unaware that the content of every BCIF was composed solely by Detective Acting Sergeant Bignell, and that therefore it was the “subjective” and “intuitive” views of Detective Acting Sergeant Bignell alone that were found in the BCIFs (subject to any “pretty minor” changes that the review panel might have made in a “handful” of cases).
- 13.322. Assistant Commissioner Crandell’s evidence was that there was a “weighting process” that was carried out, in respect of the 10 indicators in the BCIF.<sup>2798</sup> He said that this “weighting” would be done “collaboratively” by the three senior Strike Force Parrabell officers.<sup>2799</sup>

<sup>2792</sup> Transcript of the Inquiry, 7 December 2022, T805.6–7 (TRA.00012.00001).

<sup>2793</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 69 (SCOI.02632).

<sup>2794</sup> Transcript of the Inquiry, 7 December 2022, T805.31–806.32 (TRA.00012.00001).

<sup>2795</sup> Transcript of the Inquiry, 28 February 2023, T2384.4–19, 2385.26–31 (TRA.00029.00001).

<sup>2796</sup> Transcript of the Inquiry, 28 February 2023, T2384.21–2386.17 (TRA.00029.00001).

<sup>2797</sup> Transcript of the Inquiry, 28 February 2023, T2385.32–2386.17 (TRA.00029.00001).

<sup>2798</sup> Transcript of the Inquiry, 8 December 2022, T860.8–862.7 (TRA.00013.00001).

<sup>2799</sup> Transcript of the Inquiry, 8 December 2022, T862.8–863.18 (TRA.00013.00001).

- 13.323. Assistant Commissioner Crandell agreed that such a weighting process turned inevitably on the officers' personal views about how much significance or emphasis ought to be placed on one factor as opposed to another.<sup>2800</sup> He further accepted that the process, at that level, was “entirely opaque”, and that it would be impossible to penetrate or replicate the process unless one were to interrogate those officers who participated in the ultimate discussion.<sup>2801</sup>
- 13.324. Assistant Commissioner Crandell's evidence was that the purpose of the academic review was to assess the “systemic validity” of Strike Force Parrabell, including the use of the BCIF.<sup>2802</sup> In fact, as discussed a little later in this Chapter, the academic team was not prepared to endorse the BCIF. Indeed, Dr Dalton said he told the NSWPF that it was “pretty appalling”. The impact of those views on the “systemic validity” of the strike force is obvious.
- 13.325. In the NSWPF's letter of 19 May 2023, it was asserted that the Strike Force Parrabell officers applied an “intuitive synthesis methodology” in assessing each case.<sup>2803</sup> Detective Acting Sergeant Bignell said that he had “no idea” what was meant by that expression, and that “it doesn't reflect what actually happened in those review meetings... it wasn't based on intuition, it was based on the available evidence”.<sup>2804</sup>

### Standard of proof

- 13.326. Earlier in this Chapter, I addressed the question of the different the standards of proof applicable at different successive stages of the BCIF process. I will now consider the nature of the standard of proof employed by Strike Force Parrabell and how the strike force applied this in practice.
- 13.327. In Forms 3 and 4 (the versions of the BCIF found in the Coordinating Instructions and Parrabell Report respectively), the criminal standard (beyond reasonable doubt) was utilised, in respect of two of the four optional “findings”.<sup>2805</sup>
- 13.328. However, Strike Force Parrabell officers were also required to arrive at an overall conclusion, after choosing one of the four “findings” in respect of all the 10 indicators, and that overall conclusion was to be reached by reference to the lower, civil, standard (balance of probabilities).<sup>2806</sup>

<sup>2800</sup> Transcript of the Inquiry, 8 December 2022, T863.24 (TRA.00013.00001).

<sup>2801</sup> Transcript of the Inquiry, 8 December 2022, T863.27–47 (TRA.00013.00001).

<sup>2802</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [70] (SCOI.76961).

<sup>2803</sup> Exhibit 6, Tab 386, Letter from Katherine Garaty to Enzo Camporeale, 19 May 2023 (SCOI.83388).

<sup>2804</sup> Transcript of the Inquiry, 21 September 2023, T5857.32–47 (TRA.00089.00001).

<sup>2805</sup> Exhibit 6, Tab 15, Strike Force Parrabell Coordinating Instructions, Undated, 4 (SCOI.75071); Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report*, June 2018, 122 (SCOI.02632).

<sup>2806</sup> Exhibit 6, Tab 15, Strike Force Parrabell Coordinating Instructions, Undated, 4 (SCOI.75071).

- 13.329. Assistant Commissioner Crandell conceded that the standard of proof as found in those successive different parts of the BCIF appeared to be conceptually different. However, he maintained that the “tenet” of what investigators were required to do was the same, because they were looking for evidence of a bias crime.<sup>2807</sup> The criminal standard of proof was used because it was understood by criminal investigators.<sup>2808</sup>
- 13.330. Assistant Commissioner Crandell agreed that the standard of “beyond reasonable doubt” was high, and a difficult standard to reach.<sup>2809</sup> However, he maintained that it was an appropriate standard for the purposes of considering whether the incident was wholly or partially motivated by bias (even for a review “on the papers” in circumstances where it was known that the documentary material available could well be an incomplete or imperfect record of each incident).<sup>2810</sup> He said that it “showed an almost certainty that bias was involved in that crime, and that’s what I was looking for.”<sup>2811</sup>
- 13.331. Assistant Commissioner Crandell did not agree that the standard of beyond reasonable doubt increased the likelihood that the review process would underestimate the presence of bias across the deaths under consideration.<sup>2812</sup> He conceded that using different standards over time may lead to different answers, but stated that he thought:<sup>2813</sup>
- in the fullness of time that that gets teased out. So whilst that might be an initial inquiry as to whether there is material or evidence of a bias crime, I think as you move through, then the different classifications become more clear.*
- 13.332. Detective Acting Sergeant Bignell, on the other hand, did agree that the result of applying this high standard would be that not many cases would be classified as “evidence of bias crime”.<sup>2814</sup>
- 13.333. As to the application of the lower, civil, standard of proof for the “overall conclusion”, after the higher (criminal) standard had been applied at the earlier “findings” stage, Assistant Commissioner Crandell accepted that the attempted explanation which he gave in his oral evidence—namely, that he did not want investigators to exclude material for the purposes of classification because it did not reach “a certain standard”—looked like “putting the cart before the horse”.<sup>2815</sup>

<sup>2807</sup> Transcript of the Inquiry, 7 December 2022, T791.17–792.17 (TRA.00012.00001).

<sup>2808</sup> Transcript of the Inquiry, 8 December 2022, T829.45–47 (TRA.00013.00001).

<sup>2809</sup> Transcript of the Inquiry, 7 December 2022, T816.37 (TRA.00012.00001).

<sup>2810</sup> Transcript of the Inquiry, 7 December 2022, T816.37 (TRA.00012.00001).

<sup>2811</sup> Transcript of the Inquiry, 7 December 2022, T816.37–41 (TRA.00012.00001).

<sup>2812</sup> Transcript of the Inquiry, 8 December 2022, T829.31–32, 45 (TRA.00013.00001).

<sup>2813</sup> Transcript of the Inquiry, 8 December 2022, T830.19–23 (TRA.00013.00001).

<sup>2814</sup> Transcript of the Inquiry, 21 September 2023, T5836.13–33 (TRA.00089.00001).

<sup>2815</sup> Transcript of the Inquiry, 8 December 2022, T832.20–25 (TRA.00013.00001).

- 13.334. As to the use of the term “evidence/information” in each of the first two available “findings” in the BCIF, Assistant Commissioner Crandell said this was an “all-encompassing term.”<sup>2816</sup> He regarded the terms “evidence” and “information” as synonyms.<sup>2817</sup> He said he had not given “thought to those particular words and the differences between them”.<sup>2818</sup> The language was “general guidance” to the Strike Force Parrabell officers.<sup>2819</sup>
- 13.335. The evidence of Detective Inspector Grace was that as the review of the list of 88 deaths by the Strike Force progressed, he formed the view that “the notion of likelihood was extremely important” to show that certain matters were “almost certainly bias crimes”.<sup>2820</sup> Accordingly, he gave evidence that:<sup>2821</sup>
- ...we decided to separate cases out into those where we could be satisfied beyond reasonable doubt that bias was involved and those where there was evidence that suggested that bias may have been involved, albeit at a much lower level of certainty. Both categories were regarded as, in effect, bias crimes, but I considered it to be important to acknowledge differences in the strength of the available evidence. We also sought to ensure that we erred on the side of identifying bias as a possibility even where the evidence was not as clear cut.*
- 13.336. The “suspected bias” category was a “wider category of bias with a lower test”.<sup>2822</sup> It was intended to allow for “less clear-cut cases” to be “appropriately acknowledged” as possibly involving bias.<sup>2823</sup> The strike force aimed to ensure definitional transparency so that the process leading to their findings would be understood, and so the findings and definitions they had “arrived at” were consistent.<sup>2824</sup>
- 13.337. Detective Acting Sergeant Bignell stated that he had to use his “common sense” to work out what was meant by terms such as “it appears likely” or “it appears unlikely”.<sup>2825</sup> That language, it will be recalled, was the language of BCIF Form 2. In his view, “it was a pretty big threshold to meet to class something as having evidence of bias, so I was certainly very mindful of that in conducting my review and completing those forms”.<sup>2826</sup>

<sup>2816</sup> Transcript of the Inquiry, 7 December 2022, T812.35–39 (TRA.00012.00001).

<sup>2817</sup> Transcript of the Inquiry, 7 December 2022, T813.33–41 (TRA.00012.00001).

<sup>2818</sup> Transcript of the Inquiry, 7 December 2022, T815.13–15 (TRA.00012.00001).

<sup>2819</sup> Transcript of the Inquiry, 7 December 2022, T814.10–17 (TRA.00012.00001).

<sup>2820</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [56] (NPL.9000.0024.0012).

<sup>2821</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [56] (NPL.9000.0024.0012).

<sup>2822</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [57] (NPL.9000.0024.0012).

<sup>2823</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [57] (NPL.9000.0024.0012).

<sup>2824</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [58] (NPL.9000.0024.0012).

<sup>2825</sup> Transcript of the Inquiry, 21 September 2023, T5835.3–12 (TRA.00089.00001).

<sup>2826</sup> Transcript of the Inquiry, 21 September 2023, T5835.18–21 (TRA.00089.00001).

- 13.338. Detective Acting Sergeant Bignell clarified that for him to find “evidence of bias crime”, the death would “almost definitively” need to be as a result of such a bias.<sup>2827</sup> He conceded that the result of applying this high standard would be that not many deaths would be classified as having “evidence of bias crime”.<sup>2828</sup> (And so it proved: Strike Force Parrabell ultimately categorised only eight, of the 86 deaths it reviewed, as “evidence of bias crime”.)
- 13.339. He also agreed that when the standard of “beyond reasonable doubt” was introduced into the BCIF (in Form 3 and Form 4), there was an even higher threshold for “evidence of bias crime”, although he later said that this did not actually change how he determined the classification.<sup>2829</sup>
- 13.340. Detective Acting Sergeant Bignell gave evidence that the classifications he arrived at in the sections of the BCIF entitled “summary of findings” and “general comments”, as to each of the 10 indicators, were reached by applying a beyond reasonable doubt standard, and only a handful of these were changed following the meetings with Superintendent Middleton and Detective Inspector Grace.<sup>2830</sup>

### The Inquiry’s expert evidence

- 13.341. The Inquiry was assisted by the evidence of three expert witnesses: Professor Nicole Asquith; Ms Martha Coakley; and Associate Professor Austin Lovegrove.
- 13.342. Each of the Inquiry’s expert witnesses provided their views on the methodology of Strike Force Parrabell, summarised in this Chapter, by way of a written report and oral evidence before the Inquiry.
- 13.343. The reports provided, as set out in **Chapter 9**, were as follows:
- a. The Coakley report;<sup>2831</sup>
  - b. The Asquith Report;<sup>2832</sup> and
  - c. The Lovegrove Report.<sup>2833</sup>
- 13.344. Dr Dalton and Dr de Lint were also experts in the sense that they conducted a review of the Strike Force Parrabell police methodology and provided their opinions to the NSWPF and the Inquiry on this topic. However, where I refer to “experts” and “expert witnesses” in this Chapter, I intend to refer to Professor Asquith, Ms Coakley and Associate Professor Lovegrove only.

<sup>2827</sup> Transcript of the Inquiry, 21 September 2023, T5835.42–5836.4 (TRA.00089.00001).

<sup>2828</sup> Transcript of the Inquiry, 21 September 2023, T5836.13–33 (TRA.00089.00001).

<sup>2829</sup> Transcript of the Inquiry, 21 September 2023, T5836.35–42, 5837.12–27 (TRA.00089.00001).

<sup>2830</sup> Transcript of the Inquiry, 21 September 2023, T5820.21–5821.7 (TRA.00089.00001).

<sup>2831</sup> Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022 (SCOI.82367.00001).

<sup>2832</sup> Exhibit 6 Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023 (SCOI.82368.00001).

<sup>2833</sup> Exhibit 6 Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023 (SCOI.82366.00001).

- 13.345. Broadly stated, Professor Asquith’s expertise is in the area of policing, hate crimes and LGBTIQ hate crimes specifically. In her report, Professor Asquith states that she is “one of the leading international experts on hate crime victimisation and policing”.<sup>2834</sup>
- 13.346. Associate Professor Lovegrove’s expertise is in criminology and in the design of behavioural and social science research. In his report, he makes clear that: “I have no specialisation in issues connected to gay hate, but I do have significant expertise in the acquisition, analysis and presentation of empirical data in the context of the social and behavioural sciences”.<sup>2835</sup>
- 13.347. Ms Coakley is an experienced lawyer in the US state of Massachusetts, having been an Assistant District Attorney, District Attorney and Attorney General.<sup>2836</sup> Her expertise is in the criminal law of Massachusetts, including the policing and prosecution of hate crimes in that context.<sup>2837</sup> The BCIF included nine bias crime indicators which originated in Massachusetts.
- 13.348. In her oral evidence, Ms Coakley readily accepted, *inter alia*, that:
- a. Her professional experience is largely confined to the State of Massachusetts in the US;<sup>2838</sup>
  - b. She has limited experience with issues relating to violence against the LGBTIQ community in Australia (outside of work she has done in relation to the death of Scott Johnson);<sup>2839</sup>
  - c. She had not reviewed the completed BCIFs or spoken to the investigators who completed them;<sup>2840</sup> and
  - d. She had not spoken to the academic team.<sup>2841</sup>
- 13.349. Each expert was asked to comment on the methodology of Strike Force Parrabell. In doing so, the experts did not have access to the completed BCIFs, the investigators who completed them, or the academic team. They commented principally on the methodology adopted by the strike force, rather than the competence with which the Strike Force Parrabell officers had understood or analysed the historical materials.

<sup>2834</sup> Exhibit 6 Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [39] (SCOI.8236800001).

<sup>2835</sup> Exhibit 6 Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [2] (SCOI.82366.00001).

<sup>2836</sup> Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [6], [9]–[10] (SCOI.82367.00001).

<sup>2837</sup> Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [4], [11] (SCOI.82367.00001).

<sup>2838</sup> Transcript of the Inquiry, 3 March 2023, T2723.8–11 (TRA.00032.00001).

<sup>2839</sup> Transcript of the Inquiry, 3 March 2023, T2722.30–2723.17 (TRA.00032.00001).

<sup>2840</sup> Transcript of the Inquiry, 3 March 2023, T2727.31–39 (TRA.00032.00001).

<sup>2841</sup> Transcript of the Inquiry, 3 March 2023, T2727.41–2728.47 (TRA.00032.00001).

- 13.350. The experts did have access to the Coordinating Instructions, which were not published with the Parrabell Report.<sup>2842</sup> However, they were not asked to comment on the inconsistencies between the different constituent documents, or on the changes to the BCIF, many of which became apparent only over the course of Public Hearing 2 (including in several respects after the experts had given both their written and oral evidence).
- 13.351. In considering the evidence of the three experts, I take into account the evidence of Detective Acting Sergeant Bignell to the effect that the description of the operation and methodology of Strike Force Parrabell in the Investigation Plan and Coordinating Instructions contained errors.<sup>2843</sup> I also note that it only became evident during the September/October 2023 hearings of Public Hearing 2 that the Coordinating Instructions were not drafted by Detective Inspector Grace until October 2016,<sup>2844</sup> by which point all investigators except Detective Acting Sergeant Bignell had left Strike Force Parrabell.<sup>2845</sup>
- 13.352. Assistant Commissioner Crandell had previously given evidence that any uncertainty about the approach Strike Force Parrabell officers should adopt would have been “corrected in any instructions given to them...”<sup>2846</sup> and that “it would be clear that they would follow the coordinating instructions”.<sup>2847</sup> Since he had never personally discussed the differences among the constituent documents of the strike force with any of the investigators, and since it is now clear that the Coordinating Instructions were not drafted until after all investigators except Detective Acting Sergeant Bignell had left Strike Force Parrabell, this evidence from Assistant Commissioner Crandell is of no weight.<sup>2848</sup>

### Reliability and validity

- 13.353. Before turning to each expert’s views on the methodology adopted by Strike Force Parrabell, it is convenient to set out two key concepts that are explained by Associate Professor Lovegrove in his report: reliability and validity (as those terms are used in behavioural and social science research).<sup>2849</sup>

<sup>2842</sup> Exhibit 6 Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [3((3))] (SCOI.8236800001); Exhibit 6 Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [22(4)] (SCOI.82366.00001); Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [15(3)] (SCOI.82367.00001).

<sup>2843</sup> Transcript of the Inquiry, 21 September 2023 T5845.28–30 (Coordinating Instructions), T5830.45–5831.40 (Investigation Plan) (TRA.00089.00001).

<sup>2844</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023 [49] (NPL.9000.0024.0012).

<sup>2845</sup> Exhibit 6, Tab 68, Email from Craig Middleton to Anthony Crandell, 7 September 2016 (SCOI.74312); Transcript of the Inquiry, 21 September 2023, T5786.14–5787.21 (TRA.00089.00001).

<sup>2846</sup> Transcript of the Inquiry, 7 December 2022, T784.45–46 (TRA.00012.00001).

<sup>2847</sup> Transcript of the Inquiry, 7 December 2022, T784.4–8 (TRA.00012.00001).

<sup>2848</sup> Transcript of the Inquiry, 7 December 2022, T793.30 (TRA.00012.00001).

<sup>2849</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [31]–[35] (SCOI.82366.00001).



*Reliability is a term used in behavioural and social science to describe instruments and assessment tools. An instrument is reliable if two individuals using the instrument would independently reach the same judgments about the thing which is being measured by the instrument.*

*Validity is a term used in behavioural and social science to describe whether an instrument or assessment tool measures what it purports to measure. In this case, an instrument would be more valid if it were more effective at measuring gay hate and would be less valid if it measured something else.”*

*There are a variety of numerical and mathematical tools used to measure reliability and validity (percent agreement is the measure most readily understood). Poor reliability necessarily reduces validity, but there may be high reliability yet low validity (the individuals’ judgements are consistent but erroneously based or based on different criteria).*

*The Police Parrabell study used a behavioural instrument (the BCIF) to determine whether hate was involved in any of the suspected homicides in any of the of 88 cases. So too the academic study. In fact, the instrument used in the academic study is better described as an instrument comprising two components: a definitional component defining hate and a classificatory component for the purpose of assigning cases to categories according to the circumstances in which the hate was expressed and to the nature of the hate.*

*In view of each instrument’s centrality in the relevant study, the question arises as to its fitness for purpose, having particular regard to its reliability (in this case, whether separate individuals would independently agree that the case involved a hate crime) and its validity (in this case, whether those assessments, even if made reliably, were in fact identifying hate crimes).*

- 13.354. Associate Professor Lovegrove proceeded to explain the manner in which a reliable and valid instrument may be developed.<sup>2850</sup>
- 13.355. These concepts are important to evaluating both the BCIF and the classificatory framework developed by the academic team, considered later in this Chapter. As will become apparent, neither instrument was valid or reliable in the sense explained by Associate Professor Lovegrove.

### **Common issues addressed by all experts**

- 13.356. Each expert approached the evaluation of Strike Force Parrabell differently, as might be expected given their differing areas of expertise. However, there are a number of issues in connection to the methodology of Strike Force Parrabell in respect of which two or three of the experts expressed similar views. Those issues are dealt with first, before the issues which are unique to each expert.

<sup>2850</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [38]–[52] (SCOI.82366.00001).

## SELECTION OF THE BIAS CRIME INDICATORS

- 13.357. As explained above, nine of the 10 indicators in the BCIF were indicators developed in the United States, where they had been designed for the identification of hate crimes generally. Each of the experts doubted the utility of the bias crime indicators for the exercise undertaken by Strike Force Parrabell. In summary, the bases for those doubts included that:
- a. The bias crime indicators were developed in a different context to the deaths under consideration;
  - b. The bias crime indicators were developed for a different purpose to the purpose for which they were used by Strike Force Parrabell; and
  - c. There was no evidence that the bias crime indicators had been subject to any form of evaluation, let alone the kind of reliability and validity testing described by Associate Professor Lovegrove in his report.
- 13.358. Associate Professor Lovegrove addressed this issue in his report, as follows:<sup>2851</sup>

*Reliability requires, for example, two independent assessors arriving at the same judgements when applying a measure to the same set of data; the measure of reliability is numerical. No such data are offered as justification for the use of the BCIF here.*

*Validity means that the instrument does what it purports to do (in this case classifies) according to an understood and agreed standard. It would be established, in this case, by demonstrating that the BCIF had previously been used to discriminate between cases deemed by (say) an expert panel to: (i) involve; and (ii) not involve gay hate in a manner that was consistent with panel's [sic] judgements. Again, no such data are proffered. Even if the BCIF has validity in respect of the purpose for which nine of the ten indicators were developed in the US, there would be good reason to question its validity here. The BCIF appears to be directed at hate crime generally, not specifically to 'gay' hate. Moreover, there might well be significant cultural and sub-cultural differences in the manifestation of 'gay' hate, considered generally for the US and specifically for Sydney, Australia.*

*Questions about validity also arise due to the nature and content of the BCIF. The BCIF includes a set of ten indicators under each of which there are prompts for evidence (i.e., clues) of gay bias in the circumstances of cases. The US source document lists nine indicators. The Strike Force added a tenth indicator, though no explanation was given for its relevance, save that it was based on "research and cases". These ten indicators were taken by the Strike Force team to cover a range of factual aspects of a crime putatively indicative of 'gay' hate as a significant animating factor. Purpose informs validity. Here, as stated above, one of the objectives of the*

<sup>2851</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [64]–[73] (SCOI.82366.00001).

*Strike Force's research is to engage and assuage an alienated and agitated 'gay' community. In my view, the community's understanding of 'gay' crime may bear on the appropriateness of the ten indicators and their specific manifestations in a case. I consider that the opinions and understandings of the gay community may have been profitably obtained with a view to improving the validity of the instrument, at least having regard to the context of the present study.*

*In light of the lack of data on the BCIF's reliability, the reader has no idea whether another group of researchers applying it would classify these same cases as they are classified by the Strike Force researchers. (Indeed, the Strike Force researchers' description of the process they adopted to classify each of the 88 cases suggests reliability will be problematic for the reasons stated below.)*

*Moreover, absent any data on validity, the reader has no idea as to the number of cases classified falsely as involving bias or falsely as not involving bias. The margin of error might well be substantial, even very substantial.*

*With respect to each of the BCIF's ten constituent elements (indicators), no consideration is given as to how each indicator or the accompanying prompts has the potential to inform the judgement about whether the homicide was motivated by hate.*

*In fact, on this basis, there is good reason to doubt the reliability and validity of the BCIF as an indicator or measure of hate crime. When developing a scale predicting outcomes or selecting groups according to some criterion, the task is to identify a set of items that individually distinguish between the two groups/outcomes. This is ideally done empirically, here a mere inspection of the items offers sufficient cause to doubt their validity (validity determined by inspection is termed face validity.)*

*Consider the following components of the BCIF.*

*(1) Differences': 'Victim is a member of a group which is outnumbered by members of another group ...', 'Incident coincided with a holiday or date of significance ...':*

*(5) 'Previous existence of bias crime indicators ...', 'Victim was visiting a location ...':*

*(7) 'Motive of offender/s: 'victim perceived to be breaking from traditional conventions or working non-traditional employment':*

*(8) Location of incident: 'victim was in or near an area or place commonly associated with or frequented by members of a particular group', 'location of an incident has specific significance to the victim or POI group':*

*(9) 'Lack of motive': 'No clear economic or other motive for the incident exists':*

(10) *'Level of violence': 'level of violence ... is greater than would be expected for a crime of that type'; 'weapons of opportunity are used ...'; 'The number of POI is greater than the number of victims and ...'.*

*So much is left open in these components to an investigator's personal interpretation as to whether gay hate is involved in the circumstances of a particular case. Are not many homicides not involving gay hate committed under these circumstances; and do not many victims of homicide not involving gay hate satisfy these criteria? It is not clear that each of these components is, in fact, a useful and valid identifier of hate crime. And if any of these are useful and valid identifiers of hate crime, it is also not clear that they have been stated appropriately so that they can be easily and consistently applied by an investigator using the BCIF.*

*Time may matter too. There appears to be no evidence in the report of the researchers considering how the indicia of hate crime may change over time. The period of 25 years - the time scale of this report - is a long time. Thus, for example, the character of armed robberies changed greatly between 1975 and 2000 due to prevention strategies adopted by potential targets and perhaps the greater role of drug addiction as a motive for offending. The nature of gay hate crimes may similarly have changed over the course of that time period. The criteria by which gay hate crimes are identified may need to change over time as a result.*

- 13.359. The Coakley Report outlined the origins and purposes of the bias crime indicators as tools to assist investigators in investigating hate crimes of all kinds. Ms Coakley concluded that the bias crime indicators were not suitable for the exercise of review (as opposed to reinvestigation) undertaken by Strike Force Parrabell:<sup>2852</sup>

*The Massachusetts model protocol for bias crime investigation defines "bias crime indicators" as "objective facts, circumstances, or patterns attending a criminal act, which, standing alone or in conjunction with other facts or circumstances, suggest that the offender's actions were motivated, in whole or in part, by any form of bias". These factors are outlined as well in the McLaughlin Training Materials (2005). [Strike Force Parrabell] cited these training materials in preparing the Bias Crime Indicator Forms used in their exercise of reviewing, but not re-investigating, the 88 homicide crimes listed in their Report.*

*Bias indicators are not required to establish that the predominant motivation for an offender's actions was hatred or bias. An incident can be classified as a bias crime if the offender was acting out of hatred or bias, together with other motives, or if a bias motive was a contributing factor, in whole or in part, in the commission of a criminal act. But only with a conviction (by trial or by plea) are the indicators useful for the reporting of*

<sup>2852</sup> Exhibit 6, Tab 257, Expert report of Martha Coakley, 20 December 2022, [26]–[33] (SCOI.82367.00001).

*statistics; unsolved matters might be only reported as incidents which include potential bias crime indicators.*

...

*The Bias Crime Indicators (the basis of the [BCIF] created by [Strike Force Parrabell]) were developed in conjunction with other training and investigative multidisciplinary training materials from the Mass. Justice training Council, Department of Justice and the DOJ Office for Victims of Crime. The materials, and the factors, were designed for training police, District Attorneys, Victim Witness Advocates, and community members to recognize, investigate, and identify hate/bias crimes at the time...*

*They were applicable to the universe of hate/bias crimes, not just LGBTIQ hate/bias crimes, nor just homicides.*

*They were “clues” that the professionals could look for in determining if a case should be investigated as hate/bias crime and could serve as guidelines to shape that process.*

*They were meant to help address the totality of the circumstances of the crimes, to allow investigators to follow evidence that could rule in, or rule out, that a crime had been motivated by hate/bias.*

...

*The methodology used by [Strike Force Parrabell] is overinclusive in using the 9 US-derived bias crime indicator factors plus a 10th factor, level of violence, which can be relevant both to non LGBTIQ crimes, and to crimes other than homicides as well. Certain of the factors that might be relevant for race/national origin bias or bias based on religion would not necessarily be helpful in the gay hate/bias crime investigation, at least at the relevant time in NSW.*

13.360. Professor Asquith expressed her views on this issue as follows:<sup>2853</sup>

*In my view, there are some obvious limitations to using the BCIF both in an Australian context and in the context of reviewing possible crimes for LGBTIQ bias.*

*Before considering my specific concerns with the BCIF prompts, I note that [Strike Force Parrabell]—and/or the NSWPF—added the term “immutable” to the first “differences” prompt. This was not in the original set of indicators and prompts as developed by McLaughlin et al, and seems out of place in any discussion about sex, gender, and/or sexuality. While some LGBTIQ people believe they are born LGBTIQ, others recognise the fluidity of sex, sexuality, and gender characteristics. Immutability also*

<sup>2853</sup> Exhibit 6, Tab 255, Expert report of Professor Nicole Asquith, 25 January 2023, [88]–[63] (SCOI.82368.00001).

*appears out of place when considering the unique characteristics of men who have sex with men at beats, which can include not only gay and bisexual men, but also men who identify as heterosexual.*

*Furthermore, while Australia is home to a variety of far-right and extremist organisations that target some communities—particularly, Jewish and Muslim communities and their infrastructure such as places of worship—the social and cultural context of the US is somewhat different, especially as it relates to racist hate crime. For example, unlike the US, Australia has not had an organised hate group comparable to the Ku Klux Klan, which has instigated racist violence in the US since its formation in the late nineteenth century.*

*The work of organisations such as the Southern Poverty Law Centre and the Federal Bureau of Investigation (FBI) in identifying and classifying organised hate groups has set the frame of reference for assessing the characteristics of hate crime, including actions such as cross burnings, which are rare in Australia. While hate crime in the US is regulated largely via Statebased hate crime legislation, the FBI has been responsible for monitoring, tracking, and reporting on hate crimes since the passage of the Hate Crimes Statistics Act 1990 (U.S.), later modified by the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act 2009. Similarly, while the Southern Poverty Law Center was created to monitor, track, and report on racist violence, since its creation in 1971 its remit has expanded to include all forms of hate crime, including heterosexist and cissexist hate crime.*

*This focus on organised hate groups (OHGs) skews the nature of the understanding of hate crime outside of the US, and directs attention to motivated (or in the terms of Dalton et al, proactive associative) offenders rather than those who aggravate an underlying offence with animus/hate/bias/prejudice, or those who use hate habitually without reference to an ideological framework such as white supremacy.*

*This US context is plainly obvious in the BCIF prompts and its focus on organised, motivated, and proactive hate offenders. For example, indicator 4 of the BCIF is wholly focused on OHGs, which are rare—if non-existent in Australia—in relation to heterosexist and cissexist hate crime. Similarly, three of the four prompts for indicator 7 of the BCIF, which is focussed on the motive of the offender, point to an organised and motivated offending pattern.<sup>2854</sup>*

13.361. I note three points as to this evidence.

<sup>2854</sup> In her report, Professor Asquith explained that her preference is to “use the terms heterosexist and cissexist violence” when referring to anti-LGBTIQ hate crimes, often referred to as homophobic and/or transphobic violence”: see Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [60] (SCO1.82368.00001).

- 13.362. First, Professor Asquith’s observations about organised hate groups should not be understood as reflecting a view that there were no LGBTIQ hate crimes perpetrated by groups in NSW during that time. Plainly there were, and such cases are among those considered by each of Operation Taradale and Strike Force Parrabell, and by this Inquiry. However, those groups were not “organised hate groups” in the sense in which that term is used by the Southern Poverty Law Centre and the Federal Bureau of Investigation (**FBI**) in the United States. To the extent that those groups were organised, they appear to have been organised along social lines rather than along ideological lines.<sup>2855</sup>
- 13.363. Secondly, Associate Professor Lovegrove’s observations about changes over time are obviously well-founded. Associate Professor Lovegrove is not an expert in matters relating to the LGBTIQ community; his frank acknowledgement of this is set out at [13.346] above. However, the Inquiry has received evidence of the significant changes in the legal and social treatment of LGBTIQ people in NSW over time. Inevitably, in light of those changes, there were also changes in the manner in which hate was expressed against LGBTIQ people over that period.
- 13.364. The Asquith Report refers to other sets of hate crime indicators, that have been developed, more recently, including by the US-based International Association of Chiefs of Police in 2021,<sup>2856</sup> and by Vergani et al in 2022.<sup>2857</sup> Some of those indicators have a timeless quality to them—they appear to be as likely to apply today as at any other time. However, others may be specific to a particular time. For example, the use of a rainbow flag as a symbol of pride<sup>2858</sup> first occurred in 1978. The presence of a rainbow flag would have little if any relevance to hate crimes committed prior to that year.
- 13.365. Thirdly, the tenth indicator in the BCIF, the Level of Violence, had been formulated by Sergeant Steer in the course of his work as Bias Crimes Coordinator. Putting aside the appropriateness of the BCIF as a whole, as a tool for the Strike Force Parrabell review, such an indicator is a reasonable addition to the other nine when used in the way that Sergeant Steer intended, as Professor Asquith explained:<sup>2859</sup>

*The tenth indicator or characteristic of hate crime added by NSWPF is appropriate for assessing some hate crimes, especially those involving interpersonal violence. This tenth characteristic is an important factor in many of the “88/85” cases of [Strike Force Parrabell], and in some reported cases of aggravated bodily harm/grievous bodily harm and sexual assault, but is largely irrelevant to other hate crimes such as those of criminal damage and graffiti.*

<sup>2855</sup> See Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [77] (SCOI.82368.00001).

<sup>2856</sup> See Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [98] (SCOI.82368.00001).

<sup>2857</sup> See Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [111]–[112] (SCOI.82368.00001).

<sup>2858</sup> See Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [111(b)], [112(b)] (SCOI.82368.00001).

<sup>2859</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [100] (SCOI.82368.00001).

## CONCERNS ABOUT THE BCIF ITSELF

13.366. The Lovegrove Report and the Asquith Report both criticise the absence of any evidence to support the use of the BCIF for the purposes it was used for by Strike Force Parrabell.

13.367. The Asquith Report notes:<sup>2860</sup>

*As far as I am aware, and as identified by Dalton et al in their contribution to the [Strike Force Parrabell] Final Report, the BCIF—whilst 9 of the 10 indicators found within it were in wide use across the US as an assessment tool used by police—has not been evaluated either by policing organisations or independent researchers.*

13.368. As noted earlier in this Chapter, the Lovegrove Report explained how an instrument to measure a phenomenon (such as whether a particular crime was an LGBTIQ hate crime) may be developed, and how that instrument can be tested for reliability and validity.<sup>2861</sup>

13.369. Strike Force Parrabell did not attempt to undertake any such steps as those described by Associate Professor Lovegrove. Rather, Strike Force Parrabell took existing bias crime indicators (designed for another purpose, namely to assist initial investigators during the early stages of an investigation) and inserted them into a form (the BCIF), created by Strike Force Parrabell, which also included four alternative “findings”, two of which brought in (on the question of whether there was evidence of bias) the requirement of “beyond reasonable doubt”. The BCIF, with all these novel and unusual features, was not tested for validity or reliability in any way.

13.370. The Lovegrove Report accordingly concluded:<sup>2862</sup>

*Neither the police, in adopting the BCIF, nor the academic team, in adopting their own framework, appeared to test the reliability and validity of the instruments they applied to identify hate. In my view, neither instrument can be regarded, in view of the absence of appropriate evidence, as fit instruments for identifying gay-hate crimes in the list of 88 cases.*

<sup>2860</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [85] (SCOI.82368.00001).

<sup>2861</sup> See Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [38]–[52] (SCOI.82366.00001).

<sup>2862</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [51] (SCOI.82366.00001).



- 13.371. In the Academic Report, the academic team indicated concern about the lack of evidence to support the BCIF.<sup>2863</sup> They expressed that concern, in part, as deriving from uncertainty about aspects of the “scoring” of the 10 indicators.<sup>2864</sup> However, as noted above, Dr Dalton’s understanding was that the Strike Force Parrabell officers did not actually engage in a “scoring” process in the ordinary sense of that word, but rather “arrived at a view”, “intuitive[ly]”, about the responses to the indicators.<sup>2865</sup>
- 13.372. The academic team indicated that they actually did not endorse BCIF in footnote 20 of the Academic Report, as follows:<sup>2866</sup>

*Whilst the NSWPF placed great faith in this instrument, the academic team were surprised to discover that scarcely any academic literature exists that has evaluated or critiqued this instrument. Indeed, our search efforts could not even locate one academic article. Nor could the NSWPF supply such an article when requested to do so. In the face of an apparent dearth of such literature, the academic team are reluctant to endorse these indicators. The academic team are not decreeing they are wholly deficient and needing to be dropped, but we would have liked to garner independent evidence that they are indeed ‘best practice’ for law enforcement. We note here that with few choices available (the UK model is over-inclusive because it pivots on victim perceptions), the NSWPF worked with this instrument despite [no]<sup>2867</sup> empirical evidence for its efficacy.*

- 13.373. Further, the recommendations of the academic team included the following:<sup>2868</sup>

*NSWPF will need to develop a protocol for bias discovery that is prudent and grounded on evidence-based research.*

...

*The [BCIF] instrument used by NSWPF is supported by practice-based rather than evidence-based adoption in a number of jurisdictions. As such, it requires empirical support that, thus far, is not evident.*

*To arrive at a good measure of reliability and validity for this, or any such instrument, requires a methodologically rigorous evaluation. In any case, it would be prudent to consult widely for diverse expertise on the development of such an instrument. The development will also benefit from community engagement.*

<sup>2863</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 68–71 (SCOI.02632).

<sup>2864</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 71 (SCOI.02632).

<sup>2865</sup> Transcript of the Inquiry, 28 February 2023, T2384.21–2386.17 (TRA.00029.00001).

<sup>2866</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 68 (SCOI.02632).

<sup>2867</sup> Transcript of the Inquiry, 8 December 2022, T870.20–24 (TRA.00013.00001).

<sup>2868</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 107–108 (SCOI.02632).

13.374. Dr Dalton gave evidence that he raised his concerns about the BCIF during the course of Strike Force Parrabell, but that he was very conscious of the resources that had already been expended:<sup>2869</sup>

*A. ... I think I used strong language like, "It's a pretty appalling instrument", that sort of thing. But I think, in the face of, if I could put it politely, the NSW Police Force having got an awful lot of money, having spent an awful lot of detectives' time using this instrument, it's like the process was well in train and I didn't see that I had the power as an academic to sort of tell them to abandon the entire enterprise.*

*Q. No, that would have been difficult, I suppose. But you could have, couldn't you, said to them, "Look, this methodology that you're using, including this form, is so flawed and so rife with problems, that it's not possible for us to review your work; we're just – this project really can't proceed"?*

*A. Yeah, in hindsight, perhaps I could have said that, and maybe should have even said that, but it –*

13.375. Assistant Commissioner Crandell said that he could not recall whether the academic team raised concerns with him about the adequacy of the form (apart from the absence of research data to support it).<sup>2870</sup> He said that the contents of footnote 20, once he was aware of them, did not cause him to reflect that perhaps his methodology was compromised.<sup>2871</sup>

13.376. In his statement, Assistant Commissioner Crandell stated that one purpose of the academic review was to provide an independent account of Strike Force Parrabell's "systemic validity". By "systemic validity", he meant "the system investigators used to determine whether or not a crime was bias or gay hate related, using the [BCIF] and following the procedures set out in [Strike Force] Parrabell documentation (Terms of Reference, Investigation Plan and Coordinating Instructions)".<sup>2872</sup>

13.377. But the academic team did not endorse the BCIF. As a matter of logic, that can only mean that the "systemic validity" of Strike Force Parrabell, based as it was on the BCIF, was compromised if not destroyed in the view of the academic team.

13.378. In that context, a little later in Assistant Commissioner Crandell's oral evidence, the following exchange occurred:<sup>2873</sup>

*Q. Now, pausing there, the academics' view of the systemic validity was that it didn't pass muster, wasn't it?*

*A. Well –*

<sup>2869</sup> Transcript of the Inquiry, 1 March 2022, T2446.12–2447.47 (TRA.00030.00001).

<sup>2870</sup> Transcript of the Inquiry, 8 December 2022, T872.3–873.39 (TRA.00013.00001).

<sup>2871</sup> Transcript of the Inquiry, 8 December 2022, T875.34–876.18 (TRA.00013.00001).

<sup>2872</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Crandell, 31 October 2022, [70] (SCOI.76961).

<sup>2873</sup> Transcript of the Inquiry, 8 December 2022, T890.2–47 (TRA.00013.00001).

*Q. The system was the form, and they said they couldn't endorse the form?*

*A. They couldn't endorse it, yes.*

*Q. Well, if that was the purpose of the academic review and you got the outcome, which was that they couldn't endorse the system – and I appreciate that the Commissioner has essentially asked you, more or less, this question earlier –*

*A. Yes.*

*Q. – but did it not occur to you then that maybe the whole exercise had been misguided?*

*A. Well, I still believed that the bias crime indicators were valid and I thought that the processes were appropriate.*

THE COMMISSIONER:

*Q. But you were locked in, Mr Crandell, weren't you, because you had stated publicly, being your perception, that a response was necessary – you had stated publicly much earlier in the piece that you were doing this?*

*A. Yes.*

*Q. You had police officers posing as being examples of the investigators who were assembled?*

*A. Yes.*

*Q. And, to put not too fine a point on it, you were at a point of no return, weren't you? How could you possibly back out of the exercise?*

*A. Yes.*

*Q. You had to go through it –*

*A. Yes.*

*Q. – warts and all?*

*A. Yes.*

*Q. And that was your choice, wasn't it?*

*A. Yes, it was – by the time the researchers had conducted their review, it was late in the piece.*

- 13.379. In the Dalton/de Lint Response, the academic team agreed with some of the observations in the Lovegrove Report and acknowledged that the BCIF, to their knowledge, had no social science to support it.<sup>2874</sup> They wrote: “although the BCIF has been widely used as a training instrument, there are no empirical studies that have tested the typology against “a universe of cases”.<sup>2875</sup>

### CONSULTATION WITH THE LGBTIQ COMMUNITY

- 13.380. As I have outlined above, while ACON were informed that the Strike Force Parrabell exercise would occur in 2015 and had some intermittent communication with Strike Force Parrabell through to 2017,<sup>2876</sup> the organisation was not provided with the Coordinating Instructions<sup>2877</sup> or BCIF<sup>2878</sup> due to a reluctance on the part of the NSWPF to share police methodology and processes.<sup>2879</sup>
- 13.381. Assistant Commissioner Crandell acknowledged that ACON “could have” offered some insight to assist with the selection of appropriate indicators to identify anti-LGBTIQ bias crime, but consultation in relation to that issue did not occur to him.<sup>2880</sup>
- 13.382. Professor Asquith and Associate Professor Lovegrove were both critical of the failure to involve the LGBTIQ community in the exercise undertaken by Strike Force Parrabell. The Asquith Report states:<sup>2881</sup>

*The “88” had become lore in NSW LGBTIQ communities, and failing to address the concerns of the LGBTIQ communities in relation to these possible historical hate crimes continued—and some argue, continue—to hamper more effective police-community engagement, and policing responses to the unique needs of these communities.*

*The approach decided upon by NSWPF to review the Parrabell cases, however, may have caused more distrust given the exclusion of NSWPF hate crime specialists from the review, the perceived lack of training and preparation of [Strike Force Parrabell] investigators, the exclusion of LGBTIQ stakeholders from the [Strike Force Parrabell] review, and the appointment of an academic team that had only limited knowledge and expertise in heterosexual and cissexist hate crime (or, in fact, hate crime in general).*

<sup>2874</sup> Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint (endorsed by Associate Professor Derek Dalton), Undated, 2 (SCOI.82365).

<sup>2875</sup> Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint (endorsed by Associate Professor Derek Dalton), Undated, 3 (SCOI.82365).

<sup>2876</sup> Transcript of the Inquiry, 8 December 2022, T877.44–888.15 (TRA.00013.00001).

<sup>2877</sup> Transcript of the Inquiry, 8 December 2022, T878.41–47 (TRA.00013.00001).

<sup>2878</sup> Transcript of the Inquiry, 8 December 2022, T879.1–3 (TRA.00013.00001).

<sup>2879</sup> Transcript of the Inquiry, 8 December 2022, T879.5–20 (TRA.00013.00001).

<sup>2880</sup> Transcript of the Inquiry, 8 December 2022, T880.9–17, 881.20–39 (TRA.00013.00001).

<sup>2881</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [148]–[149] (SCOI.82368.00001).

- 13.383. The Lovegrove Report also emphasised the importance of involving the LGBTIQ community in the process of developing an instrument to measure LGBTIQ hate crimes:<sup>2882</sup>

*It may also be appropriate for this expert person or group to ensure that they conduct the categorisation apprised of what the gay community would regard as the signs of gay hate in the circumstances of these types of crime, as they were manifest in the era and milieu which are the subject of the investigation. I note that this does not necessarily mean that the observations of the gay community would be accepted uncritically in respect of this (since to do so might otherwise result in the over identification of gay hate). Rather, this input would be approached with the attitude that the gay community may be aware of manifestations of gay hate of which others in the community are not aware.*

#### RELIANCE ON ARCHIVAL MATERIAL

- 13.384. Professor Asquith and Ms Coakley were both critical of the fact that Strike Force Parrabell was solely reliant on archival material.

- 13.385. The Asquith Report addressed this issue as follows:<sup>2883</sup>

*In criminology—as with other disciplines reliant upon government data—the guiding principle is ‘dirty data in, dirty data out’. This is no more obvious than in the desktop, cold case review of historical homicides against gay men and transgender women.*

*Contemporary police officers reviewing case file evidence collected, collated, and archived by other officers, decades ago—and under very different social and cultural contexts—was always going to encounter gaps and barriers.*

*Even with the later (more contemporary) Parrabell cases, in the 1990s, the holdings may be deficient when compared to the kinds of records which might be generated today—more than 20 years later—especially in relation to hate crime, where there have been significant changes to mandatory reporting questions, standard operating procedures, and police training.*

- 13.386. The Coakley Report addresses the issue as follows (emphasis in original):<sup>2884</sup>

*If the goal of [Strike Force Parrabell] was to determine which, if any, of the 88 deaths were in fact motivated by an “anti-gay bias”, the methodology was only going to be as successful as the original investigators were **at the time** in recognizing, investigating, and identifying evidence of a possible hate/bias crime.*

<sup>2882</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [40] (SCOI.82366.00001).

<sup>2883</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [150]–[152] (SCOI.82368.00001).

<sup>2884</sup> Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [35] (SCOI.82367.00001).

- 13.387. Further, the academic team observed in the Academic Report: “an archive can only yield something that was captured in the first instance”.<sup>2885</sup>
- 13.388. Dr Dalton confirmed, in his oral evidence, his awareness of the limitations of relying only on historical material in completing the BCIFs:<sup>2886</sup>

*You would often read these cases, sometimes they would run to 20 pages, and there was almost nothing in it – they were enigmatic. There was none in it that often any instrument could discover and I would suggest that that is because back in the 1980s and ‘90s, et cetera, a lot of police officers were only thinking about gay and lesbian subjectivity, they were not thinking about GLBTIQ, and the sort of nuanced things that could have been observed objectively, registered, counted, written down and collected, that might have gleaned a much more valuable insight into these crimes, wasn’t captured. So it’s as though, focusing so much attention on the instrument is to misunderstand that it’s the paucity of data that’s actually in a way the problem.*

- 13.389. I also note that the first recommendation of the Police Report was to improve the NSWPF’s “historically deficient” system of archiving.<sup>2887</sup>

#### PARTIAL MOTIVATION (SUCH AS ROBBERY-RELATED VIOLENCE)

- 13.390. Neither the Police Report, nor the Coordinating Instructions or the Investigation Plan for Strike Force Parrabell, set out a definition of “bias”, or “bias crime”, as used by Strike Force Parrabell officers.
- 13.391. However, as noted in the Academic Report,<sup>2888</sup> there was at the relevant time a definition of “bias crime” in the 2015 SOPs (which had been created by Sergeant Steer and approved in 2015), as follows:<sup>2889</sup>

*A bias crime is a criminal offence motivated against persons, associates of persons, property or society that is motivated, in whole or in part, by an offender’s bias against an individual’s or group’s actual or perceived; race, religion, ethnic/ national origin, sex/ gender, gender identity, age, disability status, sexual orientation or homeless status.*

- 13.392. As the Academic Report also noted,<sup>2890</sup> the Coordinating Instructions for Strike Force Parrabell did contain a definition of “bias crime indicators” (emphasis added), as follows:<sup>2891</sup>

<sup>2885</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 80 (SCOI.02632).

<sup>2886</sup> Transcript of the Inquiry, 28 February 2022, T2399.1–15 (TRA.00029.00001).

<sup>2887</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 39 (SCOI.02632).

<sup>2888</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 81 (SCOI.02632).

<sup>2889</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 81 (SCOI.02632).

<sup>2890</sup> See Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 81 (SCOI.02632).

<sup>2891</sup> Exhibit 6, Tab 15, Strike Force Parrabell Coordinating Instructions, Undated, 3 (SCOI.75071).

*Objective facts, circumstances, or patterns attending a criminal act or acts which, standing alone or in conjunction with other facts or circumstances, suggest that the offender's actions were motivated, in whole, or in part, by any form of bias.*

13.393. Both of those definitions expressly included the concept of an offender's actions being motivated "in whole or in part" by any form of bias.

13.394. Associate Professor Lovegrove and Professor Asquith both comment on the approach by Strike Force Parrabell to reviewing the circumstances of deaths involving robbery or other partial motivations. The Lovegrove Report addressed this as follows:<sup>2892</sup>

*The finding of robbery being identified as the principal motive in 32 cases, presumably did not preclude the case being identified as a bias crime, since it was stated that bias did not have to be the principal motive for the case to be identified as a bias crime. So what is to be made of this finding? In any case, the principal motive might have been robbery, but perhaps these particular people were targeted because they were thought of as 'fair game' because they were gay; if so, hate bias would have been an active factor warranting of itself the 'bias' label. Against this, the gay victims may have been targeted for robbery because they were seen as soft targets, not because of their sexuality, or alternatively targeted because it was thought that as gay they would not want to involve the police in light of supposed police prejudice.*

13.395. These views are consistent with the "offender mode of victim selection", a different approach to understanding hate crime which is explained in the Asquith Report, and which focuses on "how, not why, offenders discriminately select victims".<sup>2893</sup>

13.396. The Asquith Report addressed the issue of robbery and partial motivation more specifically as follows:<sup>2894</sup>

*... Additionally, indicator 9 of the BCIF, which focusses on a lack of any alternative motive, precludes a partial motivation (or aggravation) that is common in Australian definitions of hate crime.*

*As to partial motivation, robbery is often a concurrent offence with hate crimes such as assault, which Tomsen calls an "incidental relation" to hate crime motivation, and Gruenewald & Kelley call "instrumental offenses". This does not mean that hate/bias/prejudice/animus was not present; rather, it indicates that hate can be an additive to an underlying offence, or that the harms of the underlying hate-motivated assault can be enhanced by robbery.*

<sup>2892</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [93(4)] (SCOI.82366.00001).

<sup>2893</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [82] (SCOI.82368.00001).

<sup>2894</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [93]–[95] (SCOI.82368.00001).

*While most public knowledge and attention is on the motivated “Type A” hate crimes, the research available demonstrates that hate often aggravates an underlying offence—such as assault, robbery, harassment, or criminal damage—in which case the hate crime motivation may be partial. As noted above, partial motivation is not excluded in the NSWPF definition of hate crime, nor in the scope of the sentencing legislation. Yet, Dalton et al and de Lint and Dalton seem to dismiss these cases as not being hate crimes at all, and that including such cases will evacuate the term hate crime of all meaning.*

13.397. Neither Associate Professor Lovegrove nor Professor Asquith were challenged on these aspects of their reports during their oral evidence.

13.398. In September 2023, Detective Acting Sergeant Bignell gave evidence that:<sup>2895</sup>

*If we had firm information to suggest that an offender had conducted or committed a robbery on a victim, as a result of that robbery, the person was now deceased, then I’d make a pretty good assumption that it wasn’t as a result of bias.*

13.399. At a later point in his oral evidence, Detective Acting Sergeant Bignell gave evidence that, in a scenario where both robbery and LGBTIQ bias motivation were a possibility, the death in question “would have been likely assessed as a suspected bias crime”, even if there may have been a robbery element to the conduct.<sup>2896</sup>

## Other aspects of the experts’ reports

### LOVEGROVE REPORT

13.400. The Lovegrove Report did not confine its criticisms of the BCIF to the process by which it was adopted. The content of the BCIF was also the subject of criticism, including as follows.

### Imprecise language

13.401. Associate Professor Lovegrove noted various phrases within the BCIF which he said are open to “an investigator’s personal interpretation” and which he suggested do not adequately distinguish between those cases which are hate crimes and those cases which are not.<sup>2897</sup>

13.402. Associate Professor Lovegrove proceeded to point out other examples of linguistic imprecision, as well.<sup>2898</sup>

<sup>2895</sup> Transcript of the Inquiry, 21 September 2023, T5852.30–36 (TRA.00089.00001).

<sup>2896</sup> Transcript of the Inquiry, 21 September 2023, T5869.46–5870.18 (TRA.00089.00001).

<sup>2897</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [71]–[72] (SCOI.82366.00001).

<sup>2898</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [75]–[83] (SCOI.82366.00001).



- 13.403. Individually, such instances of linguistic imprecision might not be fatal to the BCIF, as Associate Professor Lovegrove recognised.<sup>2899</sup> However, the report stated:
- a. “[I]t is a bedevilling problem for the BCIF’s reliability (and validity) that definitional vagueness is to be found across multiple indicators ...”;<sup>2900</sup> and
  - b. “In light of these shortcomings, it is too open for reasonable minds to differ on whether gay hate was alive in the circumstances of a particular crime.”<sup>2901</sup>

### Combination of bias crime indicators to reach conclusion

- 13.404. Associate Professor Lovegrove addressed the process by which the results of the individual indicators were converted into an overall finding of bias.<sup>2902</sup> The Coordinating Instructions described that process as follows:<sup>2903</sup>

*an overall conclusion will be made referring to each relevant indicator and the relevant evidence; comments will be recorded in order to clarify each finding; a bias indication does not have to establish that a bias was the only or main motivating factor behind an action contributing to their death.*

- 13.405. Associate Professor Lovegrove observed that there is a lack of clarity as to how that process actually occurred in the Police Report. The Lovegrove Report provided some examples of questions that highlight that absence of clarity:<sup>2904</sup>

1. *Could the decision of bias on one element carry the decision?*
2. *Could less patent evidence of bias across several indicators serve to carry the day?*
3. *How might hate on several indicators combine to determine gay hate as a motive in the case? The process may be in effect largely additive – hate on two or more indicators sums to reach a threshold – or interactive – hate on two or more indicators is greater than the sum of the individual attributes.*

- 13.406. In the June CAS, Counsel Assisting submitted that the evidence from the NSWPF did not provide clear answers to such questions.<sup>2905</sup>

<sup>2899</sup> See, e.g., Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [79]–[80] (SCOI.82366.00001).

<sup>2900</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [80] (SCOI.82366.00001).

<sup>2901</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [83] (SCOI.82366.00001).

<sup>2902</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [84]–[86] (SCOI.82366.00001).

<sup>2903</sup> Exhibit 6, Tab 15, Strike Force Parrabell, Coordinating Instructions, Undated, 4 (SCOI.75071).

<sup>2904</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [85] (SCOI.82366.00001).

<sup>2905</sup> Submissions of Counsel Assisting, 7 June 2023, [1054] (SCOI.84380).

13.407. On 21 September 2023, Senior Counsel for the NSWPF asked Detective Acting Sergeant Bignell to comment on how he approached converting the results of the individual indicators into an overall decision as to bias. He stated:<sup>2906</sup>

*A. There was no, you know if a number of indicators were met, then it would fall within a particular category; it was looking at all the information as a whole and holistically to see, you know, where it would best fall. Obviously there was, in different cases, certain information that pointed more in one direction than the other, and we would assess all available information to make a determination. But there was no, you know, if one was met and one wasn't, then it would fall within a category; it was looking at every single case in its entirety based on what was available to us.*

*Q. So each case was looked at as an individual case on its own?*

*A. Yes.*

*Q. There was no formula for looking at particular parts of the case or particular categories of evidence?*

*A. No.*

13.408. On the evidence of Detective Acting Sergeant Bignell, it does not appear that Strike Force Parrabell had a clear process in place to address how the scenarios set out in the questions posed by Associate Professor Lovegrove at [13.405] would be addressed in course of case reviews.

### **Different standards of proof**

13.409. As discussed earlier in this Chapter, the Coordinating Instructions indicate that two different standards of proof (“beyond reasonable doubt”, and “on the balance of probabilities”) were engaged at different stages of the BCIF process.

13.410. Mr Willing agreed that the requirement of “beyond reasonable doubt”, for a “finding” of “evidence of bias crime”, would inevitably mean that very few of the deaths under consideration on a paper review would meet that criterion.<sup>2907</sup>

13.411. As noted earlier in this Chapter, Detective Acting Sergeant Bignell expressed a similar view, while Assistant Commissioner Crandell was not prepared to do so.

13.412. When Mr Willing was taken to the conclusion, in the Police Report, that of the 23 deaths said to be “unsolved”, not one was categorised as ‘Evidence of Bias Crime’, he also readily agreed that such a very low number was “almost inevitable” given the requirement of beyond reasonable doubt in the form.<sup>2908</sup>

<sup>2906</sup> Transcript of the Inquiry, 21 September 2023, T5871.12–36 (TRA.00089.00001).

<sup>2907</sup> Transcript of the Inquiry, 20 February 2023, T1737.15–35 (TRA.00023.00001).

<sup>2908</sup> Transcript of the Inquiry, 20 February 2023, T1741.37–1742.13 (TRA.00023.00001).

13.413. In his report, Associate Professor Lovegrove said:<sup>2909</sup>

*In relation to the characteristics of reliability and validity, there is a further difficulty. Four intuitively sensible categories were created for the purpose of classifying cases involving hate, namely, 'Bias Crime', 'Suspected Bias Crime', 'Not Bias Crime' and 'Insufficient Information'. For each case, an assessment in respect of each of these categories is made for each of the ten indicators separately and for the ten considered together. But the standard of proof differs across the two; somewhat puzzlingly, no reason being given.*

*The assessment of bias for each of the ten indicators was to be made according to the standard of 'beyond reasonable doubt'. This standard is not easy to interpret amid a messy evidentiary scene. It is a fine judgement, one learned by long experience in putting criminal circumstances before courts. The absence of this experience invites inconsistent judgements across independent raters, leading to poor reliability of the BCIF. Along with this, it sets a high evidentiary bar. While this minimises the risk of finding bias where there is no bias, it increases the risk of missing bias where it is actually present. This may set up the study to provide an underestimate of the incidence of bias among the 88 cases.*

*In comparison, the standard of 'on the balance of probabilities' is applied to the conclusion on bias as a motivating factor in a case considered in its totality. This seems a more appropriate standard in view of the 'messy' character of the evidence. But is the damage already done in light of the 'beyond reasonable doubt' standard adopted for the individual indicators? Because of the opaqueness of the overall judgement of bias for each case (see preceding discussion), the question must be left open.*

*A final observation on the standards of proof for the four bias categories. The standard in regard to the first, second and fourth are clear (notwithstanding their problematic application) and internally consistent, but the third, 'not a bias crime', is left open and stands apart. For this category there is no accompanying standard of proof to differentiate it from the former category.*

13.414. I have set out the evidence of Detective Acting Sergeant Bignell as to how the standard of proof was applied in practice above at [13.337]–[13.340].

<sup>2909</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [87]–[90] (SCOI.82366.00001).

## Completion of BCIFs

- 13.415. The Lovegrove Report expressed concerns about the lack of information in the Parrabell Report addressing the degree of inconsistency between the completed BCIFs:<sup>2910</sup>

*Evidence of the lack of clarity in the minds of the Strike Force team is apparent in the Report's description of how the team went about making the required judgements. BCIFs were completed by individual investigative police officers, and subject to individual reviews both in batches as they were submitted and in one final sweep. For the former there were several teams and for the latter a final review team. The aim of these reviews was to 'ensure consistency in methodology and conclusions'. No information is given on the degree of inconsistency review teams were presented with at each stage of the review process. The review process may have been rigorous and elaborate but there is not sufficient information to confirm this. The review process would have been expected to improve rigour by increasing the coherence – internal consistency – of the classificatory process. However, the review process cannot make the BCIF as an instrument inherently more reliable.*

*In addition, the perceived need for these multiple reviews raises the possibility that the degree of initial inconsistency was not inconsiderable, and with this evidence of the unreliability of the BCIF as an instrument for measuring bias. This process of review itself did not ensure a high degree of consistency of the process. The actual level of unreliability could only be estimated by the process being independently repeated on the same cases and by different personnel, and then comparing the two sets of case bias assessments. This is what was required to determine whether the BCIF was sufficiently reliable as an instrument for the identification of bias.*

- 13.416. Associate Professor Lovegrove was there proceeding on the assumption (which was consistent with what was stated in the Parrabell Report and also with the evidence of Assistant Commissioner Crandell) that the BCIFs had been completed by various different investigators, prior to a review by the review panel (Superintendent Middleton, Detective Inspector Grace and Detective Acting Sergeant Bignell). That assumption was shared, at the time Associate Professor Lovegrove gave evidence, both by the Inquiry and by the NSWPF (as the June NSWPF Submissions make clear).
- 13.417. However, it was subsequently revealed in September 2023 that it was Detective Acting Sergeant Bignell, alone, who filled out the BCIFs before they were discussed and finalised with Detective Chief Inspector Middleton and Detective Inspector Grace at monthly meetings.<sup>2911</sup> The number of different officers

<sup>2910</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [91]–[92] (SCOI.82366.00001).

<sup>2911</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [48]–[69] (NPL.9000.0026.0007); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [62]–[69] (NPL.9000.0024.0012); Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [67]–[68] (NPL.9000.0029.0001). See also Transcript of the Inquiry, 21 September 2023, T5793.13–31, 5804.14–5818.43, 5820.5–5821.7 (TRA.00089.00001).

involved in the completion of the 86 BCIFs, and the number of review stages for each one, were thus fewer than had previously been understood.

- 13.418. Having regard to my obligation to provide this Report to the Governor by 15 December 2023 and the need to carefully allocate resources at such a late stage, the Inquiry did not obtain a supplementary report or oral evidence from associate Professor Lovegrove (nor from Professor Asquith or Ms Coakley). This decision was made bearing in mind that the substance of Associate Professor Lovegrove’s concerns in this respect remains sound in my view and that those concerns formed a small part of his evidence overall as to the methodology employed by Strike Force Parrabell.

### Associate Professor Lovegrove’s Conclusions

- 13.419. Associate Professor Lovegrove summarises his conclusions on the methodology of Strike Force Parrabell as follows (emphasis added):<sup>2912</sup>

*The choice of the BCIF was not soundly based and cannot be taken to be adequate. It is not shown how it is appropriate for the research question. The indicators forming part of the BCIF were developed in relation to possible hate crimes generally; they were not developed for the purpose of identifying gay hate specifically. Along with this, there is no evidence that the BCIF was culturally applicable in the specific context of this study (the gay scene in Sydney, Australia).*

*The different standards of proof applicable to different parts of the BCIF process were problematic. In particular, the use of the standard “beyond reasonable doubt” for assessments with respect to each of the ten indicators unduly risked missing cases where bias was actually present.*

*The Strike Force adopted the BCIF without any evidence of its reliability and validity. In view of the team’s process of reviewing cases for the purpose of consistency, the level of reliability of the BCIF may well have fallen below the level required of a quality behavioural measure. This was to be expected in light of the problems associated with Strike Force’s methodology for identifying gay hate.*

*With respect to validity, an analysis of its face validity pointed to low validity. Moreover, low reliability necessarily undermines validity.*

*The preceding three problems render the BCIF a crude instrument for present purposes and the accuracy of any conclusion about the incidence of bias very uncertain.*

*The Strike Force’s reporting of their analysis of the case data is too obscure. This applies to the use of the BCIF in identifying gay hate as a factor in*

<sup>2912</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [104]–[111] (SCOI.82366.00001).

these cases and, with this, the process of classifying the cases according to the presence of bias. Two consequences following from this are:

1. the reader has no means of assessing the soundness (validity) of the team's judgements of bias, leaving the reader with no more than uncertain conclusions; and

5. 2. it fails a basic requirement of a social science research project, namely, the opportunity for independent researchers to replicate the actual study.

The pivotal role of the BCIF in this study represents faux science; it imparts a false sense of research rigour and validity.

The Strike Force's reporting of their analysis opens the way for the 'headline' conclusion to be: 'Only 8 of 88 cases positively found to involve 'gay' hate bias.' This would represent a seriously misleading conclusion. More generally, having regard to the present review of the method, the Strike Force's Report provides no sound basis for any conclusion about the incidence of gay-hate bias in the 88 deaths. The 'true' figure may be quite low; the 'true' figure might be alarmingly high. We are none the wiser as a result of this research.

## COAKLEY REPORT

13.420. Ms Coakley provided her opinion as to the methodology of Strike Force Parrabell, including its use of the BCIF. The Coakley Report propounded the following analysis (emphasis added):<sup>2913</sup>

*[Strike Force Parrabell]'s use of the BCIF substitutes a checklist, or "check the box" method for merely reviewing files of past crimes that should have been investigated initially reviewing the totality of the circumstances.*

*If the goal of [Strike Force Parrabell] was to determine which, if any, of the 88 deaths were in fact motivated by an "anti-gay bias", the methodology was only going to be as successful as the original investigators were at the time in recognizing, investigating, and identifying evidence of a possible hate/bias crime.*

*For unsolved cases, the use of the BCIF alone would not assist the [Strike Force Parrabell] police reviewers in identifying, or even categorising, gay hate/bias crime. A hate/bias crime requires proof of intent or motive; where no perpetrator and/or suspect has been identified, the [Strike Force Parrabell] cannot address a crucial element needed for categorisation. It is thus not surprising that both the police summaries of investigations, and the review of just those summaries by the academic team, would result*

<sup>2913</sup> Exhibit 6, Tab 257, Expert report of Martha Coakley, 20 December 2022, [34]–[38] (SCOI.82367.00001).

*frequently in the conclusion that there was no evidence, or insufficient evidence that it was, or may have been a gay hate/ bias crime.*

*[...] The methodology did not address the issue of whether the original investigations may have been inadequate for reasons such as homophobia, transphobia or negligence. If the original case files were inadequate, the [Strike Force Parrabell] officers had very little with which to work.*

*[...] The methodology, including employing the academic team, tended to give the impression of an open, rigorous and scientific investigation, but really only created the illusion that there was not extensive homicidal violence towards the LGBTIQ community during the relevant time period.*

- 13.421. In her oral evidence, Ms Coakley reiterated and robustly stood by her analysis and opinions.<sup>2914</sup>

### ASQUITH REPORT

- 13.422. Professor Asquith provided her opinion on the limitations and methodology of Strike Force Parrabell. The Asquith Report included the following paragraphs:<sup>2915</sup>

*[Strike Force Parrabell] was delimited from the outset; it only considered the “88/85”, it only reviewed the existing holdings of each case (and some evidence may have been lost in the intervening years), and no additional investigation was undertaken.*

*To add to the partial nature of the review, [Strike Force Parrabell] involved 13 officers over a long period of time, and whilst there was some oversight to provide consistency, it is unclear from the [Strike Force Parrabell] Final Report whether each of these officers were trained in recognising the unique attributes of hate crime, or the cultural characteristics of the LGBTIQ community historically and contemporaneously. The absence of training in either of these subjects could have tempered and skewed the assessment of the holdings on each of these homicides.*

*[...] An additional factor hampering the efficacy—and as a consequence, the extent to which [Strike Force Parrabell] could bolster LGBTIQ communities’ trust in NSWPF—was that nowhere in the [Strike Force Parrabell] Final Report does it give the full list and the conclusions reached by each of the NSWPF and the academic teams in respect of each case. The conclusions are entirely opaque.*

*When these factors are combined with the lack of training and expertise of the [Strike Force Parrabell] police officers and academic team, the results of*

<sup>2914</sup> See, e.g., Transcript of the Inquiry, 3 March 2023, T2732.46–2733.42 (TRA.00032.00001).

<sup>2915</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [164]–[167] (SCOI.82368.00001).



*[Strike Force Parrabell] are unsurprising—especially, the frequent “finding” that there was insufficient information to make an assessment at all.*

- 13.423. As to the second of these points, Professor Asquith’s observations are based only on what is evident from the Parrabell Report.
- 13.424. As noted above, the evidence of Detective Acting Sergeant Bignell that he was the only officer who filled out the BCIFs had not been provided to the Inquiry at the time that Professor Asquith prepared her report and gave oral evidence.
- 13.425. Detective Acting Sergeant Bignell’s evidence confirmed that neither he nor the other investigators had any background or training in bias crime (although he completed the GLLO course several years earlier, in 2011).<sup>2916</sup> He did not believe that Superintendent Middleton or Detective Inspector Grace had any such training or background.<sup>2917</sup>
- 13.426. I interpolate that not only did the officers who constituted Strike Force Parrabell have no particular training in bias crimes, but the strike force made a deliberate choice not to utilise the expertise of the BCU or Sergeant Steer in any substantive way.<sup>2918</sup>

### **What could have been done instead?**

- 13.427. The final point at [167] of the Asquith Report (extracted above) points to another fundamental question: was Strike Force Parrabell a worthwhile exercise at all, given that it was confined only to looking at historical papers, given that it was not to reinvestigate any case, and given the numerous methodological defects referred to above?
- 13.428. Both the Asquith Report (at [159]) and the Coakley Report (at [47]–[49]) referred to the possibility that actual reinvestigation of at least some of the unsolved deaths might have been a more worthwhile project.
- 13.429. When such a suggestion was raised with Assistant Commissioner Crandell, he accepted that that would have been a possible approach but referred to (among other things) the significant resources and timeframes that would be needed.<sup>2919</sup>

<sup>2916</sup> Transcript of the Inquiry, 21 September 2023, T5790.16–5791.17 (TRA.00089.00001)

<sup>2917</sup> Transcript of the Inquiry, 21 September 2023, T5790.16–5791.17 (TRA.00089.00001). The statements of Superintendent Middleton and Detective Inspector Paul Grace do not suggest that they have any particular training in bias crime: Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [9]–[20], (NPL.9000.0024.0012); Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [12]–[24] (NPL.9000.0029.0001).

<sup>2918</sup> In his oral evidence, Sergeant Steer outlined the extent of his involvement in Strike Force Parrabell, which comprised a presentation to the strike force concerning hate crimes and the bias crime indicators, three meetings with Assistant Commissioner Crandell, and “other meetings around Parrabell” for which he could not remember what occurred: see Transcript of the Inquiry, 13 December 2022, T1090.34–T1097.35 (TRA.00016.00001).

<sup>2919</sup> Transcript of the Inquiry, 7 December 2022, T795.30–796.27 (TRA.00012.00001).



- 13.430. Counsel for the NSWPF suggested to Ms Coakley, by reference to the reinvestigation of the death of Scott Johnson, that it may not be practicable to apply the necessary level of resources to each of the unsolved deaths considered by Strike Force Parrabell. Ms Coakley responded as follows:<sup>2920</sup>

*A. Well, we're just arguing different points here, counselor. I'm not suggesting that every case could or should have those resources, but I think what we learned is if that case had had the appropriate resources from the beginning, instead of writing it off as a suicide, losing evidence, not talking to folks, and if that was done even with some of these other cases that Parrabell looked at, some of those - some of that progress could be made, because there was just not an acknowledgment that it was even a homicide at the beginning."*

## Submissions of Counsel Assisting and the NSWPF

### Police Methodology

- 13.431. As noted above, there were significant developments in the evidence available to the Inquiry concerning the methodology of Strike Force Parrabell in the September/October 2023 hearings of Public Hearing 2. Accordingly, I will outline both the June CAS and June NSWPF Submissions, and then the October CAS and October NSWPF Submissions, which address the evidence which came to light in the September/October 2023 hearings.
- 13.432. In the June NSWPF Submissions, the NSWPF emphasised that the review of the first-round investigators' review by the "senior leadership team" was the "critical decision-making phase" to take into account when setting out the methodology of Strike Force Parrabell.<sup>2921</sup> It emphasised that the review was an "intuitive process" involving "discussions between reviewing officers" resulting in "ultimate determination[s]" based on "synthesis of the features in each case... and made with the benefit of extensive investigative experience".<sup>2922</sup> In light of Detective Acting Sergeant Bignell's evidence provided in September 2023, it appears that this was not an accurate description of this phase of the review.
- 13.433. In the October NSWPF Submissions, the NSWPF reiterated its submission that "the BCIFs were not employed in any mechanical process" during the Strike Force Parrabell review, which focused on synthesising the features identified and producing a "considered judgment" based on the "investigative experience of the officers".<sup>2923</sup>

<sup>2920</sup> Transcript of the Inquiry, 3 March 2023, T2739.32–47 (TRA.00032.00001).

<sup>2921</sup> Submissions of NSWPF, 28 June 2023, [539] (SCOI.84211).

<sup>2922</sup> Submissions of NSWPF, 28 June 2023, [541] (SCOI.84211), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 67–69 (SCOI.02632); Transcript of the Inquiry, 7 December 2022, T806.21–33, 807.16–29 (TRA.00012.00001).

<sup>2923</sup> Supplementary Submissions of NSWPF, 23 October 2023, [345] (SCOI.86378).

- 13.434. In June 2015, during email correspondence between Assistant Commissioner Crandell and Dr Weatherburn in relation to the topic of an academic review, Dr Weatherburn observed as follows:<sup>2924</sup>

*As far as I know COPS doesn't reliably record whether a homicide is a gay hate homicide. Some sort of inference might be drawn from the homicide files but this would be a time-consuming task without any assurance of a reliable result (do the files contain reliable information on offender motive?) I simply don't have the staff to put on this sort of project.*

- 13.435. Counsel Assisting submitted that Dr Weatherburn's observation, made in June 2015 (i.e., prior to the strike force being formally established), "succinctly drew attention to two fundamental problems confronting the methodology" of Strike Force Parrabell.<sup>2925</sup>
- 13.436. The first problem identified by Counsel Assisting was that any review of the historical materials in connection with a given case, with a view to deducing or inferring—from those materials alone, without any re-investigation at all—whether the death in question was LGBTIQ-hate related, was heavily dependent on the extent to which those who had authored those historical materials at the time (mainly in the 1970s and 1980s), had given any attention to such a possibility and on the quality and extent and expression of any such consideration in that material.<sup>2926</sup>
- 13.437. Counsel Assisting submitted that this problem (the existence and inescapability of which Assistant Commissioner Crandell readily acknowledged) meant, from the outset, that any "findings" by Strike Force Parrabell, as to whether or not "gay hate" bias (or some similar concept) had been a factor in a death occurring decades earlier, would be of very limited value.<sup>2927</sup>
- 13.438. The NSWPF disagreed with this submission. The NSWPF acknowledged that, undoubtedly, there were always going to be limitations to the conduct of a paper review as compared with a re-investigation of each case. However, it submitted that a paper review still provided a number of opportunities to discern whether anti-LGBTIQ motivation existed, and indeed it was identified in a significant number of the deaths considered by Strike Force Parrabell.<sup>2928</sup> Further, the NSWPF submitted that even a full re-investigation would have likely encountered very significant difficulties associated with the passage of time (including an inability to re-interview relevant witnesses, shifts in police practices regarding the identification of bias, and difficulties in historical archiving practice).<sup>2929</sup>

<sup>2924</sup> Exhibit 6, Tab 33, Email correspondence between Superintendent Anthony Crandell and Dr Don Weatherburn, 22–25 June 2015, 2 (SCOI.74119).

<sup>2925</sup> Submissions of Counsel Assisting, 7 June 2023, [1095] (SCOI.84380).

<sup>2926</sup> Submissions of Counsel Assisting, 7 June 2023, [1095(a)] (SCOI.84380).

<sup>2927</sup> Submissions of Counsel Assisting, 7 June 2023, [1096] (SCOI.84380).

<sup>2928</sup> Submissions of NSWPF, 28 June 2023, [644] (SCOI.84211).

<sup>2929</sup> Submissions of NSWPF, 28 June 2023, [644] (SCOI.84211).

- 13.439. The second problem identified by Counsel Assisting was that any authoritative or reliable review by academics of the quality or effectiveness of the work done by the Strike Force Parrabell officers, would at the very least require the academics to look at the same historical material that the police officers had looked at, and would be a very time-consuming exercise.<sup>2930</sup>
- 13.440. Counsel Assisting observed that:
- a. As Dr de Lint conceded, unless the academic team had gone back and considered the historical papers themselves, they could not assess the quality and effectiveness of the answers arrived at in the BCIFs.<sup>2931</sup>
  - b. It was initially envisaged (as per clauses 3.4 and 4.1 of the RFQ, discussed below) that the academic reviewers would indeed have access to all the historical material which the Strike Force Parrabell officers had looked at. However, as events transpired, that did not happen.<sup>2932</sup>
  - c. Professor Asquith gave the following evidence (also discussed below):<sup>2933</sup>
    - Q. If you had been chosen - your team - and it turned out you were not going to get access to the original source material which the Parrabell officers had had, and you were only going to get the completed BCIF forms filled in by those officers, what would your response have been? What would you have done?*
    - A. In the first instance, I would have tried to negotiate with NSW Police to explain to them how their methodology would not result in the outcome that they were seeking if they were unprepared to share those extra resources, the original resources, to the - what I feel is that the academic team that were appointed were given third-hand data. What I would have been wanting to get is to get at least second-hand data, the summaries of those case files, not the BCIF forms. If that was not possible, then I would have handed back the money and told them that I could not meet the brief.*
- 13.441. In response, the NSWPF submitted that, while the intention from the outset was for the review team to review the same materials as Strike Force Parrabell, it quickly became apparent that this would have been an onerous task that was simply not feasible from either a resourcing or timing perspective given the volume of material.<sup>2934</sup> The NSWPF submitted that, however, while this was a limitation to the academic team's review, such a limitation was not a justifiable reason for Assistant Commissioner Crandell to conclude that no academic review should be conducted and that Strike Force Parrabell "should not be criticised for proceeding

<sup>2930</sup> Submissions of Counsel Assisting, 7 June 2023, [1095(b)] (SCOI.84380).

<sup>2931</sup> Submissions of Counsel Assisting, 7 June 2023, [1098] (SCOI.84380).

<sup>2932</sup> Submissions of Counsel Assisting, 7 June 2023, [1099] (SCOI.84380).

<sup>2933</sup> Transcript of the Inquiry, 3 March 2023, T2826.3-19 (TRA.00032.00001).

<sup>2934</sup> Submissions of NSWPF, 28 June 2023, [645] (SCOI.84211).

- with what was perceived to be ‘the good’ in circumstances where ‘the perfect’ was simply not possible.”<sup>2935</sup>
- 13.442. Counsel Assisting submitted that the “governance system” referred to by Assistant Commissioner Crandell could not and, more importantly, did not ensure accuracy:<sup>2936</sup>
- a. As Assistant Commissioner Crandell accepted, the narratives were not second-guessed by the senior review panel members, in that they did not go back over the files to determine whether they agreed or disagreed with the narrative originally prepared.<sup>2937</sup>
  - b. The Inquiry has before it examples of BCIFs with inaccurate or flawed narratives, such as the BCIF for the matter of Graham Paynter, where the reviewing officer copied and pasted sections from the BCIF relating to another deceased person, Peter Sheil.<sup>2938</sup>
- 13.443. As to the former matter, the NSWPF submitted that Assistant Commissioner Crandell had stated that “he ‘did not believe’ that the senior investigators” had reviewed the files,<sup>2939</sup> but it would be “surprising” if they had not done so having regard to the “available information regarding the process”.<sup>2940</sup> While in an “ideal world” Strike Force Parrabell would have comprised a review of the “entire case file... multiple times by multiple officers” to avoid facts being missed, this would have required “significant additional resources and time”. That such a process was not followed “is not a proper basis for criticism”.<sup>2941</sup>
- 13.444. As to the latter matter, the NSWPF accepted that the error in the BCIF relating to Mr Paynter was “regrettable”, however submitted that its “significance should be evaluated in context and not overstated”.<sup>2942</sup> There was no indication that this error affected the ultimate categorisation in the case and Strike Force Parrabell had “conservatively” classified Mr Paynter’s death into the “Insufficient Information” category.<sup>2943</sup>
- 13.445. Counsel Assisting submitted that, in reality, the BCIF obscured the true nature of the process and gave the appearance of scientific rigour which in reality was totally absent. Dr Dalton agreed in his oral evidence that “the elaborate apparatus of the form was apt to conceal ... the near impossibility of the task”.<sup>2944</sup> As will be

<sup>2935</sup> Submissions of NSWPF, 28 June 2023, [645] (SCOI.84211).

<sup>2936</sup> Submissions of Counsel Assisting, 7 June 2023, [928] (SCOI.84380).

<sup>2937</sup> Transcript of the Inquiry, 12 December 2022, T1031.15–16 (TRA.00015.00001).

<sup>2938</sup> See Exhibit 8, Tab 22, Strike Force Parrabell Bias Crimes Indicators Review Form – Graham Paynter, Undated (SCOI.74992).

<sup>2939</sup> Transcript of the Inquiry, 12 December 2022, T1031.15 (TRA.00015.00001).

<sup>2940</sup> Submissions of NSWPF, 28 June 2023, [554]–[555] (SCOI.84211).

<sup>2941</sup> Submissions of NSWPF, 28 June 2023, [556] (SCOI.84211).

<sup>2942</sup> Submissions of NSWPF, 28 June 2023, [553] (SCOI.84211).

<sup>2943</sup> Submissions of NSWPF, 28 June 2023, [553] (SCOI.84211).

<sup>2944</sup> Transcript of the Inquiry, 28 February 2023, T2399.20–2400.10 (TRA.00029.00001).

discussed later in this Chapter, Associate Professor Lovegrove called it “faux science”,<sup>2945</sup> and Ms Coakley expressed a similar view.<sup>2946</sup>

- 13.446. The NSWPF accepted that the categorisation of cases by Strike Force Parrabell “ultimately rested on subjective judgments, by reference to particular factors identified in the review process”.<sup>2947</sup> However, it was submitted that Counsel Assisting’s submission was based on a “false premise” that the BCIF was “employed as a ‘checklist’” used “inflexibly” to categorise cases,<sup>2948</sup> rather than an intuitive process based on “qualitative information” and analysed at three levels of review;<sup>2949</sup> that there could thus be no sensible criticism of the subjectivity of the process, which is an inherent characteristic of police work and the criminal justice system;<sup>2950</sup> and that Strike Force Parrabell “did not purport to be a scientific exercise”.<sup>2951</sup>

### Expert evidence

- 13.447. Counsel Assisting submitted that the opinions expressed by Professor Asquith, Associate Professor Lovegrove and Ms Coakley related to matters that were within their respective areas of expertise.<sup>2952</sup>
- 13.448. It was submitted that none of the matters set out above at [13.348] affect Ms Coakley’s expertise to give evidence about the subjects she addressed, namely:
- a. The Bias Crimes Indicators, which originated and are used in Massachusetts;
  - b. The policing and prosecution of hate crimes; and
  - c. The questions she was asked about Strike Force Parrabell and the Parrabell Report.<sup>2953</sup>
- 13.449. The NSWPF raised the following issues as to Ms Coakley’s evidence:
- a. She had never worked or conducted research in Australia; her exposure to issues associated with violence against the Australian LGBTIQ community was limited to her involvement in Scott Johnson’s case; her knowledge and understanding of other LGBTIQ deaths was limited to media exposure.<sup>2954</sup>

<sup>2945</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [110] (SCOI.82366.00001).

<sup>2946</sup> Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [38] (SCOI.82367.00001).

<sup>2947</sup> Submissions of NSWPF, 28 June 2023, [557] (SCOI.84211).

<sup>2948</sup> Submissions of NSWPF, 28 June 2023, [559], [561] (SCOI.84211).

<sup>2949</sup> Submissions of NSWPF, 28 June 2023, [560] (SCOI.84211).

<sup>2950</sup> Submissions of NSWPF, 28 June 2023, [558] (SCOI.84211).

<sup>2951</sup> Submissions of NSWPF, 28 June 2023, [562] (SCOI.84211).

<sup>2952</sup> Submissions of Counsel Assisting, 7 June 2023, [986]–[991] (SCOI.84380).

<sup>2953</sup> Submissions of Counsel Assisting, 7 June 2023, [992] (SCOI.84380).

<sup>2954</sup> Submissions of NSWPF, 28 June 2023, [737] (SCOI.84211).

- b. Her opinions as to the appropriateness of the academic team’s methodology were not based on specialised knowledge and should be afforded “little weight”; she had no experience conducting criminological research studies within Australia or overseas. It was also noted that she had not spoken to the academic team.<sup>2955</sup>
- c. Her opinions as to the methodology and processes of Strike Force Parrabell must be considered with regard to “the very limited information with which she was briefed by the Inquiry”, noting that she did not consider “any... case files”, “any of the completed BCIFs”, or any of the evidence given by the investigators involved in Strike Force Parrabell or the academic team (or otherwise speak to them).<sup>2956</sup>
- 13.450. The NSWPF submitted it was “surprising” that Counsel Assisting did not acknowledge the potential for a possible or perceived conflict of interest to arise with respect to Professor Asquith’s evidence because she had unsuccessfully tendered for the academic review.<sup>2957</sup>
- 13.451. As to Associate Professor Lovegrove, the NSWPF submitted that his evidence must be considered in light of his admission that he “did not have any experience in and had not conducted any research into, hate crimes generally or anti-LGBTIQ crimes specifically”; rather, he was experienced in “conduct of research projects and the acquisition, analysis and presentation of empirical data”.<sup>2958</sup>
- 13.452. The NSWPF initially submitted that the absence of certain evidence had “fundamentally diminished the utility” of the experts’ evidence. The evidence said to be absent was “evidence from Assistant Commissioner Crandell, the academics or the senior investigators or reviewing officers of [Strike Force] Parrabell as to the methodology actually employed by [Strike Force] Parrabell”. The submissions of Counsel Assisting were characterised as “adopt[ing] the same flawed premise in relation to the manner in which the BCIF was employed”, for instance by assuming that there was “blind ‘application of an instrument’ to obtain a result” rather than “intuitive judgments made by highly experienced investigators”.<sup>2959</sup>
- 13.453. In relation to the submission as to the absence of evidence, I note firstly that the reason that the experts had not addressed the evidence belatedly provided by the NSWPF as to the processes actually followed by the strike force (as revealed by the evidence of Detective Acting Sergeant Bignell in particular) was that the NSWPF had not brought that evidence forward in a timely way as it plainly should have.

<sup>2955</sup> Submissions of NSWPF, 28 June 2023, [738], [740] (SCOI.84211).

<sup>2956</sup> Submissions of NSWPF, 28 June 2023, [738]–[739], [741] (SCOI.84211).

<sup>2957</sup> Submissions of NSWPF, 28 June 2023, [743] (SCOI.84211).

<sup>2958</sup> Submissions of NSWPF, 28 June 2023, [745] (SCOI.84211), citing Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [2] (SCOI.82366.00001).

<sup>2959</sup> Submissions of NSWPF, 28 June 2023, [604] (SCOI.84211).

- 13.454. Secondly, it is striking that at no point did the NSWPF seek for the experts to be recalled in order to address that additional evidence.
- 13.455. Thirdly, nor did the NSWPF argue that the changed state of the evidence fundamentally challenged the conclusions reached by the experts, including that the BCIF imparted “a false sense of research rigour and ability”<sup>2960</sup> or that the entire exercise was necessarily limited by the strike force’s reliance on archival materials.<sup>2961</sup>

### Selection of the bias crime indicators

- 13.456. As to the selection of the bias crime indicators as one of the key components of the BCIF, Counsel Assisting submitted that the views expressed by each of the experts on this issue were not challenged. It was submitted that they are persuasive and should be accepted. The bias crime indicators were not developed for the purpose of identifying LGBTIQ hate crimes, still less such crimes in NSW between 1976 and 2000. Counsel Assisting observed that NSW is not the United States, hate against LGBTIQ people is not the same as hate on the basis of race, nationality or religion, and the manifestation of hate is not static over time.<sup>2962</sup>
- 13.457. It was submitted that the BCIF was therefore, for those reasons alone, not an appropriate instrument for the purposes of Strike Force Parrabell. Little weight, if any, should be placed on results reached through the application of an instrument which was not fit for purpose.<sup>2963</sup>
- 13.458. The NSWPF conceded that the reliability and validity of the bias crime indicators and BCIF had not been “assessed scientifically”.<sup>2964</sup> However, it was submitted that the “core premise” underlying the experts’ evidence was “fundamentally flawed”. There was said to be a misconception that the BCIF was used to *determine* the issue of whether anti-LGBTIQ hate was involved in any of the 88 deaths reviewed.<sup>2965</sup>
- 13.459. The NSWPF submitted that the characterisation of the bias crime indicators as “clues”<sup>2966</sup> in the Coakley Report matched “precisely” to how the bias crime indicators within the BCIF were used to assist in the ultimately “intuitive” determination of whether a bias crime had occurred.<sup>2967</sup> The BCIF was used as a “prompt for reviewing officers” (not a “checklist”) and means to record information to support the reviewing officer and senior investigators in considering how to categorise each case.<sup>2968</sup> The NSWPF drew my attention to evidence of Ms Coakley as to the position in Massachusetts, including that the bias

<sup>2960</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [104]–[111] (SCOI.82366.00001).

<sup>2961</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [150]–[152] (SCOI.82368.00001); Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [35] (SCOI.82367.00001).

<sup>2962</sup> Submissions of Counsel Assisting, 7 June 2023, [1003] (SCOI.84380).

<sup>2963</sup> Submissions of Counsel Assisting, 7 June 2023, [1004] (SCOI.84380).

<sup>2964</sup> Submissions of NSWPF, 28 June 2023, [600] (SCOI.84211).

<sup>2965</sup> Submissions of NSWPF, 28 June 2023, [601] (SCOI.84211).

<sup>2966</sup> Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [31] (SCOI.82367.00001).

<sup>2967</sup> Submissions of NSWPF, 28 June 2023, [603] (SCOI.84211).

<sup>2968</sup> Submissions of NSWPF, 28 June 2023, [602] (SCOI.84211).

crime indicators are “basically sound to be used... at the beginning of an investigation” and are used as a teaching tool to identify “motives”.<sup>2969</sup>

- 13.460. The NSWPF submitted that, at the time of Strike Force Parrabell and to date, there is “no independently validated tool for the assessment of hate crimes”,<sup>2970</sup> despite some “potentially promising work” published in 2022.<sup>2971</sup>
- 13.461. In my view, even if this was the case, this does not provide a justification for Strike Force Parrabell engaging in an exercise that had little underlying utility, particularly in circumstances where it was envisioned that the results of that exercise would be subsequently represented as the product of a scientifically rigorous process.

### Concerns about the BCIF itself

- 13.462. Counsel Assisting submitted that, in the Dalton/de Lint Response (and elsewhere) the academic team confused the indicators (nine of which had indeed been used in training curricula), with the BCIF itself, which had never been used at all prior to Strike Force Parrabell,<sup>2972</sup> nor indeed (on the available evidence) has it ever been used since.<sup>2973</sup>
- 13.463. It was submitted that in the absence of any attempt to assess the validity and reliability of a process so dependent on the BCIF, the NSWPF ought not to have used it, contrary to Assistant Commissioner Crandell’s views.<sup>2974</sup>
- 13.464. It may be that not every tool or instrument used in policing would need to be developed in accordance with a process having all of the rigour outlined by Associate Professor Lovegrove. However, Counsel Assisting submitted that this does not justify the decision to use an untested instrument in these circumstances, for at least two reasons.<sup>2975</sup>
- 13.465. First, Dr Dalton, who was engaged for the purposes of providing independent expert advice, advised Strike Force Parrabell that the BCIF was “pretty appalling”.<sup>2976</sup> The fact that the academic team dissociated itself from the BCIF ought to have given Strike Force Parrabell pause. It underlined how deeply flawed Strike Force Parrabell’s methodology was.<sup>2977</sup>

<sup>2969</sup> Submissions of NSWPF, 28 June 2023, [608] (SCOI.84211).

<sup>2970</sup> Submissions of NSWPF, 28 June 2023, [606] (SCOI.84211).

<sup>2971</sup> Submissions of NSWPF, 28 June 2023, [607] (SCOI.84211).

<sup>2972</sup> Transcript of the Inquiry, 8 December 2022, T874.19–39 (TRA.00013.00001).

<sup>2973</sup> Submissions of Counsel Assisting, 7 June 2023, [1022] (SCOI.84380).

<sup>2974</sup> Submissions of Counsel Assisting, 7 June 2023, [1023] (SCOI.84380).

<sup>2975</sup> Submissions of Counsel Assisting, 7 June 2023, [1024]–[1026] (SCOI.84380).

<sup>2976</sup> Transcript of the Inquiry, 1 March 2023, T2446.39 (TRA.00029.00001).

<sup>2977</sup> Submissions of Counsel Assisting, 7 June 2023, [1025] (SCOI.84380).



- 13.466. Secondly, Strike Force Parrabell was an unusual exercise for the NSWPF. Among other things, it is not an exercise in the direct “prevention and detection of crime” (see s. 6(3)(a) of the *Police Act 1990*), of the kind which the NSWPF might ordinarily undertake.<sup>2978</sup> Rather, Strike Force Parrabell was attempting what was effectively a research project, where the NSWPF would purportedly derive, from historical materials, conclusions and/or inferences which would be presented to the public as reliable and as having “systemic validity”.<sup>2979</sup>
- 13.467. Counsel Assisting submitted that, that being so, the NSWPF ought to have adopted a methodology that actually did have at least some rigour. Neither the compilation of the BCIF, nor its use by the Strike Force Parrabell officers, had any such rigour.<sup>2980</sup>
- 13.468. It was submitted that the evidence of Associate Professor Lovegrove in particular demonstrated that it was not a valid or reliable instrument for identifying LGBTIQ hate crimes. Only limited weight can be accorded to conclusions reached through the use of such an instrument.<sup>2981</sup>

### Consultation with the LGBTIQ community

- 13.469. Counsel Assisting observed that involving the LGBTIQ community in the process of Strike Force Parrabell would have been consistent with its stated “overriding objective”,<sup>2982</sup> and it would have helped to address the “significant angst” to which the Parrabell Report refers.<sup>2983</sup>
- 13.470. It was submitted that involving the LGBTIQ community in the process of Strike Force Parrabell could have improved at least the “validity” of the exercise, if not its “reliability”. Given that the list of 88 deaths was created by members of the LGBTIQ community, one obvious starting point for Strike Force Parrabell might have been to ask those individuals why they thought that those deaths might have involved LGBTIQ bias.<sup>2984</sup>

### Reliance on archival material

- 13.471. Earlier in this Chapter, I outlined the views of Professor Asquith and Ms Coakley as to the sole reliance of Strike Force Parrabell on archival material.

<sup>2978</sup> This is not to say that Strike Force Parrabell went beyond the mission or the functions of the NSWPF. The work of Strike Force Parrabell can fairly be characterised as incidental to those functions: *Police Act 1990* s 6(2)(c).

<sup>2979</sup> Submissions of Counsel Assisting, 7 June 2023, [1026] (SCOI.84380).

<sup>2980</sup> Submissions of Counsel Assisting, 7 June 2023, [1027] (SCOI.84380).

<sup>2981</sup> Submissions of Counsel Assisting, 7 June 2023, [1028] (SCOI.84380).

<sup>2982</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 18 (SCOI.02632).

<sup>2983</sup> Submissions of Counsel Assisting, 7 June 2023, [1031] (SCOI.84380), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 14 (SCOI.02632).

<sup>2984</sup> Submissions of Counsel Assisting, 7 June 2023, [1032] (SCOI.84380).

- 13.472. Counsel Assisting submitted that the force in these views is self-evident. It was observed that the point had been conceded in the Police Report<sup>2985</sup> and by the academic team in the Academic Report.<sup>2986</sup>
- 13.473. Counsel Assisting noted that, if investigations by police in the 1970s, 1980s and 1990s did not record evidence or other matters which might be indicative of a hate crime, those matters were necessarily not before Strike Force Parrabell. Investigators might have failed to identify, or appreciate the significance of, such matters at the time, for any number of reasons including (among others) ignorance about hate crimes,<sup>2987</sup> incompetence or laziness,<sup>2988</sup> or bias against the LGBTIQ community,<sup>2989</sup> manifesting as indifference or malice. Regardless of the reason why the original police investigation might have failed to notice, identify or record such matters, it was submitted that their absence irretrievably limited the capacity of Strike Force Parrabell to “arrive at” a soundly-based view of any particular case.<sup>2990</sup>
- 13.474. The NSWPF accepted that relying on archival material was a “limitation of the [Strike Force] Parrabell exercise”, as information may not have been recorded by the original investigators and material may have been lost or disposed of. Indeed, the “No evidence of bias” category had been renamed from “Not bias crime” to reflect the limitations in available evidence. However, it was submitted that this limitation “could never have been circumvented”, even by re-investigation, as archival material would still be heavily relied upon.<sup>2991</sup>

### Partial motivation (such as robbery-related violence)

- 13.475. In the June CAS, Counsel Assisting submitted that the views expressed as to this topic by Associate Professor Lovegrove and Professor Asquith are cogently reasoned and should be accepted.<sup>2992</sup>
- 13.476. In the October NSWPF Submissions, the NSWPF drew my attention to the evidence of Detective Acting Sergeant Bignell extracted at [13.407] above.<sup>2993</sup>
- 13.477. The NSWPF submitted that Detective Acting Sergeant Bignell’s evidence clarified, “to the extent there was any doubt”, that a dual motivation (such as robbery) “would not prevent a case being classified as a bias crime”.<sup>2994</sup>

<sup>2985</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 39 (SCOI.02632).

<sup>2986</sup> Submissions of Counsel Assisting, 7 June 2023, [1036] (SCOI.84380), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 80 (SCOI.02632).

<sup>2987</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [155] (SCOI.82368.00001).

<sup>2988</sup> See Transcript of the Inquiry, 3 March 2023, T2821.7–8 (TRA.00032.00001).

<sup>2989</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [158], [163] (SCOI.82368.00001).

<sup>2990</sup> Submissions of Counsel Assisting, 7 June 2023, [1039] (SCOI.84380).

<sup>2991</sup> Submissions of NSWPF, 28 June 2023, [611]–[614] (SCOI.84211).

<sup>2992</sup> Submissions of Counsel Assisting, 7 June 2023, [1047] (SCOI.84380).

<sup>2993</sup> Supplementary Submissions of NSWPF, 23 October 2023, [345] (SCOI.86378); Transcript of the Inquiry, 21 September 2023, T5871.18–28 (TRA.00089.00001).

<sup>2994</sup> Supplementary Submissions of NSWPF, 23 October 2023, [346] (SCOI.86378).

## Other aspects of the experts' reports

### LOVEGROVE REPORT

#### Standard of proof

- 13.478. Counsel Assisting submitted that Associate Professor Lovegrove was correct to say that the use of different standards at different stages of the analysis was apt to cause confusion, and also that the “beyond reasonable doubt” standard sets a high evidentiary bar in relation to the assessment of each indicator. He was also correct to say, it was submitted, and as Mr Willing and Detective Acting Sergeant Bignell appreciated,<sup>2995</sup> that the effect of setting that high evidentiary bar was to lower the likelihood that Strike Force Parrabell would find that a particular case was a bias crime. That approach risked underestimating or downplaying the true number of bias crimes.<sup>2996</sup>
- 13.479. Counsel Assisting submitted that the requirement of “beyond reasonable doubt” for a “finding” of “evidence of bias crime” (and also the presence of that concept in relation to the “suspected bias crime” “finding”) is problematic for numerous reasons including:<sup>2997</sup>
- a. The criminal standard is obviously a high bar;
  - b. The question being asked was whether there was evidence of bias crime, not whether a bias crime had in fact occurred;
  - c. To impose the “beyond reasonable doubt” requirement on the possibility of a “Yes” response to that question (whether there was evidence) is both difficult to understand and difficult (if not impossible) to apply, in any intelligible or coherent way; and
  - d. If it were now to be suggested that the “beyond reasonable doubt” requirement was actually to apply to whether a bias crime had occurred (and not merely to whether there was evidence of such a crime), then:
    - i. That is far from clear from the words of the form: and
    - ii. The likelihood of a “Yes” answer to that question would be lower still.
- 13.480. The NSWPF relied on their submissions summarised earlier in this Chapter concerning the standard of proof in the context of the four versions of the BCIF. It was reiterated that the determination of Strike Force Parrabell in each case relied on “intuitive judgment[s]” of the reviewing officer and senior investigators.<sup>2998</sup>

<sup>2995</sup> Transcript of the Inquiry, 20 February 2023, T1741.37–1742.13 (TRA.00023.00001); Transcript of the Inquiry, 21 September 2023, T5837.35–5837.27 (TRA.00089.00001).

<sup>2996</sup> Submissions of Counsel Assisting, 7 June 2023, [1059] (SCOI.84380).

<sup>2997</sup> Submissions of Counsel Assisting, 7 June 2023, [1060] (SCOI.84380).

<sup>2998</sup> Submissions of NSWPF, 28 June 2023, [615]–[616] (SCOI.84211).

### Associate Professor Lovegrove’s Conclusions

- 13.481. Earlier in this Chapter, I set out the summary of Associate Professor Lovegrove’s conclusions on the methodology of Strike Force Parrabell included in the Lovegrove Report.
- 13.482. Counsel Assisting submitted that Associate Professor Lovegrove’s conclusions were amply supported by the analysis in the Lovegrove Report, were essentially unchallenged, and should be accepted.<sup>2999</sup>
- 13.483. The NSWPF submitted that Strike Force Parrabell made no attempt to engage in “faux science” or convey to the public that it had “systemic validity”. Counsel for the NSWPF drew my attention the evidence of Assistant Commissioner Crandell who stated that it would have been “dangerous... to try to make it a scientific process”, elaborating that this could lead to a “tick-box exercise, I fear... you would then be looking at some sort of calculation to determine whether... somebody had bias in their mind” in a context where Strike Force Parrabell was assessing “human motivation and human behaviour”.<sup>3000</sup>

### COAKLEY REPORT

- 13.484. Earlier in this Chapter, I set out the analysis of Ms Coakley as to the methodology of Strike Force Parrabell and the BCIF in the Coakley Report, which was maintained in her oral evidence.
- 13.485. Counsel Assisting submitted that her conclusions were largely unchallenged and should be accepted.<sup>3001</sup>
- 13.486. The NSWPF submitted, as noted above, that Ms Coakley lacked the experience and specialised knowledge required to express an opinion as to these issues.<sup>3002</sup>

### ASQUITH REPORT

- 13.487. Counsel Assisting drew my attention to [164]–[167] of the Asquith Report in particular, which outlined Professor Asquith’s views as to the limitations and methodology of Strike Force Parrabell. Those paragraphs are set out above at [13.422].
- 13.488. Counsel Assisting submitted that the evidence before the Inquiry goes further than the second point made by Professor Asquith at [165] of her report, which was based on the Parrabell Report. Further evidence has shown, it was submitted, that the Strike Force Parrabell officers also failed to utilise the expertise of the BCU or Sergeant Steer in “any substantive or comprehensive fashion”.<sup>3003</sup>

<sup>2999</sup> Submissions of Counsel Assisting, 7 June 2023, [1064] (SCOI.84380).

<sup>3000</sup> Submissions of NSWPF, 28 June 2023, [605] (SCOI.84211).

<sup>3001</sup> Submissions of Counsel Assisting, 7 June 2023, [1067] (SCOI.84380).

<sup>3002</sup> Submissions of NSWPF, 28 June 2023, [740] (SCOI.84211).

<sup>3003</sup> Submissions of Counsel Assisting, 7 June 2023, [1069] (SCOI.84380).

- 13.489. The NSWPF submitted, as set out above, that it was “surprising” that Counsel Assisting had not acknowledged the potential for an actual or perceived conflict of interest on her part.<sup>3004</sup>

### What could have been done instead?

- 13.490. Earlier in this Chapter, I drew attention to a fundamental question as to whether, given the limitations of Strike Force Parrabell, it was a worthwhile exercise at all.
- 13.491. Counsel Assisting submitted that the answer to that question is no.<sup>3005</sup>
- 13.492. Counsel Assisting observed that while it may well have been impracticable to dedicate the level of resources applied to investigating the death of Scott Johnson to all of the unsolved deaths (some 23) that were considered by Strike Force Parrabell, three points may be noted.<sup>3006</sup>
- a. First, the resources required in relation to each death would depend on the facts of that case. Investigative progress might have been made in relation to some deaths with far fewer resources than were required in Scott Johnson’s case.
  - b. Secondly, Strike Force Parrabell itself plainly required and received significant resources. Equivalent resources could have been allocated to reinvestigating at least some of the unsolved deaths.
  - c. Thirdly, a reinvestigation would be the only way to overcome the problem of reliance only on archival material.
- 13.493. The NSWPF submitted that re-investigation would have been limited to a “small fraction of the 23 unsolved cases” and would have “shed no light as to questions of bias” in relation to the balance of the 88 deaths.<sup>3007</sup>
- 13.494. The NSWPF also pointed to other difficulties with re-investigation including the following:
- a. Complete reinvestigation of the 23 unsolved deaths would take “many years”. Assistant Commissioner Crandell’s evidence was that “it would likely have been possible to complete only one re-investigation” during the 18-month period of Strike Force Parrabell.<sup>3008</sup>
  - b. To determine the resources required for each case would be a “substantially more onerous” task than the Strike Force Parrabell review; it would require a “preliminary triage process”, “development of investigative strategies in each case”, and then implementation of those strategies.<sup>3009</sup>

<sup>3004</sup> Submissions of NSWPF, 28 June 2023, [743] (SCOI.84211).

<sup>3005</sup> Submissions of Counsel Assisting, 7 June 2023, [1071] (SCOI.84380).

<sup>3006</sup> Submissions of Counsel Assisting, 7 June 2023, [1075]–[1078] (SCOI.84380).

<sup>3007</sup> Submissions of NSWPF, 28 June 2023, [627] (SCOI.84211).

<sup>3008</sup> Submissions of NSWPF, 28 June 2023, [624] (SCOI.84211), citing Transcript of the Inquiry, 12 December 2022, T1042.33–38 (TRA.00015.00001).

<sup>3009</sup> Submissions of NSWPF, 28 June 2023, [625] (SCOI.84211).

- c. The “productive reinvestigation” of unsolved homicides depends on receipt of “unanticipated information” arising from “change in relationships, or developments in forensic testing”. Therefore, the 23 unsolved deaths were not likely to be “susceptible to productive reinvestigation” during the period of Strike Force Parrabell.<sup>3010</sup>
- d. A re-investigative approach would not allow for consideration of whether recommendations could be made about the NSWPF “approach to policing and/or investigation of bias crimes generally”, and consideration of “potential investigative malfeasance” would be limited to the deaths reinvestigated.<sup>3011</sup>
- 13.495. The NSWPF submitted that I should reject Counsel Assisting’s submission that Strike Force Parrabell was not a “worthwhile exercise” for two reasons:<sup>3012</sup>
- a. The submission is premised on a “fundamental misconception of the role the BCIF played in the categorisation process”; and
  - b. The submission is “infected by a very significant hindsight bias” because the difficulties that impacted the review process were only identified because Strike Force Parrabell was undertaken. For example, a review of the investigative files was required to determine that information potentially relevant to identifying bias was “regularly” not considered by the original investigators.

### Other matters

- 13.496. The NSWPF submitted that it was “highly instructive”<sup>3013</sup> that Counsel Assisting’s method to assess bias “aligns broadly” with the approach of Strike Force Parrabell, namely identifying “a series of potentially relevant features” (which were “closely analogous” to the BCIF factors “in almost every instance”) and assessing the “likely motivation of the perpetrator (if any)” based on “intuitive judgment”.<sup>3014</sup> Accordingly, in the “very great majority” of the deaths considered by the Inquiry, “the assessment of Counsel Assisting” aligned “closely” with Strike Force Parrabell.<sup>3015</sup>
- 13.497. In the October NSWPF Submissions, the NSWPF submitted that the “convergences” between the approach of Strike Force Parrabell and that of Counsel Assisting “render many of the criticisms” of the strike force “illogical”.<sup>3016</sup>

<sup>3010</sup> Submissions of NSWPF, 28 June 2023, [626] (SCOI.84211).

<sup>3011</sup> Submissions of NSWPF, 28 June 2023, [629] (SCOI.84211).

<sup>3012</sup> Submissions of NSWPF, 28 June 2023, [630] (SCOI.84211).

<sup>3013</sup> Submissions of NSWPF, 28 June 2023, [622] (SCOI.84211).

<sup>3014</sup> Submissions of NSWPF, 28 June 2023, [617], [619]–[620] (SCOI.84211).

<sup>3015</sup> Submissions of NSWPF, 28 June 2023, [617]–[618].

<sup>3016</sup> Supplementary Submissions of NSWPF, 23 October 2023, [357] (SCOI.86378).

- 13.498. Counsel Assisting drew attention to the evidence of Detective Acting Sergeant Bignell that prior to August 2023, no-one had asked him for his recollections or understanding about how Strike Force Parrabell had undertaken its work;<sup>3017</sup> including:<sup>3018</sup>
- a. Not at the time when Assistant Commissioner Crandell prepared his statement (October 2022);<sup>3019</sup>
  - b. Not at the time when Assistant Commissioner Crandell gave evidence to the Inquiry (December 2022);<sup>3020</sup> and
  - c. Not at the time when detailed correspondence was exchanged between the Inquiry and the NSWPF about the various versions of the BCIFs used by Strike Force Parrabell (May 2023).<sup>3021</sup>
- 13.499. It was submitted that the fact that Detective Acting Sergeant Bignell was not consulted at an earlier stage by the NSWPF or Assistant Commissioner Crandell has resulted in a considerable waste of time and public resources. Having regard to the Inquiry’s letter of 20 September 2022 and Practice Guideline 1, the NSWPF as a model litigant should have provided the Inquiry with full and accurate evidence at the earliest available opportunity. In particular, if the evidence of Detective Acting Sergeant Bignell was important to understanding the methodology of Strike Force Parrabell, as asserted by the NSWPF in the June NSWPF Submissions and as now revealed to be so, then the NSWPF should have so informed the Inquiry, and provided the evidence of Detective Acting Sergeant Bignell, 12 months ago.<sup>3022</sup>
- 13.500. In response, the NSWPF submitted that:
- a. Counsel Assisting bears the responsibility to secure “an appropriate evidentiary foundation” for their submissions;<sup>3023</sup>
  - b. The Inquiry had not sought further evidence at any stage prior to 28 June 2023;<sup>3024</sup>
  - c. Blame should not be placed on the NSWPF for any “considerable waste of time and public resources”;<sup>3025</sup> and

<sup>3017</sup> Transcript of the Inquiry, 21 September 2023, T5779.11–30 (TRA.00089.00001).

<sup>3018</sup> Supplementary Submissions of Counsel Assisting, 16 October 2023, [321] (SCOI.86243).

<sup>3019</sup> Transcript of the Inquiry, 21 September 2023, T5779.32–46 (TRA.00089.00001).

<sup>3020</sup> Transcript of the Inquiry, 21 September 2023, T5780.1–8 (TRA.00089.00001).

<sup>3021</sup> Transcript of the Inquiry, 21 September 2023, T5780.10–15 (TRA.00089.00001). See Exhibit 6, Tab 385, Letter from Enzo Camporeale to Patrick Hodgetts, 10 May 2023 (SCOI.83387); Exhibit 6, Tab 386, Letter from Katherine Garaty to Enzo Camporeale, 19 May 2023 (SCOI.83388).

<sup>3022</sup> Supplementary Submissions of Counsel Assisting, 16 October 2023, [322] (SCOI.86243).

<sup>3023</sup> Supplementary Submissions of NSWPF, 23 October 2023, [353] (SCOI.86378).

<sup>3024</sup> Supplementary Submissions of NSWPF, 23 October 2023, [351]–[352] (SCOI.86378).

<sup>3025</sup> Supplementary Submissions of NSWPF, 23 October 2023, [356] (SCOI.86378).



- d. The suggestion that the NSWPF could have behaved contrary to the Model Litigant Policy is “completely unfounded”.<sup>3026</sup>
- 13.501. Likewise, it was submitted that the Inquiry had not “taken any steps to afford procedural fairness” to Detective Superintendent Middleton, Detective Inspector Grace or Detective Acting Sergeant Bignell despite “significant criticisms” in the June CAS;<sup>3027</sup> this responsibility fell “squarely” on the Inquiry.<sup>3028</sup>

## Conclusions of the Inquiry

### The experts

- 13.502. As to Ms Coakley, while she has not practised in Australia, she is a very experienced lawyer with significant expertise in criminal law and the policing and prosecution of hate crimes in Massachusetts, the state from which the bias crime indicators originated.
- 13.503. I accept the submissions of Counsel Assisting that the matters referred to by the NSWPF, as to Ms Coakley’s experience and specialised knowledge do not affect her ability to give evidence as to the subjects she addressed in the Coakley Report and her oral evidence before the Inquiry.
- 13.504. Ms Coakley has a significant depth of experience and specialised knowledge as to the origins and purpose of the bias crime indicators. Her experience amply qualifies Ms Coakley to offer an opinion as to the methodology of Strike Force Parrabell. I was assisted by her evidence as to the ordinary contexts in which the bias crime indicators are used (i.e., an investigatory context), and whether they were a suitable instrument to employ in the context of a *review* (rather than re-investigation) as conducted by Strike Force Parrabell.
- 13.505. As to Professor Asquith, the NSWPF appears to insinuate that the objectivity of the opinions expressed by Professor Asquith was affected by an actual (or “at least perceived”) conflict of interest, as she had unsuccessfully tendered for the academic review in Strike Force Parrabell.<sup>3029</sup> I note firstly that Professor Asquith expressly disclosed those matters in her report, and secondly that, at [2] of her report, Professor Asquith acknowledged that she had “read the Expert Witness Code of Conduct in Schedule 7 to the *Uniform Civil Procedure Rules 2005* (NSW)” and agree[d] to be bound by it”. That Code imposes a “paramount duty” on experts to “assist the court impartially on matters relevant to [their] expertise”.
- 13.506. I do not consider that the concerns hinted at by the NSWPF are of any substance. No instance in which such a conflict has affected, or might have affected, Professor Asquith’s evidence was identified in the submissions of the NSWPF.

<sup>3026</sup> Supplementary Submissions of NSWPF, 23 October 2023, [356] (SCOI.86378).

<sup>3027</sup> Supplementary Submissions of NSWPF, 23 October 2023, [355] (SCOI.86378).

<sup>3028</sup> Supplementary Submissions of NSWPF, 23 October 2023, [354] (SCOI.86378).

<sup>3029</sup> Submissions of NSWPF, 28 June 2023, [743] (SCOI.84211).



- 13.507. As to Associate Professor Lovegrove, his evidence as to the methodology of Strike Force Parrabell falls squarely within his “significant expertise in the acquisition, analysis and presentation of empirical data in the context of the social and behavioural sciences”.<sup>3030</sup> Associate Professor Lovegrove was asked to provide his opinion as to the appropriateness of the methodology of Strike Force Parrabell and the academic team, having regard to the objectives of Strike Force Parrabell;<sup>3031</sup> his response to these questions falls within his expertise and I have been assisted by his evidence.

### **The September/October 2023 evidence**

- 13.508. I have also taken into account the submissions of the NSWPF to the effect that the utility of the experts’ evidence has been “fundamentally diminished” by the absence of certain evidence as to the “methodology actually employed” by Strike Force Parrabell.<sup>3032</sup>
- 13.509. I note that no request was made for any of these experts to be recalled to give further evidence to address this perceived difficulty. Under Practice Guideline 1 of the Inquiry, it was open to the NSWPF to request that Counsel Assisting do so, particularly if in the circumstances the NSWPF held fundamental concerns with the experts’ evidence.
- 13.510. However, in any event, very little of the experts’ evidence turns on the evidence of the three Strike Force Parrabell officers which was only belatedly provided by the NSWPF after the experts had given evidence. With the exception of the differences between the methodology described in the constituent documents of Strike Force Parrabell and the methodology actually used in practice (as disclosed principally in the evidence of Detective Acting Sergeant Bignell), the material provided to the experts was sufficient and appropriate to ascertain and evaluate the methodology of the strike force. I have been assisted, for example, by the evidence of Ms Coakley as to the origins and appropriate use of the bias crime indicators and by the evidence of Associate Professor Lovegrove as to the reliability and validity of the BCIF as a method for assessing the occurrence of a bias crime.

### **General conclusions as to methodology**

- 13.511. To my mind, the essential problems with the police methodology were as follows.
- 13.512. First, as noted above, the constituent documents were inconsistent with one another. The extent to which this materially affected the outcome of the review process is not clear, particularly given that Detective Acting Sergeant Bignell gave evidence that he alone (and not any of the other investigators) filled out the BCIF, that the role of the investigators was simply to select material which might be

<sup>3030</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [2] (SCOI.82366.00001).

<sup>3031</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, 11, 29 (SCOI.82366.00001).

<sup>3032</sup> Submissions of NSWPF, 28 June 2023, [597]–[599] (SCOI.84211).

- relevant to the question of bias, and that the investigators largely relied on verbal briefings from him rather than on the content of the constituent documents.<sup>3033</sup>
- 13.513. Nevertheless, in my view it is significant that the Parrabell Report does not acknowledge, or indeed mention, that the various constituent documents had so many variations and inconsistencies, or that the BCIF was changed significantly several times during the course of the strike force.
- 13.514. Dr Dalton, for example, did not appear to be aware of any changes to the BCIF over time, and appeared to be surprised when it was put to him “that the police changed their instrument” as part of an assumption he was asked to make.<sup>3034</sup>
- 13.515. Secondly, even if it were to be assumed (which I do not) that the differences between the constituent documents and the several successive changes to the BCIF had no material impact upon the outcome of the exercise, the BCIF remained a deeply flawed instrument for reasons set out in detail by the experts at [13.366]–[13.379].
- 13.516. The NSWPF has offered no counter to the well-reasoned opinion of Associate Professor Lovegrove in relation to reliability and validity. In particular, I refer to and adopt Associate Professor Lovegrove’s reasoning in relation to the imprecise language used in the BCIF, the combination of bias crime indicators used to reach a conclusion, and the different standards of proof (set out above). I note the summary of his conclusions set out at [13.419], which is a damning indictment of the BCIF and of the strike force’s decision to adopt it.
- 13.517. For the reasons set out above at [13.468], only limited weight can be accorded to the conclusions reached through the use of such an instrument. It is telling that Dr Dalton told the NSWPF that he considered the BCIF to be “pretty appalling”.<sup>3035</sup>
- 13.518. The use of the BCIF—in all its various forms—as the underpinning instrument of Strike Force Parrabell was a regrettable choice. It partially stemmed from the fact that Strike Force Parrabell was an unusual exercise for police to undertake. The officers involved were evidently inexperienced in (and perhaps unaware of) what would have been required for a process of this nature to possess any methodological rigour. That being the case, it is not clear why the NSWPF did not, from a much earlier stage, consult with academics well-versed in carrying out studies of this nature to ascertain whether the proposed exercise could feasibly be carried out by the NSWPF.

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<sup>3033</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [47] (NPL.9000.0026.0007).

<sup>3034</sup> Transcript of the Inquiry, 28 February 2023, T2377.26–2378.8 (TRA.00029.00001).

<sup>3035</sup> Transcript of the Inquiry, 1 March 2023, T2446.39 (TRA.00029.00001).

- 13.519. Thirdly, in relation to the standard of proof employed in completing the BCIFs, I accept the evidence of Associate Professor Lovegrove at [13.413], which is supported by the evidence of Mr Willing and that of Detective Acting Sergeant Bignell as to the actual application of the two standards of proof to the BCIFs. The requirement of the criminal standard set a “high evidentiary bar” which “increase[d] the risk of missing bias... actually present” and thus the risk of an “underestimate of the incidence of bias among the 88 cases”.<sup>3036</sup> Particularly in relation to unsolved deaths where there was typically no clear person or persons of interest under consideration, to employ the criminal standard created an obvious difficulty in attributing any bias-related motivation to a perpetrator.
- 13.520. Fourthly, as was submitted by Counsel Assisting and acknowledged by the NSWPF, the exclusive reliance on archival material, of whatever nature, quantity and quality, was a serious limitation of the Strike Force Parrabell exercise. The views of Ms Coakley and Professor Asquith, as set out at [13.385] and [13.386] strongly support this conclusion.
- 13.521. The NSWPF submitted that even had each matter been reinvestigated, it would have remained the case that the involved officers only had the archival material as a starting point. However, while that may be so, the impact of limited information at the beginning of a process of reinvestigation (during which, one would hope, more information would be obtained) is quite different from the impact of limited material in the course of a classificatory exercise when that material is the only information permitted to be used.
- 13.522. I consider that it was evident as early as June 2015 (i.e., *before* the police methodology was implemented) that there were fundamental problems with developing a methodology entirely reliant on archival material, as directly referred to in Dr Weatherburn’s email to Assistant Commissioner Crandell dated 24 June 2015 (set out above).<sup>3037</sup>
- 13.523. I accept Counsel Assisting’s submission that (i) any “findings” of Strike Force Parrabell are necessarily of very limited value, and (ii) any authoritative or reliable review by academics would, at least, have required those academics to have access to and examine the same historical material.
- 13.524. The limitations of the approach advanced by the NSWPF—explicitly drawn to Assistant Commissioner Crandell’s attention in Dr Weatherburn’s email of 24 June 2015—should have resulted in serious consideration by the NSWPF as to whether it was worth pursuing the exercise at all. In light of Dr Weatherburn’s comments, Assistant Commissioner Crandell was on notice that his proposed methodology was not only not “perfect”, but not “good” (using the language from the NSWPF’s submissions above). It is a matter of some concern that this problem was not confronted and pragmatically dealt with. Further, as I will discuss later in this

<sup>3036</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [88] (SCOI.82366.00001).

<sup>3037</sup> Exhibit 6, Tab 33, Email correspondence between Superintendent Anthony Crandell and Dr Don Weatherburn, 22–25 June 2015, 2 (SCOI.74119).

Chapter in relation to ‘Academics’ Methodology’, the reliance of the academic team on the BCIFs, which were prepared in a manner that was inherently subjective, compromised the ability of the academic team to review the exercise objectively.

- 13.525. Fifthly, I accept the submission of Counsel Assisting that the reports of Associate Professor Lovegrove and Professor Asquith in relation to the issue of robbery and partial motivation are compelling. However, I note that the NSWPF submitted that Detective Acting Sergeant Bignell’s evidence in September 2023 “made it clear – to the extent there was any doubt – that the existence of a dual motivation would not prevent a case being classified as a bias crime”.
- 13.526. Ultimately, I am of the view that the overall objective of Strike Force Parrabell was to confront the LGBTIQ community about the list of 88 deaths. I do not conclude that Detective Acting Sergeant Bignell, Detective Inspector Grace or Superintendent Middleton were dishonest. They were, however, out of their depth, and lacked the required expertise to undertake this task. They were unable to detect the flaws in the exercise by reason of their lack of expertise in bias crime identification, and unable to assess, as Professor Asquith put it, “the cultural characteristics of the LGBTIQ community historically and contemporaneously”.<sup>3038</sup>
- 13.527. I discuss my conclusions concerning the Police Report further below.

#### **Identification of bias crimes by Counsel Assisting compared to the process engaged in by Strike Force Parrabell**

- 13.528. The NSWPF also submitted that the intuitive methodological approach adopted by Strike Force Parrabell was, in effect, substantively similar to the process engaged in by Counsel Assisting for the purpose of identifying “unsolved suspected hate crime deaths” for the purposes of the Inquiry’s Terms of Reference.
- 13.529. I reject that submission. The fundamental problem with the methodology of Strike force Parrabell was the centrality of a flawed instrument, namely the BCIF. It gave the appearance of scientific rigour when in fact there was none. The process was entirely subjective and “intuitive”, and incapable of replication so as to enable either validity or reliability to be assessed. It was, in the words of Associate Professor Lovegrove, faux science.
- 13.530. The approach of Counsel Assisting, in the deaths the subject of evidence and submissions in this Inquiry, was quite different. It involved no such flawed device, but the application of traditional techniques of factual analysis common to the world of the law.

<sup>3038</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [165] (SCOI.82368.00001).

- 13.531. In any event, the comparison which would truly be relevant is that between the approach of Strike Force Parrabell and the approach of this Inquiry, as now set forth in this Report. As I have outlined elsewhere, my approach to the question of whether LGBTIQ bias was or might have been a factor in each of those deaths, and the outcomes of that approach, are very different from those of Strike Force Parrabell.
- 13.532. How the inquiries with respect to this category of deaths have been made by Counsel Assisting and the solicitors assisting the Inquiry is set out in detail at **Chapter 5** of this Report.
- 13.533. As is evident from a review of that section of the report, the process by which those inquiries have been carried out is an entirely different method from the one engaged in by the NSWPF in the course of Strike Force Parrabell. In contrast to the purely paper review conducted by the strike force, the Inquiry took steps to reinvestigate the deaths which fall within the Terms of Reference, including, for example, by arranging for exhibits to be tested, contacting persons of interest and obtaining statements or facilitating their attendance at the Inquiry to give oral evidence in a private hearing, and engaging experts to give evidence.
- 13.534. Further, unlike the approach adopted by Strike Force Parrabell, the Inquiry is guided by the terms “unsolved” and “suspected” as those terms appear in the Terms of Reference. Those terms effectively qualify my authorisation to inquire into LGBTIQ hate crime deaths. In my view, these terms do not import the criminal standard of proof that was adopted by Strike Force Parrabell. Consequently, the Inquiry’s approach has not been affected by the high evidentiary bar attendant upon the criminal standard of proof, as was the case for Strike Force Parrabell, or the related risk of underestimating the presence of anti-LGBTIQ bias motivation in the circumstances of the deaths falling within the Terms of Reference.

## D. Choosing the Academics

### Purpose of the academic review

- 13.535. At some point after deciding to embark upon Strike Force Parrabell, Assistant Commissioner Crandell formed the view that the work of the Strike Force Parrabell officers should be reviewed by an academic, or a team of academics.
- 13.536. Four purposes of the academic review are recorded in the Parrabell Report, namely to:<sup>3039</sup>
- a. Provide an independent account of Strike Force Parrabell’s systemic validity;
  - b. Where possible, identify evidence of poor or biased police investigations;
  - c. Guide future policing strategies of community engagement; and
  - d. Develop a more suitable bias crime identification process.
- 13.537. Similarly, in the Parrabell Report, the academic team described the purpose of their review as follows:<sup>3040</sup>

*The principal task of the academic team was to comment on the efficacy and quality of [Strike Force Parrabell]’s review and to comment on the extent of agreement with the [Strike Force Parrabell] outcomes and determinations. Additionally, the academic team was to provide recommendations for future policing, community engagement, training and development of bias crime indicators and processes.*

- 13.538. Ultimately, only the purposes at [13.536(a) and (d)] were able to be pursued to some extent. However, whether these were successfully pursued is another matter entirely.
- 13.539. Assistant Commissioner Crandell acknowledged that the other two reasons were ultimately not pursued as part of the academic review.<sup>3041</sup>
- 13.540. First, in his statement, Assistant Commissioner Crandell said that an academic review would:<sup>3042</sup>

*... provide an independent account of Strike Force Parrabell systemic validity. ... By systemic validity I mean the system investigators used to determine whether or not a crime was bias or gay hate related; using the BCIF and following the procedures set out in Strike Force Parrabell documentation (Terms of Reference; Investigation Plan; and Coordinating Instructions) to arrive at the determinations recorded...*

<sup>3039</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report*, (Report, June 2018) 14 (SCOI.02632).

<sup>3040</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report*, (Report, June 2018) 56 (SCOI.02632).

<sup>3041</sup> Transcript of the Inquiry, 8 December 2022, T891.5–42 (TRA.00013.00001).

<sup>3042</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [70]–[71] (SCOI.76961).

*In my view, it was critical that an impartial analysis took place in parallel with Strike Force Parrabell. ... I was concerned that the LGBTIQ community would not accept a review conducted by police alone given significant community concern at the time over police investigating police during internal investigations. An academic review, as independent as possible from policing in NSW was the goal in attracting a suitable tender.*

13.541. In his oral evidence, Assistant Commissioner Crandell said:<sup>3043</sup>

*A. I'm not sure when that idea came into my mind, but it was - I desperately wanted it reviewed because I wanted an independent view, and I was conscious at the time that the police investigation may not be accepted by the LGBTIQ community on the basis of police reviewing police information. So that's why I wanted the academic reviewers to come in to give that some objectivity.*

...

*Q. When you say that one reason for getting the academic review was "to ensure transparency of the methodology employed by" the strike force, what did you mean there?*

*A. I think to give - it was more about - I was thinking about it from a community perspective more than anything. To give the community some level of comfort that we had looked at bias crime indicators and that we hadn't simply gone about our business in other than a systemic way. So I wanted to gather some credibility for that outside of the NSW Police Force.*

13.542. Thus, according to Assistant Commissioner Crandell, the independence and impartiality of the academic review was essential.

13.543. For Assistant Commissioner Crandell, one advantage of such independence appears to have been that the rejection by Strike Force Parrabell of the views espoused by the LGBTIQ community as to the numbers of "gay hate" deaths—a rejection which, as noted elsewhere, Assistant Commissioner Crandell evidently anticipated—would thereby be rendered more palatable to that community.

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<sup>3043</sup> Transcript of the Inquiry, 8 December 2022, T888.18–36, 889.20–29 (TRA.00013.00001).

- 13.544. For example, on 25 June 2016, in an email to Dr Don Weatherburn, the Director of the NSW Bureau of Crime Statistics and Research, Assistant Commissioner Crandell said:<sup>3044</sup>

*Unfortunately many sections of the gay/lesbian community will never accept our conclusions simply because of our status as police. I was really after some independence and a method of recording findings for prosperity [sic] rather than just sending a media release at the end.*

- 13.545. According to Assistant Commissioner Crandell, it was also hoped that the academic review would improve police methodology and assist the NSWPF to “develop a more suitable bias crime identification process”.<sup>3045</sup>
- 13.546. However, in his oral evidence, Assistant Commissioner Crandell accepted that no such “more suitable bias crime identification” was actually proffered or suggested in the Academic Report. Instead, after the Parrabell Report had been published, Assistant Commissioner Crandell “made those inquiries with another university”.<sup>3046</sup> That “other university” was Charles Sturt University. These inquiries are outlined in **Chapter 10**.
- 13.547. The desire to improve police methodology was nevertheless one of the reasons put forward by Assistant Commissioner Crandell as to why he wished the Strike Force Parrabell officers and the academic team to work closely together.<sup>3047</sup> In that context, he said that he did not have in mind a “completely arm’s length process”. Assistant Commissioner Crandell thought the academic team “could provide insights along the way” and could help to “improve my methodologies”.<sup>3048</sup> The collaboration between the Strike Force Parrabell officers and the academic team is discussed further below.

### The search for possible academic reviewers

- 13.548. The search for a team of academics to undertake the review of Strike Force Parrabell was a long and somewhat difficult one. As canvassed in the discussion that follows, it took the NSWPF over 12 months to find three academic teams willing to tender for the review, with several possible academics they approached being unable or unwilling to assist with the project.

<sup>3044</sup> Exhibit 6, Tab 33, Email correspondence between Anthony Crandell and Dr Don Weatherburn, 22–25 June 2015 (SCOI.74119).

<sup>3045</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [70] (SCOI.76961).

<sup>3046</sup> Transcript of the Inquiry, 8 December 2022, T891.44–892.14 (TRA.00013.00001).

<sup>3047</sup> Transcript of the Inquiry, 8 December 2022, T893.23–31 (TRA.00013.00001).

<sup>3048</sup> Transcript of the Inquiry, 8 December 2022, T893.19–31 (TRA.00013.00001).



## Early enquiries

13.549. In June 2015, Assistant Commissioner Crandell corresponded with Dr Weatherburn in relation to the topic of a proposed academic review. Dr Weatherburn advised that he was not able to assist himself, but suggested Professor Gail Mason from the University of Sydney Law School and Dr Andrew McGrath from Charles Sturt University as possible candidates.<sup>3049</sup>

13.550. Dr Weatherburn further observed that:<sup>3050</sup>

*As far as I know COPS doesn't reliably record whether a homicide is a gay hate homicide. Some sort of inference might be drawn from the homicide files but this would be a time-consuming task without any assurance of a reliable result (do the files contain reliable information on offender motive?) I simply don't have the staff to put on this sort of project.*

13.551. This response of Dr Weatherburn was the subject of detailed submissions by both Counsel Assisting and the NSWPF.

13.552. Counsel Assisting submitted that Dr Weatherburn's observation, made in June 2015, "succinctly drew attention to two fundamental problems confronting the methodology" of Strike Force Parrabell.<sup>3051</sup> These problems, and the submissions of NSWPF in response, are discussed above.

13.553. Ms Braw, who reported to Ms Sharma, was designated as the "project manager for the academic review side of things".<sup>3052</sup> Ms Braw was also designated as the person who would liaise with those academics ultimately awarded the tender.<sup>3053</sup>

13.554. On 25 January 2016, Ms Braw informed Assistant Commissioner Crandell by email that Professor Mason had said that she had too much work on at that time. Ms Braw suggested Professor Asquith, who "has experience with the history and the AVP [Anti-Violence Project] in the past and she seems objective enough".<sup>3054</sup>

13.555. Assistant Commissioner Crandell responded:<sup>3055</sup>

*I think it worth speaking with Nicole [Asquith], we just want someone that brings independence to the role. If no good there perhaps we should try Chris Devereux and perhaps send it out to tender or expressions of interest.*

<sup>3049</sup> Exhibit 6, Tab 33, Email correspondence between Superintendent Anthony Crandell and Dr Don Weatherburn, 22–25 June 2015, 1 (SCOI.74119).

<sup>3050</sup> Exhibit 6, Tab 33, Email correspondence between Superintendent Anthony Crandell and Dr Don Weatherburn, 22–25 June 2015, 2 (SCOI.74119).

<sup>3051</sup> Submissions of Counsel Assisting, 7 June 2023, [1095] (SCOI.84380).

<sup>3052</sup> Transcript of the Inquiry, 13 December 2022, T1204.5–18 (TRA.00016.00001).

<sup>3053</sup> Transcript of the Inquiry, 13 December 2022, T1204.5–18 (TRA.00016.00001).

<sup>3054</sup> Exhibit 6, Tab 34, Email correspondence between Jacqueline Braw and Superintendent Anthony Crandell, 25 January 2016, 1 (SCOI.74148).

<sup>3055</sup> Exhibit 6, Tab 34, Email correspondence between Jacqueline Braw and Superintendent Anthony Crandell, 25 January 2016, 1 (SCOI.74148).

### APPROACH TO THE ASQUITH/DWYER TEAM

- 13.556. On 27 January 2016, Ms Braw emailed Professor Asquith and her colleague Dr Angela Dwyer (**the Asquith/Dwyer team**) to enquire whether they were interested. Professor Asquith responded to say that she and Dr Dwyer would like to submit a quote.<sup>3056</sup>
- 13.557. By 11 February 2016, Professor Asquith and Dr Dwyer had submitted a draft proposal to conduct a review of the Strike Force Parrabell findings.<sup>3057</sup>

### Three quotes required

- 13.558. By early March 2016, Dr Chris Devery, Manager of the Research Co-ordination Unit at the NSWPF, had advised Assistant Commissioner Crandell that a minimum of three quotes were needed in order to satisfy NSWPF procurement guidelines.<sup>3058</sup>
- 13.559. Dr Devery suggested Professor Murray Lee from the University of Sydney, and Nicholas Cowdery from the University of NSW, as possible reviewers.<sup>3059</sup> Assistant Commissioner Crandell then asked Ms Braw to assist him in obtaining additional quotes.<sup>3060</sup>

### APPROACH TO THE LEE/CROFTS/TOMSEN TEAM

- 13.560. On 13 April 2016, Professor Lee expressed interest, on behalf of a team comprising himself, Professor Thomas Crofts and Professor Tomsen, in tendering for the project (**the Lee/Crofts/Tomsen team**).<sup>3061</sup>
- 13.561. On 14 April 2016, Ms Braw replied to Professor Lee.<sup>3062</sup> As to what the academic review would involve, Ms Braw set out nine bullet points which summarised the main tasks to be completed by the academics. Those nine bullet points were, in order (emphasis added):<sup>3063</sup>
- *An independent evaluation of [Strike Force Parrabell]'s review of the 88 deaths*

<sup>3056</sup> Exhibit 6, Tab 35, Email correspondence between Jacqueline Braw and Dr Nicole Asquith, 27 January–11 February 2016 (SCOI.78856).

<sup>3057</sup> Exhibit 6, Tab 20, Contract Brief of Dr Nicole Asquith and Dr Angela Dwyer – Independent Evaluation of Strikeforce Parrabell, 11 February 2016 (SCOI.77316).

<sup>3058</sup> Exhibit 6, Tab 36, Email correspondence between Dr Christopher Devery and Superintendent Anthony Crandell, 12 February–7 March 2016 (SCOI.74172).

<sup>3059</sup> Exhibit 6, Tab 36, Email correspondence between Dr Christopher Devery and Superintendent Anthony Crandell, 12 February–7 March 2016 (SCOI.74172).

<sup>3060</sup> Exhibit 6, Tab 41, Email correspondence between Anthony Crandell, Jacqueline Braw and Craig Middleton, 9–10 June 2016, 2 (SCOI.74239).

<sup>3061</sup> Exhibit 6, Tab 37, Email correspondence between Jacqueline Braw, Anthony Crandell and Murray Lee, 13–28 April 2016, 2 (SCOI.74202).

<sup>3062</sup> Exhibit 6, Tab 37, Email correspondence between Jacqueline Braw, Anthony Crandell and Murray Lee, 13–28 April 2016, 2 (SCOI.74202).

<sup>3063</sup> Exhibit 6, Tab 37, Email correspondence between Jacqueline Braw, Anthony Crandell and Murray Lee, 13–28 April 2016, 2 (SCOI.74202).

- *An examination of the process and method used to conduct [Strike Force Parrabell] including the application of NSWPF Bias Crime indicators*
- *Access and review original source materials as needed*
- *Research and provide an introductory section detailing the historical context of policing during this period and a commentary on investigating deaths of men identified as gay or transgender during this period*
- *Provide a conclusion including comment on the efficacy and quality of [Strike Force Parrabell]'s review, the outcomes of the review, does the researcher agree with [Strike Force Parrabell] outcomes/determinations?*
- *Provide recommendations for future policing, community engagement, training, development of bias crime indicators/processes*
- *Provide relevant recommendations for future directions of the GLLO program*
- *Produce and publish a research article*
- *Throughout this entire process maintain close contact with the Corporate Sponsor Sexuality & Gender Diversity and the Senior Programs Officer.*

13.562. No such list had been provided to the Asquith/Dwyer team.

13.563. On 5 May 2016, Professor Lee emailed Ms Braw with a draft proposal to conduct the Strike Force Parrabell review. A final version, which included minor amendments, was submitted the following day.<sup>3064</sup>

13.564. By mid-March 2016, it had become apparent that a formal RFQ would need to be issued before an academic team could be appointed.<sup>3065</sup> Steps were taken to prepare a draft RFQ, whilst Ms Braw continued to attempt to locate a third quote from an academic team.

<sup>3064</sup> Exhibit 6, Tab 21, Research Proposal of Professor Murray Lee, Professor Stephen Tomsen and Professor Thomas Crofts – Independent evaluation of Strikeforce Parrabell's review of the identified 88 deaths during the late 70s, 80s and 90s, 12 February–6 May 2016 (SCOI.74206).

<sup>3065</sup> Exhibit 6, Tab 36, Email correspondence between Dr Christopher Devery and Anthony Crandell, 12 February–7 March 2016 (SCOI.74172).

## APPROACH TO THE DALTON/DE LINT/TYSON TEAM

- 13.565. In about June 2016, Professor Asquith suggested then Associate Professor Derek Dalton of Flinders University as a possible third tenderer for the review.<sup>3066</sup> In her oral evidence to the Inquiry, Professor Asquith clarified that she did not have knowledge of Dr Dalton's previous work and was passing on the recommendation of Dr Dwyer.<sup>3067</sup>
- 13.566. On 24 June 2016, Ms Braw emailed Dr Dalton asking whether he would be interested in submitting a proposal to review the findings of Strike Force Parrabell.<sup>3068</sup> That email set out the same nine bullet points that had been provided to Professor Lee.
- 13.567. Dr Dalton said that Ms Braw explained to him on the phone that:<sup>3069</sup>

*...this was not a 'rubber stamping' process, but one where full and frank scrutiny was encouraged. I was given to understand that regardless of the police findings, if we found significant differences, we were free to state these differences without fear or favour.*

## The Request for Quotation (RFQ)

### Drafting of the Request for Quotation

- 13.568. The evidence before me indicated that the RFQ was primarily drafted by Ms Braw, with Ms Sharma and Assistant Commissioner Crandell making edits or refinements to the draft.<sup>3070</sup>
- 13.569. In May 2016, Ms Braw produced an initial draft of the RFQ which she sent to both Assistant Commissioner Crandell and Ms Sharma (**May RFQ draft**).<sup>3071</sup>

<sup>3066</sup> Exhibit 6, Tab 244, Email correspondence between Jacqueline Braw and Associate Professor Derek Dalton, and Associate Professor Derek Dalton and Narmon Tulsi, 24 and 29 June 2016 (SCOI.79884); Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [44] (SCOI.82368.00001).

<sup>3067</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [44] (SCOI.82368.00001); Transcript of the Inquiry, 3 March 2023, T2803.34–2804.19 (TRA.00032.00001).

<sup>3068</sup> Exhibit 6, Tab 244, Email correspondence between Jacqueline Braw and Derek Dalton, and Derek Dalton and Narmon Tulsi, 24 and 29 June 2016 (SCOI.79884). See also Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 3 (SCOI.76959).

<sup>3069</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 3 (SCOI.76959).

<sup>3070</sup> Transcript of the Inquiry, 13 December 2022, T1202.38–42 (TRA.00016.00001). See also Transcript of the Inquiry, 13 December 2022, T1211.18–41 (TRA.00016.00001).

<sup>3071</sup> Exhibit 6, Tab 262, Email correspondence between Jacqueline Braw, Anthony Crandell and Shobha Sharma, 19 May 2016 (SCOI.74216).

- 13.570. By 11 July 2016, Ms Braw had produced a further draft of the RFQ.<sup>3072</sup> Ms Sharma made some amendments to the draft, which was then sent to Assistant Commissioner Crandell (**July RFQ draft**).<sup>3073</sup> Ms Braw later sent an email on 14 July 2016 which included a file titled “TC edit Request for quote Parrabell.doc”.<sup>3074</sup>
- 13.571. The RFQ, in its final form,<sup>3075</sup> was sent to the three prospective tenderers on 22 July 2016.<sup>3076</sup>

### Insertion of additional bullet point under “Services required”

- 13.572. Section 4 of the RFQ was headed “Terms of Reference”. It contained only one clause, clause 4.1, which was headed “Services Required”. The required “services” were listed bullet points.<sup>3077</sup>
- 13.573. In the May RFQ draft, nine bullet points were listed.<sup>3078</sup> These nine bullet points were in substantially the same terms as the nine bullet points set out in Ms Braw’s earlier emails to Professor Lee and Dr Dalton (on 14 April 2016 and 24 June 2016 respectively).
- 13.574. However, by the July RFQ draft, an additional bullet point had been inserted at the top of the list of ‘Services Required’, namely “A collaborative approach to working with NSWPF on Strikeforce Parrabell”.<sup>3079</sup>
- 13.575. Assistant Commissioner Crandell was asked about this bullet point in his evidence.<sup>3080</sup> He said that the word “collaborative” was not “his word”,<sup>3081</sup> although he “supposed” he took responsibility for it.<sup>3082</sup>
- 13.576. Other sections of the RFQ similarly emphasised this point of “collaboration”:
- a. Clause 3.3 stated that the researchers would be invited (emphasis added):<sup>3083</sup>

*to collaborate with NSWPF to provide advice on reviewed cases, determinations (conclusions), methodology, language used and any other aspect of the Strikeforce Parrabell review...*

<sup>3072</sup> Exhibit 6, Tab 263, Email correspondence between Shobha Sharma, Jacqueline Braw and Anthony Crandell, 11 July 2016 (SCOI.74247).

<sup>3073</sup> Exhibit 6, Tab 263, Email correspondence between Shobha Sharma, Jacqueline Braw and Anthony Crandell, 11 July 2016 (SCOI.74247).

<sup>3074</sup> Exhibit 6, Tab 264, Email from Jacqueline Braw to Voon Chin, 14 July 2016 (SCOI.74248).

<sup>3075</sup> Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project – RFQ Number: 001286, 22 July 2016 (SCOI.76961.00007).

<sup>3076</sup> Exhibit 6, Tab 43, Email from Jacqueline Braw, 22 July 2016 (SCOI.74286).

<sup>3077</sup> Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project – RFQ Number: 001286, 22 July 2016, 7 (SCOI.76961.00007).

<sup>3078</sup> Exhibit 6, Tab 262A, Request for Quotation: Evaluation of Strikeforce Parrabell (Draft), Undated (SCOI.74217).

<sup>3079</sup> Exhibit 6, Tab 264A, Draft Request for Quotation: Strikeforce Parrabell Project, Undated (SCOI.74249).

<sup>3080</sup> Transcript of the Inquiry, 9 December 2022, T933.8–42 (TRA.00014.00001).

<sup>3081</sup> Transcript of the Inquiry, 9 December 2022, T922.25–33, 924.18–41 (TRA.00014.00001).

<sup>3082</sup> Transcript of the Inquiry, 9 December 2022, T933.8–42 (TRA.00014.00001).

<sup>3083</sup> Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project – RFQ Number: 001286, 22 July 2016, 6 (SCOI.76961.00007).

- b. Clause 6.1 stated that a tenderer's response should include (emphasis added):<sup>3084</sup>

*Willingness and capacity to closely liaise with Operational Programs, Strikeforce Parrabell Team and the Corporate Sponsor, Sexuality and Gender Diversity, as required.*

### **"Challenges"**

- 13.577. Clause 3.4 of the RFQ was entitled "Challenges", and stated (emphasis added):<sup>3085</sup>

*One of the key challenges is locating suitable, qualified and independent researchers.*

*Many researchers in this area are connected to the "gay community" and may not be as independent as desirable.*

*Some researchers have had their own personal history of negative relationships with police.*

*Other researchers are concerned about the highly political nature of this area.*

*Another challenge will be the sheer volume of original material that researchers may need to deal with. NSWPF will provide access to this material however, the volume is significant.*

- 13.578. Assistant Commissioner Crandell was asked about this clause, including whether it indicated that someone connected with "the gay community" might not be objective.<sup>3086</sup> He said that it did not.<sup>3087</sup>
- 13.579. Assistant Commissioner Crandell accepted that Professor Asquith and Dr Dwyer, and also Professor Tomsen and Professor Lee, were "connected to the gay community", but said that the RFQ was not suggesting that therefore they might not be as objective or desirable.<sup>3088</sup> He said that Dr Dalton and Dr de Lint were also connected to the "gay community", because they had "written articles about gay-related topics".<sup>3089</sup>

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<sup>3084</sup> Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project – RFQ Number: 001286, 22 July 2016, 8 (SCOI.76961.00007).

<sup>3085</sup> Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project – RFQ Number: 001286, 22 July 2016, 6 (SCOI.76961.00007).

<sup>3086</sup> Transcript of the Inquiry, 9 December 2022, T926.33–933.4 (TRA.00014.00001).

<sup>3087</sup> Transcript of the Inquiry, 9 December 2022, T927.45–928.27 (TRA.00014.00001).

<sup>3088</sup> Transcript of the Inquiry, 13 December 2022, T1212.27–1213.11 (TRA.00016.00001).

<sup>3089</sup> Transcript of the Inquiry, 9 December 2022, T931.45–932.14 (TRA.00014.00001).

- 13.580. Assistant Commissioner Crandell was asked, “Why would people connected to the gay community not be as independent as desirable?”. He answered, “Well, I don’t know”.<sup>3090</sup> He said he did not know what was meant by these words in the RFQ, and that he could not give an explanation as to why such a statement would be put in the RFQ. He said it “may be the case” that it was “a rather strange statement”.<sup>3091</sup>
- 13.581. When Ms Sharma was pressed on whether a person’s connection to the “gay community” might indicate that they lacked independence, she said:<sup>3092</sup>
- Look, I think in hindsight, we could have worded that better, but what we had in mind was not to exclude people - in fact, we wanted people that were connected to or understood the gay community, so that was certainly a desirable. But what we had in mind, and how we worded it, is perhaps not the most effective way of having done it.*
- 13.582. Ms Sharma said that she thought a connection with the “gay community” could be a good thing, because of their familiarity with the subject matter, but if they “had a strong background of being an activist”, that “would impact on the independence they would bring”.<sup>3093</sup>
- 13.583. Ms Sharma at first said she did not have anyone in mind in that regard.<sup>3094</sup> However, a little later in her evidence, she nominated “Stephen Tomsen potentially”.<sup>3095</sup>
- 13.584. Ms Sharma also accepted that if her view, and that of Ms Braw, Assistant Commissioner Crandell and Dr Devery, was that activist researchers such as Professor Tomsen and Professor Asquith might not be as independent as desirable, and if independence was an important criterion, then those teams were “perhaps” going to start behind the others on the starting grid.<sup>3096</sup>

<sup>3090</sup> Transcript of the Inquiry, 9 December 2022, T930.21–931.9 (TRA.00014.00001).

<sup>3091</sup> Transcript of the Inquiry, 9 December 2022, T932.16–933.4 (TRA.00014.00001).

<sup>3092</sup> Transcript of the Inquiry, 13 December 2022, T1213.1–7 (TRA.00016.00001).

<sup>3093</sup> Transcript of the Inquiry, 13 December 2022, T1213.9–28 (TRA.00016.00001).

<sup>3094</sup> Transcript of the Inquiry, 13 December 2022, T1213.24–28 (TRA.00016.00001).

<sup>3095</sup> Transcript of the Inquiry, 13 December 2022, T1215.4–15 (TRA.00016.00001).

<sup>3096</sup> Transcript of the Inquiry, 13 December 2022, T1216.11–32 (TRA.00016.00001).

## The selection criteria, and the three proposals

13.585. Section 5 of the RFQ was titled “Selection Criteria”. The selection criteria were as follows:<sup>3097</sup>

1. *The proposed solution meets the requirements as set out in RFQ 001286*
2. *Demonstrated capability to provide services, including support, of comparable complexity and size*
3. *Demonstrated experience in supply of similar services within Australia*
4. *Demonstrated objectivity to ensure an independent evaluation is conducted*
5. *Assessment of value for money*
6. *Capacity to obtain and maintain a security clearance as determined by the NSW Police Force at the level appropriate to the position held and/or information/ data accessed.*

13.586. On 28 July 2016, Dr Dalton wrote to Ms Braw. He enclosed what he described as a “formal proposal to conduct a collaborative review of Strikeforce Parrabell” (emphasis added).<sup>3098</sup>

13.587. The Flinders proposal identified “five key reasons” why their team should be awarded the tender, namely:<sup>3099</sup>

- i. Excellent research expertise*
- ii. Independence [a guarantee of objectivity]*
- iii. Dedication to genuine cooperation*
- iv. A meticulously thought out approach to the brief provided*
- v. Value for money*

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<sup>3097</sup> Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project – RFQ Number: 001286, 22 July 2016, 8 (SCOI.76961.00007).

<sup>3098</sup> Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016 (SCOI.75775).

<sup>3099</sup> Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016, 25–30 (SCOI.75775).



- 13.588. Under the first reason, ‘Excellent Research Expertise’, the relevant experience of the three team members was summarised. It was said that:<sup>3100</sup>
- a. As to Dr Dalton:
    - i. He “has extensive experience in conducting and publishing research in relation to the policing, [sic] homosexuality and public space”, especially in relation to beats.<sup>3101</sup>
    - ii. He “does not profess to be [an] expert *per se* in ‘hate crime’”, but he “nevertheless has an excellent grasp of this academic literature particularly as it relates to the commission and indicators of homophobic violence”.<sup>3102</sup>
    - iii. References to his having presented a lecture in 2004 and a keynote address in 2006, and attending monthly meetings of a GLBTIQ South Australia Police Focus Group from 2004 to 2007, testified to the fact he “has extensive experience communicating with police officers and fostering mutual respect, trust and cooperation with a view to securing positive outcomes”.<sup>3103</sup>
  - b. As to Dr de Lint:
    - i. His areas of interest include security and policing, particularly public order policing.
    - ii. He has an esteemed international reputation in relation to his policing research.
    - iii. He has expertise in “policing culture and practices”, which would be “crucial” to the approach that the team would take to “this collaboration”.<sup>3104</sup>
  - c. As to Dr Danielle Tyson:
    - i. She has 15 years’ experience researching in the area of intimate partner violence, domestic homicide, filicide in the context of separation and divorce, and family violence and family law reform.<sup>3105</sup>

<sup>3100</sup> Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016, 25–26 (SCOI.75775).

<sup>3101</sup> Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016, 25 (SCOI.75775).

<sup>3102</sup> Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016, 25 (SCOI.75775). See also Dr Dalton’s oral evidence to the Inquiry, including at Transcript of the Inquiry, 28 February 2023, T2430.36–2431.21 (TRA.00029.00001).

<sup>3103</sup> Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016, 25 (SCOI.75775).

<sup>3104</sup> Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016, 25–26 (SCOI.75775).

<sup>3105</sup> Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016, 26 (SCOI.75775).

13.589. Under the second reason “Independence [a guarantee of objectivity]”, the proposal said that this arose from the fact the academics were located in South Australia and Victoria, and not NSW. By contrast, there was “baggage” associated with key players (in NSW) such as “activists, academics” and others.<sup>3106</sup>

13.590. Under the third reason “Dedication to genuine cooperation”, the proposal stated (emphasis added):<sup>3107</sup>

- a. That the project would be “a collaboration”;
- b. That “[f]ostering transparency and genuine cooperation” would “foster a collaborative spirit”;
- c. That by “working creatively and collaboratively (and with a focus on the minutiae)”, the NSWPF and the academic team “would craft a meticulously well thought through report”; and
- d. That the:

*intimate police knowledge (of the cases under review) and our academic knowledge will coalesce in a manner that sees a very tightly honed report produced that both parties will be proud to carry their mark of authorship.*

13.591. In his oral evidence, Dr Dalton agreed that, in his tender proposal, he devoted “considerable emphasis to the idea of collaboration” as being how he saw the project proceeding.<sup>3108</sup> He said that the document that the academic team was responding to (i.e., the RFQ) “really emphasised this idea of collaboration”, and that colleagues at Flinders University told him to emphasise this concept.<sup>3109</sup>

13.592. At another point in his oral evidence, in relation to his tender proposal, Dr Dalton said:<sup>3110</sup>

*Could you even accuse me, in this document, of kind of embellishing a little to try to get the tender because this is what you have to do with this process? I think even you could do that and that would be justified. We were told to embellish, to sell yourself like there’s no tomorrow to get the money.*

*They were literally salivating when I went into that office saying, ‘We might be able to get this tender’. They were sort of just seeing the dollar signs, they took 20 something per cent or 25 per cent off the top of it.*

<sup>3106</sup> Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016, 27 (SCOI.75775).

<sup>3107</sup> Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016, 27–28 (SCOI.75775).

<sup>3108</sup> Transcript of the Inquiry, 1 March 2023, T2453.43–47, 2454.29–39 (TRA.00030.00001).

<sup>3109</sup> Transcript of the Inquiry, 1 March 2023, T2454.10–35 (TRA.00030.00001).

<sup>3110</sup> Transcript of the Inquiry, 28 February 2023, T2434.4–14 (TRA.00029.00001).

- 13.593. Under the fourth reason, “A meticulously well thought out approach to the brief provided”, among the matters highlighted was that “hon[ing]” the “quality and scope” of Strike Force Parrabell would be “a two-way process”, and that Dr Dalton and his team would write the first draft of the (single) report “in close collaboration with police” (emphasis added).<sup>3111</sup>
- 13.594. Under the fifth reason, “Value for money”, the academic team offered a 66% discount on the “expertise charge rates”, or the daily rates of the academic team, because they were “enthusiastic about the research topic and [...] keen to secure the work”.<sup>3112</sup>
- 13.595. On 5 August 2016, Professor Lee submitted a response to the RFQ. His proposed research team included himself, Professor Crofts and Professor Tomsen.<sup>3113</sup> Professor Tomsen was noted as the “most published academic expert on gay homicides, masculine violence and hate crime in Australia”.<sup>3114</sup> Professor Crofts was identified as an “expert in homicide law” and a person who had worked on “numerous GLBTI and GLLO focused projects”.<sup>3115</sup>
- 13.596. At about the same time, Professor Asquith and Dr Dwyer also submitted a response to the RFQ.<sup>3116</sup>

### The selection process

- 13.597. A Quotation Evaluation Committee (**QEC**), which consisted of Assistant Commissioner Crandell, Ms Sharma, Dr Devery and Ms Braw, evaluated the three tenders.
- 13.598. The results of the evaluation were tabulated in a document titled ‘Quotation, Evaluation and User Guide’, bearing various dates between 18 July and 22 August 2016.<sup>3117</sup>
- 13.599. The six selection criteria (outlined above at [13.58513.585]) were each given a mark out of five. Thus, the maximum “raw” score was 30. The Lee/Crofts/Tomsen team scored 23.5; the Asquith/Dwyer team scored 26; and the Dalton/de Lint/Tyson team scored a perfect 30.<sup>3118</sup>

<sup>3111</sup> Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016, 28 (SCOI.75775).

<sup>3112</sup> Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016, 29–30 (SCOI.75775).

<sup>3113</sup> Exhibit 6, Tab 27, Tender Proposal of Professor Murray Lee, Professor Thomas Crofts and Professor Stephen Tomsen, 4 August 2016 (SCOI.75764).

<sup>3114</sup> Exhibit 6, Tab 27, Tender Proposal of Professor Murray Lee, Professor Thomas Crofts and Professor Stephen Tomsen, 4 August 2016, 7 (SCOI.75764).

<sup>3115</sup> Exhibit 6, Tab 27, Tender Proposal of Professor Murray Lee, Professor Thomas Crofts and Professor Stephen Tomsen, 4 August 2016, 7 (SCOI.75764).

<sup>3116</sup> Exhibit 6, Tab 26, Tender Proposal of Dr Nicole Asquith and Dr Angela Dwyer, Undated (SCOI.75770).

<sup>3117</sup> Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated (SCOI.77324).

<sup>3118</sup> Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated, 15–17 (SCOI.77324).

- 13.600. When a weighting process was applied to the raw scores, whereby the maximum score was 100, the Lee/Crofts/Tomsen team scored 81; the Asquith/Dwyer team scored 90; and the Dalton/de Lint/Tyson team scored a perfect 100.<sup>3119</sup>
- 13.601. Accordingly, the Dalton/de Lint/Tyson tender was successful.
- 13.602. On or around 30 September 2016, the NSWPF and Flinders University entered into a contract entitled “Terms and Conditions of Supply for Strikeforce Parrabell Project (Supply Agreement)”.<sup>3120</sup> The entry into the supply agreement was authorised by Assistant Commissioner Crandell.<sup>3121</sup> The unsuccessful tenderers were notified thereafter.<sup>3122</sup>
- 13.603. In about October 2016, the Dalton/de Lint/Tyson team commenced work on the review of Strike Force Parrabell.<sup>3123</sup>

### **“Capability” and “demonstrated experience”**

- 13.604. For the second and third selection criteria, related to “capability” to provide the services, and “demonstrated experience” in the supply of similar services, all three teams were ranked equally, each scoring five out of five.<sup>3124</sup>

### **“Objectivity”**

- 13.605. For the fourth criterion, “objectivity”, the Dalton/de Lint/Tyson team was awarded a perfect score, five out of five. The comment assigned to this factor was: “This team is from outside NSW and demonstrates the most objectivity of all RFQs.”<sup>3125</sup>
- 13.606. No other particular factor, besides geography, seems to have been perceived, or propounded, as providing support for the perfect 5/5 score for the Dalton/de Lint/Tyson team on the “objectivity” criterion.<sup>3126</sup> In his oral evidence, Assistant Commissioner Crandell confirmed that the reason that the Dalton/de Lint/Tyson team was perceived to be the “most objective” was that they had “no contact with the communities of LGBTIQ of New South Wales”.<sup>3127</sup>

<sup>3119</sup> Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated, 15–17 (SCOI.77324).

<sup>3120</sup> Exhibit 6, Tab 31, Supply Agreement with Flinders University – Contract Number 001286, executed 30 September 2016 (SCOI.77325); Exhibit 6, Tab 46, Email correspondence between NSW Police Force and Flinders University, 6–7 October 2016 (SCOI.74332).

<sup>3121</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [81] (SCOI.76961).

<sup>3122</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [46] (SCOI.82368.00001)

<sup>3123</sup> Transcript of the Inquiry, 28 February 2023, T2393.1–27 (TRA.00029.00001); Exhibit 6, Tab 69, Email correspondence between Jacqueline Braw, Anthony Crandell, Shoba Sharma and Geoffrey Steer, 11 October 2016 (SCOI.74335)

<sup>3124</sup> Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated, 15–17 (SCOI.77324).

<sup>3125</sup> Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated, 17 (SCOI.77324).

<sup>3126</sup> Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000(OE), Undated, 17 (SCOI.77324).

<sup>3127</sup> Transcript of the Inquiry, 9 December 2022, T952.3–17 (TRA.00014.00001).

- 13.607. These sentiments were echoed by Ms Sharma, who stated that because the Dalton/de Lint/Tyson team was based in South Australia (and Victoria, in the case of Dr Tyson), that was an advantage in terms of objectivity because:<sup>3128</sup>

*They didn't know anyone in New South Wales, so there could be that element of being at arm's length from whatever happened here. So they could look at it without being part of it, so to speak.*

- 13.608. Yet when pressed on this answer, Ms Sharma immediately acknowledged that actually she did not know what difference it would make if the researchers had some awareness in relation to some of the police involved or of some of the deaths: “I don't know. It wouldn't make a great deal [of difference], maybe.”<sup>3129</sup>

- 13.609. By contrast, the other two teams were marked down on the “objectivity” criterion, heavily so in the case of the Lee/Crofts/Tomsen team (a mark of two out of five).<sup>3130</sup>

- 13.610. In the case of the Asquith/Dwyer team (which received a mark of four out of five), the relevant comment was “[o]ne University – Western Sydney – does work for NSWPF”.<sup>3131</sup> This appears to be a reference to the fact that Professor Asquith had in the past been retained by NSWPF to provide assistance on one or more projects (because of her expertise).<sup>3132</sup> Assistant Commissioner Crandell conceded that he was aware of no other factor about Professor Asquith or Dr Dwyer that in any way indicated, in his mind, a lack of objectivity.<sup>3133</sup>

- 13.611. In the case of the Lee/Crofts/Tomsen team (which received a mark of two out of five), there were two comments. The first was that “[t]here is an association with Sydney University and NSWPF”, and the second was “[o]ne of the team – Tomsen – has an undisclosed association,” as to which there was “no evidence in the RFQ declaring and dealing with this association”.<sup>3134</sup>

- 13.612. Assistant Commissioner Crandell did not know whether these two comments referred to one matter or two different matters, and he could not remember what this “association” specifically referred to.<sup>3135</sup> Ms Sharma also could not remember “exactly” what this association was, but indicated that Professor Tomsen's involvement in the compilation of the “list of 88” would have been a “conflict”.<sup>3136</sup>

<sup>3128</sup> Transcript of the Inquiry, 13 December 2022, T1227.10–22 (TRA.00016.00001).

<sup>3129</sup> Transcript of the Inquiry, 13 December 2022, T1227.24–38 (TRA.00016.00001).

<sup>3130</sup> Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated, 15 (SCOI.77324).

<sup>3131</sup> Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated, 16 (SCOI.77324).

<sup>3132</sup> Transcript of the Inquiry, 9 December 2022, T949.24–951.25 (TRA.00014.00001).

<sup>3133</sup> Transcript of the Inquiry, 9 December 2022, T951.19–25 (TRA.00014.00001).

<sup>3134</sup> Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated, 15 (SCOI.77324).

<sup>3135</sup> Transcript of the Inquiry, 9 December 2022, T946.20–948.18 (TRA.00014.00001).

<sup>3136</sup> Transcript of the Inquiry, 13 December 2022, T1231.42–47, 1232.1–4, 1238.19–24 (TRA.00016.00001).

## Submissions; and conclusions of the Inquiry

### Purpose of the academic review

- 13.613. Beyond setting out the different purposes for the academic review, and the evidence as to why most of these were not pursued, I note that Counsel Assisting did not submit that I should make any particular findings in relation to the purpose of the academic review, beyond the fact that a number of these purposes were not ultimately pursued as part of the academic review.
- 13.614. In their submissions, the NSWPF set out why several of the intended purposes for the academic review were unable to be pursued.
- 13.615. The first purpose of the academic review was to provide an independent account of Strike Force Parrabell’s systemic validity. My observations in relation to whether that purpose was fulfilled are set out in my discussion of the ‘Academics’ Methodology’ later in this Chapter.
- 13.616. In relation to the second purpose—identifying “evidence of poor or biased police investigations” —the NSWPF submitted that this was ultimately not pursued. This was not because the academics “were asked not to pursue such a task, [but] rather, [because] they determined that it would not be possible without undertaking a detailed consideration of the ‘investigatory procedures or efficacy of all homicides in the period against those motivated by anti-gay bias’.”<sup>3137</sup>
- 13.617. In relation to the third purpose—guiding “future policing strategies of community engagement”—and despite the evidence of Assistant Commissioner Crandell that this was not pursued by the academic team, the NSWPF emphasised that the Academic Report did make recommendations in relation to community engagement.<sup>3138</sup> In support of this submission, the NSWPF cited two pages of the Academic Report where six recommendations are listed under the heading “Recommendations for future of policing, community engagement, training and development of bias crime indicators/processes”.<sup>3139</sup> It is true that six recommendations are listed where indicated by the NSWPF, but I query whether the inclusion of those brief recommendations is sufficiently substantive to provide any material guidance on future policing strategies concerning community engagement. Furthermore, although these recommendations were made by the academic team, there was no evidence before the Inquiry that such recommendations were ever implemented or actioned by the NSWPF in response.<sup>3140</sup>

<sup>3137</sup> Submissions of NSWPF, 28 June 2023, [635] (SCOI.84211), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report*, (Report, June 2018) 58 (SCOI.02632).

<sup>3138</sup> Submissions of NSWPF, 28 June 2023, [637] (SCOI.84211).

<sup>3139</sup> Submissions of NSWPF, 28 June 2023, [637] (SCOI.84211); Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report*, (Report, June 2018) 107–108 (SCOI.02632).

<sup>3140</sup> Transcript of the Inquiry, 8 December 2022, T891.29–42 (TRA.00013.00001). See also Exhibit 6, Tab 131, Issue Paper of Bridie O’Sullivan (SCOI.77348), which focuses on the implementation of the 12 recommendations outlined in the Police Report.

- 13.618. In relation to the fourth purpose of the academic review—developing a bias crime identification process—the NSWPF submitted that the fact that Assistant Commissioner Crandell hoped to learn from the academics’ approach to bias crimes, with a view to improving the NSWPF’s capacity to identify them, is apparent from the first of the comments he made in oral evidence on the Academic Report (emphasis added):<sup>3141</sup>

*Whilst not wanting to push the research team, because I think they have gone above and beyond, I wondered whether they actually prepared a bias crime indicator as an alternative to the model used by Parrabell, which is consistent with our corporate model. Does the concept of animus play a part in the identification of a bias crime that might be fashioned into a rule or guideline for operational police? If this was to be achieved I think it may have international application - clearly almost anything would be better than the UK model - Perhaps this is something we could discuss with the team in person to be a basis for a new model? I thought from earlier discussions that the research team was seeking to cut the bias crime indicators down to about 3 rather than 10, which would be positive if we were to identify crimes of bias at the first available opportunity, and to create a more consistent and easier process for front line police.*

- 13.619. The NSWPF submitted that, while the academics did not produce a “more suitable bias crime identification process”, that was not because police asked them not to undertake this task.<sup>3142</sup> The NSWPF submitted that this was because “the development of a reliable and valid bias crime identification tool was likely to be a time-consuming and potentially costly process”.<sup>3143</sup>
- 13.620. In summary, none of the second, third and fourth purposes were properly pursued as part of the academic review.<sup>3144</sup> In addition, there remains a real question as to whether it was ever appropriate for Strike Force Parrabell to consider that all four of these purposes could be addressed in the same academic review exercise, given the substantial scope of each of those objectives.
- 13.621. Furthermore, for the reasons which I set out below in the sections on “Academics’ methodology” and “Consensus, collaboration and independence”, I consider that the academic team was unable to fulfil the first purpose of the exercise, that is, to provide an “independent account” of Strike Force Parrabell’s “systemic validity”.<sup>3145</sup> This is because: first, the academic team categorised cases according to a completely different methodology compared to that of Strike Force Parrabell; and secondly, because the review was not conducted “independently” of the Strike

<sup>3141</sup> Submissions of NSWPF, 28 June 2023, [585] (SCOI.84211); Transcript of the Inquiry, 2 March 2023, T2620.27 (TRA.00031.00001).

<sup>3142</sup> Submissions of NSWPF, 28 June 2023, [636] (SCOI.84211).

<sup>3143</sup> Submissions of NSWPF, 28 June 2023, [636] (SCOI.84211).

<sup>3144</sup> Submissions of Counsel Assisting, 7 June 2023, [1084]–[1086] (SCOI.84380).

<sup>3145</sup> See Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [70] (SCOI.76961).

Force Parrabell team. As detailed further below, the approach adopted was a collaborative one.

13.622. Ultimately, I consider that the task originally set by the NSWPF was over-expansive in scope and, in some important respects, contradictory. Not only was the academic team “independently” to review and evaluate the findings of Strike Force Parrabell—a substantive task in itself had it been properly done—but the team was also to work closely with the NSWPF to guide future policing strategies of community engagement and develop a more suitable bias crime identification process. I consider it difficult to believe that anyone could have achieved this task in the time and budget set.

13.623. Finally, I note the submission made by the NSWPF that:<sup>3146</sup>

*there was of course no obligation for any academic review to be undertaken: such a course was embarked upon voluntarily by [Assistant Commissioner] Crandell and [Strike Force] Parrabell to attempt to bring some comfort to the LGBTIQ community via an independent and impartial assessment.*<sup>3147</sup>

13.624. The NSWPF similarly submitted that Strike Force Parrabell’s “decision to engage external academic reviewers, and to expose themselves (and the NSWPF) to scrutiny of that type, was commendable”.<sup>3148</sup>

13.625. Obviously, there was no obligation for an academic review to be undertaken. Assistant Commissioner Crandell and the Strike Force Parrabell team designed the project and they decided upon the elements of the exercise. The academic review was Assistant Commissioner Crandell’s suggestion. Although it is obviously commendable for the NSWPF (or any organisation) to engage with academics and staff from universities for the purpose of seeking assistance with research and related matters, I consider that the engagement of the academic team in the case of Strike Force Parrabell reflected at least two motivations. It may have indeed been the case that Assistant Commissioner Crandell genuinely sought the input of a team of academics to provide an authoritative review of the Strike Force Parrabell findings and improve the processes of the NSWPF. However, I also consider that Assistant Commissioner Crandell was incentivised to recruit the academic team for the purpose of legitimising the findings of Strike Force Parrabell in the eyes of the LGBTIQ community.

<sup>3146</sup> Submissions of NSWPF, 28 June 2023, [638] (SCOI.84211).

<sup>3147</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [70]–[71] (SCOI.76961); Transcript of the Inquiry, 8 December 2022, T888–889 (TRA.00013.00001).

<sup>3148</sup> Submissions of NSWPF, 28 June 2023, [810] (SCOI.84211).



### The search for possible academic reviewers

- 13.626. In submissions, Counsel Assisting drew attention to two aspects of Ms Braw’s email of 27 January 2016, namely that Ms Braw said (emphasis in original):<sup>3149</sup>
- a. “[Superintendent] Crandell is really keen to ensure that whatever we produce is verified by an independent researcher”; and
  - b. “[w]e would prefer someone who is neither actively ‘pro’ or anti’ police ... which kinda rules out a few others you and I could probably think of!”
- 13.627. Both Assistant Commissioner Crandell and Ms Sharma said that they did not know who Ms Braw was referring to.<sup>3150</sup> Counsel Assisting submitted that these answers were disingenuous and that, having regard to the whole of evidence, Professor Tomsen was one academic who was plainly the subject of that reference in Ms Braw’s email.<sup>3151</sup>
- 13.628. In response, the NSWPF submitted that:<sup>3152</sup>
- a. As the author of the email, Ms Braw should have been called to give evidence and was not. Nor was the email put to Professor Asquith;
  - b. It was inappropriate to seek Assistant Commissioner Crandell’s and Ms Sharma’s speculative views on the intentions of Ms Braw in her email;
  - c. The implication that Assistant Commissioner Crandell understood that Ms Braw was referring to Professor Tomsen in her email as being “anti-Police” is inconsistent with his evidence in relation to Professor Tomsen generally;<sup>3153</sup> and
  - d. It was never put to either Assistant Commissioner Crandell or Ms Sharma that they were being “disingenuous” in their evidence.
- 13.629. It is clear that the NSWPF approached several academics over a significant period of time and faced considerable difficulty in identifying academics with suitable backgrounds who were willing and available to assist with the Strike Force Parrabell project.
- 13.630. In relation to the submissions concerning Ms Braw’s email, I agree with the submissions made by Counsel Assisting. I do not consider that it was inappropriate for Counsel Assisting to seek the views of Assistant Commissioner Crandell and Ms Sharma in relation to an email sent by Ms Braw as part of the academic tender process, a process in which both Assistant Commissioner Crandell and Ms Sharma were involved.

<sup>3149</sup> Submissions of Counsel Assisting, 7 June 2023, [1105] (SCOI.84380).

<sup>3150</sup> Transcript of the Inquiry, 9 December 2022, T902.19–24 (TRA.00014.00001); Transcript of the Inquiry, 13 December 2022, T1220.30–36 (TRA.00016.00001).

<sup>3151</sup> Submissions of Counsel Assisting, 7 June 2023, [1108] (SCOI.84380).

<sup>3152</sup> Submissions of NSWPF, 28 June 2023, [650]–[652] (SCOI.84211).

<sup>3153</sup> Transcript of the Inquiry, 9 December 2022, T907.1–6 (TRA.00014.00001); Transcript of the Inquiry, 9 December 2022, T919.4–9 (TRA.00014.00001).

- 13.631. I also consider that I can reasonably infer that Professor Tomsen was one of the academics to whom Ms Braw was referring when she spoke of academics who would be “rule[d] out” on the basis that they were perceived as actively “‘pro’ or ‘anti’ police”.<sup>3154</sup>
- 13.632. Finally, it should be noted that Ms Braw was subsequently provided with an opportunity to make a statement and/or submissions to the Inquiry in relation to the evidence and submissions in Public Hearing 2.<sup>3155</sup> Ms Braw chose not to take up this opportunity; in effect choosing not to refute or correct the submission made by Counsel Assisting.<sup>3156</sup>

## Request for Quotation (RFQ)

### DRAFTING OF THE RFQ

- 13.633. The extent of Assistant Commissioner Crandell’s involvement in the drafting of the RFQ was a point of contention during his evidence.
- 13.634. When asked whether he had a part in drafting the RFQ, he stated “I don’t believe so”.<sup>3157</sup> In addition, when asked about certain aspects of the RFQ, he sought to emphasise that the RFQ was not his document and that he had not drafted it.<sup>3158</sup>
- 13.635. Nevertheless, as outlined above, the documentary evidence indicated that, shortly after Assistant Commissioner Crandell was provided with a draft RFQ by Ms Sharma, a document existed that referred to—in its title—“TC edit”. In addition, Assistant Commissioner Crandell conceded that it was unlikely that he had not reviewed the RFQ.<sup>3159</sup>
- 13.636. Counsel Assisting submitted that Assistant Commissioner Crandell was “plainly” involved in the drafting of the RFQ.<sup>3160</sup>
- 13.637. In response, the NSWPF submitted that this proposition should be rejected because:<sup>3161</sup>
- a. The “TC edit” document was not put to Assistant Commissioner Crandell;
  - b. Ms Braw was not called to give evidence as to Assistant Commissioner Crandell’s involvement in the drafting process; and

<sup>3154</sup> Exhibit 6, Tab 35, Email correspondence between Jacqueline Braw and Nicole Asquith, 27 January–11 February 2016, 4 (SCOI.78856).

<sup>3155</sup> Exhibit 6, Tab 478A, Letter from Enzo Camporeale to Jacqueline Braw, 22 August 2023 (SCOI.85471); Exhibit 6, Tab 462A, Letter from Enzo Camporeale to Katherine Garaty, 18 September 2023 (SCOI.85723).

<sup>3156</sup> Exhibit 6, Tab 462B, Email from Patrick Hodgetts to Enzo Camporeale, 18 September 2023 (SCOI.85724).

<sup>3157</sup> Transcript of the Inquiry, 9 December 2022, T927.1–3 (TRA.00014.00001).

<sup>3158</sup> Transcript of the Inquiry, 9 December 2022, T927.1–3, 927.35–40, 930.26–27, 932.22–23, 933.36–42 (TRA.00014.00001).

<sup>3159</sup> Transcript of the Inquiry, 9 December 2022, T927.42–928.6 (TRA.00014.00001).

<sup>3160</sup> Submissions of Counsel Assisting, 7 June 2023, [1138] (SCOI.84380).

<sup>3161</sup> Submissions of NSWPF, 28 June 2023, [670]–[672] (SCOI.84211).

- c. Assistant Commissioner Crandell’s evidence that he did not have substantive involvement in drafting the RFQ was consistent with Ms Sharma’s evidence as to his involvement, namely that, “he would have relied on us to do the majority of the drafting”,<sup>3162</sup> “I think we did the drafting and he just looked over it” and “I think we must have run it past him”.<sup>3163</sup>
- 13.638. The NSWPF submitted that the file name of the “TC edit” document does not confirm that any such edits were in fact made by Assistant Commissioner Crandell, the sections which were edited, or the nature of those edits.<sup>3164</sup>
- 13.639. I do not consider it necessary to resolve any conflict as to the *extent* of Assistant Commissioner Crandell’s involvement in the drafting of the RFQ, as has been the focus of the NSWPF submissions.
- 13.640. Rather, there is sufficient evidence for me to conclude that Assistant Commissioner Crandell reviewed a draft of the RFQ before it was finalised and made some edits. As I have referred to in other sections of this report, the documents must speak for themselves to a certain extent. I do not consider that the title of a document which clearly refers to “TC Edit” (i.e., Tony Crandell Edit) had to be put to Assistant Commissioner Crandell for me to conclude that he reviewed and made at least some edits to the RFQ.
- 13.641. As to the specific content of those edits, I do not consider that this is important. Based on the content of the final RFQ, I consider that Assistant Commissioner Crandell approved the wording in the “Services Required” and “Challenges” sections, and thus should be prepared to take responsibility for them as the Commander of Strike Force Parrabell. It was entirely appropriate for him to be asked by Counsel Assisting about certain words used and what he considered they meant.

#### INSERTION OF ADDITIONAL BULLET POINT UNDER “SERVICES REQUIRED”

- 13.642. Counsel Assisting submitted that the introduction of an emphasis on “collaboration” in the July RFQ draft was both significant and embraced by the Dalton/de Lint/Tyson team in their proposal.<sup>3165</sup>
- 13.643. The submissions of the NSWPF on this issue went much further.
- 13.644. First, the NSWPF submitted that Ms Braw was not called to give evidence as to her intended meaning of the word, despite “the emphasis Counsel Assisting seeks to place on it”.<sup>3166</sup>

<sup>3162</sup> Transcript of the Inquiry, 13 December 2022, T1211.14–16, 1211.29–41 (TRA.00016.00001).

<sup>3163</sup> Transcript of the Inquiry, 13 December 2022, T1218.21–34 (TRA.00016.00001).

<sup>3164</sup> Submissions of NSWPF, 28 June 2023, [671] (SCOI.84211).

<sup>3165</sup> Submissions of Counsel Assisting, 7 June 2023, [1122], [1138] (SCOI.84380).

<sup>3166</sup> Submissions of NSWPF, 28 June 2023, [661(b)] (SCOI.84211).

13.645. The NSWPF further submitted that it was:<sup>3167</sup>

*abundantly clear from Senior Counsel Assisting's questioning on this issue that he was suggesting that the use of the word 'collaborative' meant a loss of independence. In light of Assistant Commissioner Crandell's differing view on this point ... it is unsurprising that he did not embrace the use of the word 'collaborative' in the sense contended for by Counsel Assisting.*

13.646. The NSWPF also characterised Counsel Assisting's submissions as follows:<sup>3168</sup>

*Counsel Assisting appear to submit that the fact the process was intended to involve collaboration and discussion between the NSWPF [Strike Force] Parrabell team and the Academic Review Team, means there was both an intended (and in fact a) consequent departure from the objective and independent review [Assistant Commissioner] Crandell had considered to be the fundamental purpose of the project.*

...

*Contrary to Counsel Assisting's submissions, the Commissioner of Police does not accept that the reference in the RFQ to 'collaboration' was reflective of any reduction in emphasis of the importance of the objectivity or independence of the Academic Review Team. It is submitted that the process could be both independent and collaborative. That is, discussion as between NSWPF and the Academic Review Team about their respective methodologies and how particular findings were arrived at to ensure differences were a true product of a difference in opinion and not a lack of clarity or a misunderstanding, need not equate to a lack of independence or objectivity on the part of the Academic Review Team.*

13.647. I do not accept these submissions.

13.648. First, I do not consider that Counsel Assisting sought to place any emphasis on the word "collaborative" that was undue or beyond the natural and ordinary meaning of that word. If Counsel Assisting had submitted that a *different* meaning should be placed on the word (separate to its ordinary meaning), additional evidence may have been required. It is evident to me that Ms Braw used the word "collaborative" in the ordinary sense of the word. It was not necessary to call her to ask about her "intended meaning" in circumstances when that meaning is clear from the text itself.

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<sup>3167</sup> Submissions of NSWPF, 28 June 2023, [661(c)] (SCOI.84211).

<sup>3168</sup> Submissions of NSWPF, 28 June 2023, [654], [658] (SCOI.84211).

- 13.649. Secondly, I consider that the fact that an additional bullet point was added under “Services Required” in July 2016 that explicitly required the academic team to have “a collaborative approach” with the NSWPF is highly significant. This was an important addition to the RFQ and framed, from the outset, the approach required by the NSWPF. This was an approach that sat uncomfortably with the purported primary objective of the academic review, that is, to provide an independent account of Strike Force Parrabell’s systemic validity. This tension is discussed in further detail below.

### “CHALLENGES”

- 13.650. In relation to clause 3.4 of the RFQ titled “Challenges”, Counsel Assisting submitted that, as Ms Sharma to some extent acknowledged,<sup>3169</sup> the inclusion of specific reference to a possible loss of objectivity if a researcher was “connected to the gay community” is difficult to understand other than as an indication that the teams which included “activists” such as Professor Tomsen or Professor Asquith would be at a disadvantage in the selection process.<sup>3170</sup>
- 13.651. The NSWPF acknowledged the evidence of Assistant Commissioner Crandell and Ms Sharma that the language in clause 3.4 of the RFQ was unclear and a better choice of words could have been selected.<sup>3171</sup> However, the NSWPF again submitted that Ms Braw was not called to give evidence as to the intended meaning of the language used.<sup>3172</sup> For the reasons set out above, I do not accept this submission.
- 13.652. The NSWPF further submitted that the conjunction “and” in the following sentence was “of critical importance” (emphasis added):<sup>3173</sup>

*Many researchers in this area are connected to the “gay community” and may not be as independent as desirable.*

- 13.653. The NSWPF submitted that the “challenge” referred to in that paragraph related not simply to the connection of the researchers to the community, but to the fact that “some” academics in the area might not be “as independent as desirable”.<sup>3174</sup> (I pause here to note that the RFQ refers to “many”—rather than “some”—researchers who may not be as independent as desirable).
- 13.654. Further, the NSWPF submitted that:<sup>3175</sup>

*It was possible that a number of academics and researchers in this area could have had a direct, or indirect, connection to any one or more of the cases which formed part of [Strike Force] Parrabell, which could have*

<sup>3169</sup> Transcript of the Inquiry, 13 December 2022, T1212.14–1213.28, 1216.11–32 (TRA.00016.00001).

<sup>3170</sup> Submissions of Counsel Assisting, 7 June 2023, [1138] (SCOI.84380).

<sup>3171</sup> Submissions of NSWPF, 28 June 2023, [664] (SCOI.84211), citing Transcript of the Inquiry, 9 December 2022, T929.22–932.14; Transcript of the Inquiry, 12 December 2022, T1212.27–1213.22 (TRA.00016.00001).

<sup>3172</sup> Submissions of NSWPF, 28 June 2023, [664] (SCOI.84211).

<sup>3173</sup> Submissions of NSWPF, 28 June 2023, [664] (SCOI.84211).

<sup>3174</sup> Submissions of NSWPF, 28 June 2023, [536], [664] (SCOI.84211).

<sup>3175</sup> Submissions of NSWPF, 28 June 2023, [665]–[666] (SCOI.84211).

*impacted their perceived independence and objectivity in conducting the review. Involvement, for example, in the preparation of the original “list of 88” may have resulted in a perception – whether accurate or otherwise – of a lack of independence in assessing whether each of the matters on the list was in fact motivated by anti-LGBTIQ bias.*

*But it does not follow that by putting the tendering academic teams on notice of these perceived challenges, so that those challenges could be addressed in their respective tender documents (i.e., by disclosing any perceived conflicts and / or advising how those conflicts or challenges may be overcome), the NSWPF was indicating that the teams which included “activists” such as (in the view of Counsel Assisting) Professor Tomsen or Professor Asquith, would be at a disadvantage in the selection process.*

- 13.655. The NSWPF submitted that Counsel Assisting’s submission “proceeds upon a strained interpretation of the words used in the RFQ” and is directly contrary to the evidence of Assistant Commissioner Crandell.<sup>3176</sup>
- 13.656. The NSWPF submitted that a connection to the LGBTIQ community was in no way a disqualifying factor for the successful tender, which is evident when the following matters are considered:<sup>3177</sup>
- a. The previous research of Dr Dalton, which includes articles such as “Policing Outlawed Desire: Homocriminality in Beat Spaces in Australia”;
  - b. Dr Dalton’s sexuality, which was “widely known” at Flinders University;<sup>3178</sup> and
  - c. In many respects, Dr Dalton’s previous academic work had been prepared from a perspective that “could properly be described as ‘anti-Police’”.<sup>3179</sup>
- 13.657. In my mind, it is significant that both Assistant Commissioner Crandell and Ms Sharma acknowledged that the language in clause 3.4 of the RFQ was unclear and a better choice of words could have been selected. In considering the language of the RFQ, it is important to examine the text of the words themselves and what they conveyed to the reader, rather than what may (or may not) have been intended by a particular person. This was the document by which NSWPF asked tenderers to tender. It told them what was required and hoped for. The language that it used mattered.

<sup>3176</sup> Submissions of NSWPF, 28 June 2023, [667] (SCOI.84211), citing Transcript of the Inquiry, 9 December 2022, T929.22–932.14 (TRA.00014.00001).

<sup>3177</sup> Submissions of NSWPF, 28 June 2023, [667] (SCOI.84211).

<sup>3178</sup> Submissions of NSWPF, 28 June 2023, [667] (SCOI.84211), citing Transcript of the Inquiry, 2 March 2023, T2609.26–37 (TRA.00031.00001).

<sup>3179</sup> Submissions of NSWPF, 28 June 2023, [667] (SCOI.84211), citing Transcript of the Inquiry, 2 March 2023, T2609.6–19 (TRA.00031.00001).

- 13.658. In my view, the language “[m]any researchers in this area are connected to the ‘gay community’ and may not be as independent as desirable” was intended to flag to potential tenderers that individuals with particular connections to the LGBTIQ community or a background in advocacy were unlikely to be evaluated as highly as others without those connections or advocacy experience. For clarity, and with respect to the NSWPF’s submissions in relation to Dr Dalton, I do not intend to suggest that the language indicated that the NSWPF would not consider any applicant who identified as a member of the LGBTIQ community.
- 13.659. In addition, the language also serves as a useful insight into the attitude of the NSWPF at the time. It appears to me that the NSWPF considered that a substantial connection to the LGBTIQ community, and more particularly to any work linked to the list of 88 deaths, was an attribute likely to hinder, rather than help, the academic reviewers to complete the task. It is my impression that Assistant Commissioner Crandell and other members of the QEC were motivated to select an academic team that was not overly connected to the NSWPF milieu on the basis that a team with those connections might exhibit bias against the NSWPF in their analysis of the Strike Force Parrabell findings.<sup>3180</sup> I consider that there was a concern that some applicants—perhaps those with “activist”<sup>3181</sup> tendencies—may have been overly sympathetic towards the proponents of the list of 88 deaths and less willing to collaborate with the NSWPF.

### The selection process

- 13.660. Counsel Assisting submitted that the selection process, and the scores allocated to the three competing tenders, gave rise to some concerns.<sup>3182</sup>
- 13.661. For the second and third selection criteria, related to “Capability” to provide the services, and “Demonstrated experience” in the supply of similar services, all three teams were ranked equally, each scoring five out of five.<sup>3183</sup>

<sup>3180</sup> See Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project — RFQ Number: 001286, 22 July 2016, 6 (SCOI.76961.00007); Exhibit 6, Tab 35, Email correspondence between Jacqueline Braw and Nicole Asquith, 27 January – 11 February 2016 (SCOI.78856).

<sup>3181</sup> Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016, 27 (SCOI.75775). In the Tender Proposal, the academic team included a heading titled “Independence [a guarantee of objectivity]”, which referred to “baggage” associated with key players (in NSW) such as “activists, academics” and others. In contrast, the academic team would provide “a type of insurance against accusations... of pre-existing bias” held by the independent review. In addition, in oral evidence Assistant Commissioner Crandell did not agree that Professor Asquith and Professor Tomsen were the “activists” in question, however he accepted that he wanted a team willing to engage in “some level of collaboration”: Transcript of the Inquiry, 9 December 2022, T938.1–940.35 (TRA.00014.00001). See also the views of Ms Sharma as to this issue: Transcript of the Inquiry, 13 December 2022, T1212.35–42, 1213.17–22, 1216.11–32 (TRA.00016.00001).

<sup>3182</sup> Submissions of Counsel Assisting, 7 June 2023, [1157] ff (SCOI.84380).

<sup>3183</sup> Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated, 15–17 (SCOI.77324).

- 13.662. Counsel Assisting submitted that the experience and expertise of the Dalton/de Lint/Tyson team, in relation to the relevant subject matter of hate crime, could not on any objective view be regarded as comparable to that of either of the other two teams.<sup>3184</sup> Counsel Assisting noted that Dr Dalton positively disclaimed any such expertise, and neither Dr de Lint nor Dr Tyson claimed to have it.<sup>3185</sup> By comparison, both Professor Tomsen and Professor Asquith were widely regarded and respected as experts on hate crime.<sup>3186</sup>
- 13.663. Ms Sharma readily agreed that Professor Asquith and Professor Tomsen had expertise in hate crime, as did Professor Lee and Dr Dwyer.<sup>3187</sup>
- 13.664. The NSWPF submitted that Counsel Assisting chose to interpret the second and third criteria as:<sup>3188</sup>
- requiring demonstrated experience in the area of LGBTIQ hate crime in Australia, which all (including Professor Asquith) seem to acknowledge is a very limited field of expertise which very few possess.*
- 13.665. The NSWPF submitted that the criteria were, in fact, not so limited.<sup>3189</sup>
- 13.666. In my view, Counsel Assisting did not, in fact, suggest such an interpretation. At [1158]–[1159] of the June CAS (which were cited by the NSWPF in its submission), Counsel Assisting refer only to “hate crime”, not “LGBTIQ hate crime”.<sup>3190</sup>
- 13.667. The NSWPF submitted that each team possessed highly experienced academics, who had demonstrated “capability” to perform an academic review. When looked at through the lens of capability to conduct the exercise, the panel considered all teams had the requisite ability and so were accorded a 5/5 rating. The NSWPF submitted that this does not demonstrate that the Dalton/de Lint/Tyson team was favoured.<sup>3191</sup>

<sup>3184</sup> Submissions of Counsel Assisting, 7 June 2023, [1159] (SCOI.84380).

<sup>3185</sup> Submissions of Counsel Assisting, 7 June 2023, [1159] (SCOI.84380), citing Exhibit 6, Tab 25, Tender Proposal of Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson, 28 July 2016, 25–26 (SCOI.75775).

<sup>3186</sup> See for example Exhibit 6, Tab 27, Tender Proposal of Professor Murray Lee, Professor Thomas Crofts and Professor Stephen Tomsen, 4 August 2016, 7 (SCOI.75764); Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated, 15 (SCOI.77324); Exhibit 6, Tab 34, Email correspondence between Jacqueline Braw and Anthony Crandell, 25 January 2016, 1 (SCOI.74148).

<sup>3187</sup> Transcript of the Inquiry, 13 December 2022, T1226.9–14 (TRA.00016.00001).

<sup>3188</sup> Submissions of NSWPF, 28 June 2023, [688] (SCOI.84211).

<sup>3189</sup> Submissions of NSWPF, 28 June 2023, [687]–[688] (SCOI.84211).

<sup>3190</sup> Submissions of Counsel Assisting, 7 June 2023, [1159] (SCOI.84380).

<sup>3191</sup> Submissions of NSWPF, 28 June 2023, [688] (SCOI.84211).



- 13.668. The NSWPF further submitted that each team also demonstrated “experience” with the subject matter of the review. The NSWPF stated that while Dr Dalton professed that he was not an “expert *per se* in ‘hate crime’” (emphasis in original) he nevertheless indicated he had “an excellent grasp of this academic literature, particularly as it relates to the commission and indicators of homophobic violence [bias crime]”.<sup>3192</sup>
- 13.669. I pause here to note that having “an excellent grasp of [the] academic literature” is not the same as possessing in-depth expertise and should not be regarded as such, although I acknowledge that this distinction may not have been appreciated by the QEC at the time. Regardless, it is evident that the Dalton/de Lint/Tyson team did not have the same breadth of experience and expertise in the area of hate/bias crime research as the other tenderers.
- 13.670. Counsel Assisting further submitted that Assistant Commissioner Crandell’s determined resistance to the suggestion that Professor Tomsen and Professor Asquith were “experts” in the field, and his equally determined attempts to elevate Dr Dalton’s standing in that regard (despite Dr Dalton’s own frank disclaimer of such expertise), indicated a defensiveness about the way the selection process appeared to favour the Dalton/de Lint/Tyson team.<sup>3193</sup>
- 13.671. The NSWPF countered that “determined resistance” was an “unfair characterisation”, and submitted that there was some confusion in the exchange between Counsel Assisting and Assistant Commissioner Crandell stemming from what the latter saw as a distinction between the words “expertise” and “experience”.<sup>3194</sup> The NSWPF stated that the fact that Assistant Commissioner Crandell would “accurately” see those as distinct and different terms is not a foundation for criticism.<sup>3195</sup> The NSWPF further submitted that Assistant Commissioner Crandell had accepted in evidence that Professor Asquith and Professor Tomsen were experts in hate crime.<sup>3196</sup>
- 13.672. Counsel Assisting also noted that Assistant Commissioner Crandell flatly disputed the proposition, which I put to him during his oral evidence, that the most significant factor would be the level of experience in the particular area of motivation that Strike Force Parrabell was concerned with.<sup>3197</sup> Assistant Commissioner Crandell said, “No, I think that’s a factor. I don’t think it’s the most significant factor necessarily.”<sup>3198</sup>

<sup>3192</sup> Submissions of NSWPF, 28 June 2023, [688] (SCOI.84211), citing Exhibit 6, Tab 25, Tender Proposal of Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson, 28 July 2016, 25 (SCOI.75775).

<sup>3193</sup> Submissions of Counsel Assisting, 7 June 2023, [1161] (SCOI.84380), citing Transcript of the Inquiry, 9 December 2022, T952.34–959.36 (TRA.00014.00001).

<sup>3194</sup> Submissions of NSWPF, 28 June 2023, [689] (SCOI.84211), citing Submissions of Counsel Assisting, 7 June 2023, [1161] (SCOI.84380).

<sup>3195</sup> Submissions of NSWPF, 28 June 2023, [689] (SCOI.84211).

<sup>3196</sup> Submissions of NSWPF, 28 June 2023, [689] (SCOI.84211), citing Transcript of the Inquiry, 9 December 2022, T953.34–955.17 (TRA.00014.00001).

<sup>3197</sup> Submissions of Counsel Assisting, 7 June 2023, [1162] (SCOI.84380).

<sup>3198</sup> Transcript of the Inquiry, 9 December 2022, T950.41–951.8 (TRA.00014.00001).

- 13.673. In response, the NSWPF submitted that:<sup>3199</sup>
- a. The fact that the experience of the tendering teams was one of many factors to be considered in the context of the tender is uncontroversial;
  - b. The NSWPF personnel conducting the tender assessment process were bound by the NSWPF Procurement Policy in force at the relevant time. They were not free, for example, to determine that cost was not a relevant consideration;
  - c. As Assistant Commissioner Crandell emphasised, he was looking for the “best qualified person with objectivity, and demonstrated objectivity”;<sup>3200</sup> and
  - d. The fact that Professor Asquith, for example, may have had greater experience in the sphere of hate crime “*per se*”, does not mean that it was unreasonable for the evaluation panel to conclude that the Dalton/de Lint/Tyson team was also entirely capable of performing the work and award them a score accordingly. A score of ‘5/5’ (assigned to both the Dalton/de Lint/Tyson team and the Asquith/Dwyer team) required an assessment that the relevant team’s proposal was “excellent” in relation to the relevant criterion and not that they were the best of the tenderers in this respect.<sup>3201</sup> There was nothing to indicate that the RFQ was required to be scored on a bell curve.<sup>3202</sup>
- 13.674. For the fourth criterion, “Objectivity”, the NSWPF submitted that, as was evident from the selection of Dr Dalton, “himself a gay man with an academic background that included relevant research best described as having been conducted from an ‘anti-Police’ perspective,<sup>3203</sup> a connection to the gay community was not something that the NSWPF sought to avoid”.<sup>3204</sup> It was submitted that, rather than avoiding an academic team with connections to the LGBTIQ community, the review’s purpose was to “attempt to bring some comfort to the LGBTIQ community via an independent and impartial assessment of the work of Strike Force Parrabell”.<sup>3205</sup> The NSWPF sought to avoid “something that might have impacted upon the relevant academic’s ability to bring an independent mind to bear on the task at hand, or otherwise given [sic] an appearance of a lack of objectivity”.<sup>3206</sup>

<sup>3199</sup> Submissions of NSWPF, 28 June 2023, [690] (SCOI.84211).

<sup>3200</sup> Submissions of NSWPF, 28 June 2023, [690], citing Transcript of the Inquiry, 9 December 2022, T950.45–46 (TRA.00014.00001).

<sup>3201</sup> Submissions of NSWPF, 28 June 2023, [690] (SCOI.84211), citing Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated, 10 (SCOI.77324).

<sup>3202</sup> Submissions of NSWPF, 28 June 2023, [695] (SCOI.84211).

<sup>3203</sup> Submissions of NSWPF, 28 June 2023, [696] (SCOI.84211), citing Transcript of the Inquiry, 2 March 2023, T2609.6–19 (TRA.00031.00001).

<sup>3204</sup> Submissions of NSWPF, 28 June 2023, [696] (SCOI.84211).

<sup>3205</sup> Submissions of NSWPF, 28 June 2023, [696] (SCOI.84211).

<sup>3206</sup> Submissions of NSWPF, 28 June 2023, [696] (SCOI.84211).

- 13.675. Counsel Assisting submitted that the evidence points to the distinct possibility that the criteria were interpreted, whether deliberately or otherwise, in ways which advantaged the Dalton/de Lint/Tyson team, and disadvantaged both the Lee/Crofts/Tomsen team and the Asquith/Dwyer team, with the consequence that the researchers with the most experience and expertise in hate crime were rejected in favour of academics with little, if any, experience in that particular area.<sup>3207</sup>
- 13.676. Counsel Assisting submitted that, more fundamentally, in their apparent determination to choose a team without any history of “activism”, meaningful connection to the “gay community”, or prior associations (however objective and professional) with police, the NSWPF effectively excluded the possibility of engaging with an academic team with substantial and recognised expertise, which could have provided far more credible assessment and review of the process.<sup>3208</sup>
- 13.677. The NSWPF submitted that the tendering process and selection for the review of Strike Force Parrabell was transparent, competitive and fair, and that the lower scores given to the Lee/Crofts/Tomsen team and Asquith/Dwyer team were readily justified in the tender evaluation document.<sup>3209</sup>
- 13.678. In relation to the Lee/Crofts/Tomsen team, the NSWPF submitted that:<sup>3210</sup>

*First, it was the view of the evaluation team that the proposal from the Lee/Crofts/Tomsen team was “threadbare” and the detail of the proposal was “unclear”.<sup>3211</sup> This team therefore received a low score in relation to the criterion ‘proposed solution meets requirement of RFQ’.<sup>3212</sup> Counsel Assisting do not suggest that this finding by the evaluation panel was incorrect.*

*Secondly, the evaluation team recorded that Professor Tomsen had failed to disclose or declare an association with Strike Force Parrabell in that team’s response to the RFQ, and that there was no information in the response as to how that association would be addressed by the team. The evidence before the Inquiry shows that Professor Tomsen was in fact involved in compiling the original list of the 88 cases to be considered during Parrabell.<sup>3213</sup> Ms Sharma gave evidence that her recollection was that this was the “undisclosed association” referred to in the evaluation report in relation to Professor Tomsen.<sup>3214</sup>*

<sup>3207</sup> Submissions of Counsel Assisting, 7 June 2023, [1171] (SCOI.84380).

<sup>3208</sup> Submissions of Counsel Assisting, 7 June 2023, [1172] (SCOI.84380).

<sup>3209</sup> Submissions of NSWPF, 28 June 2023, [678]–[679] (SCOI.84211).

<sup>3210</sup> Submissions of NSWPF, 28 June 2023, [680]–[683] (SCOI.84211).

<sup>3211</sup> Submissions of NSWPF, 28 June 2023, [680] (SCOI.84211), citing Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated, 15 (SCOI.77324).

<sup>3212</sup> Submissions of NSWPF, 28 June 2023, [680] (SCOI.84211), citing Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated, 10 (SCOI.77324).

<sup>3213</sup> Submissions of NSWPF, 28 June 2023, [681] (SCOI.84211).

<sup>3214</sup> Submissions of NSWPF, 28 June 2023, [681] (SCOI.84211), citing Transcript of the Inquiry, 13 December 2022, T1231.26–1232.4 (TRA.00016.00001). See also Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), Undated, 15 (SCOI.77324).

*While the existence of this potential conflict was not a disqualifying factor, the fact the Lee/Crofts/Tomsen team had (i) failed to declare the conflict; or (ii) detail how the conflict would be addressed by the team to ensure it was able to achieve the objectives of independence and objectivity, was understandably of concern to the evaluation panel. It is submitted that any objective observer presented with a tender proposal which fails to declare an obvious conflict, let alone detail how that conflict could be addressed, would have understandable concerns about the team's objectivity or independence, and the score ultimately awarded would reflect that concern.*

*...this was a very reasonable concern for the evaluation panel to hold in circumstances where the relevant conflict was that one of the team members was a creator of the very list under consideration. A creator of the original list was, at least, likely to be perceived as being protective of it, and an acknowledgement of that conflict and a proposal of how it was to be addressed should have been included in the Lee/Crofts/Tomsen team proposal.*

13.679. In relation to the Asquith/Dwyer team, the NSWPF submitted that:<sup>3215</sup>

*First, this proposal was considerably more expensive (by between approximately \$25,000-\$35,000) than the other proposals and accordingly received a low score for the criterion of 'value for money'. 'Value for money' is understandably an important component of a government tender that is funded via public funds. In particular, justifying the acceptance of a tender that is between approximately 50% and 80% more expensive than the relevant competitors would be nigh-on impossible in any public-sector environment.<sup>3216</sup>*

*Secondly, as to the small (and only other) deduction this team received for 'objectivity' and 'independence', this was on the basis that Professor Asquith has previously done work for the NSWPF. While again this was not a disqualifying factor, in [Assistant Commissioner] Crandell's evidence he indicated that he saw that prior association as a factor which might give rise to a perceived lack of objectivity. Despite the professional respect [Assistant Commissioner] Crandell had for Professor Asquith and her work, he did not "want a suggestion that [he had] hand-picked reviewers at all".<sup>3217</sup>*

<sup>3215</sup> Submissions of NSWPF, 28 June 2023, [685] (SCOI.84211), citing Transcript of the Inquiry, 9 December 2022, T949.24–950.39 (TRA.00014.00001).

<sup>3216</sup> Submissions of NSWPF, 28 June 2023, [684] (SCOI.84211).

<sup>3217</sup> Submissions of NSWPF, 28 June 2023, [685] (SCOI.84211), citing Transcript of the Inquiry, 9 December 2022, T950.33–39 (TRA.00014.00001).

- 13.680. The NSWPF submitted that, by comparison, “the Dalton/de Lint/Tyson team tender proposal scored highly in the three areas in which the other teams had been marked down”. It was submitted that their tender proposal was “substantially more cost effective than the Asquith/Dwyer proposal”, it “clearly met the RFQ requirements”, and this academic team had “no possible or perceived conflicts that could impact upon their objectivity or independence”. The NSWPF submitted that the team’s “scores in these areas should be uncontroversial”.<sup>3218</sup>
- 13.681. The NSWPF submitted that there was no evidence of any intention by the evaluation team, or Assistant Commissioner Crandell, to unduly favour the Dalton/de Lint/Tyson team over the other two academic teams.<sup>3219</sup> It was submitted that “to attribute such motivations to [Assistant Commissioner] Crandell or the evaluation panel is simply not open on the evidence, particularly in circumstances where, for example, [Assistant Commissioner] Crandell had Professor Asquith in mind from a very early stage and clearly held her work in high regard”.<sup>3220</sup> It also ignores the presence of, and assessments conducted by, panel members entirely independent of the work of Strike Force Parrabell such as Dr Devery, and “unfairly and baselessly calls into question their integrity”.<sup>3221</sup>
- 13.682. Further, the NSWPF submitted that, contrary to the submissions of Counsel Assisting, there is no evidence to suggest that the:
- a. Process of searching for appropriate academics;
  - b. Request for tender; or
  - c. Tender evaluation process,
- for the academic review of the work of Strike Force Parrabell was anything other than transparent, objective and fair.<sup>3222</sup>
- 13.683. The NSWPF further submitted that, in particular, the June CAS sought to attribute some ulterior motivation to Assistant Commissioner Crandell and/or the QEC team concerning the selection of the Dalton/de Lint/Tyson team as the preferred tenderer. The NSWPF submitted that these assertions are grave and without any proper evidentiary foundation, and are not open to the Inquiry.<sup>3223</sup>

<sup>3218</sup> Submissions of NSWPF, 28 June 2023, [686] (SCOI.84211).

<sup>3219</sup> Submissions of NSWPF, 28 June 2023, [691] (SCOI.84211).

<sup>3220</sup> Submissions of NSWPF, 28 June 2023, [691] (SCOI.84211), citing Exhibit 6, Tab 36, Email correspondence between Dr Christopher Devery and Anthony Crandell, 12 February–7 March 2016 (SCOI.74172).

<sup>3221</sup> Submissions of NSWPF, 28 June 2023, [691] (SCOI.84211).

<sup>3222</sup> Submissions of NSWPF, 28 June 2023, [692] (SCOI.84211).

<sup>3223</sup> Submissions of NSWPF, 28 June 2023, [693] (SCOI.84211).

- 13.684. That is not my perception of what was submitted by Counsel Assisting. At no point do Counsel Assisting actually attribute an ulterior motive to Assistant Commissioner Crandell and/or the QEC team. In fact, the submissions of Counsel Assisting show that the determination of the QEC to choose a team without any history of activism, meaningful connection to the LGBTIQ community or prior associations with police was quite an open objective. However, prioritising this factor meant that the NSWPF excluded the possibility of engaging with an academic team with substantial and recognised expertise in the area being explored by Strike Force Parrabell.
- 13.685. In particular, I consider that the QEC underestimated the value of genuine expertise in hate crime, and instead appeared to consider that Dr Dalton claiming to have “an excellent grasp of [the] literature” was an adequate substitute. I agree with Counsel Assisting that the unfortunate consequence was that the researchers with the most experience and expertise in hate crime were rejected in favour of an academic team with little, if any, experience in that particular area.
- 13.686. I do appreciate that the Dalton/de Lint/Tyson proposal was more cost effective than the Asquith/Dwyer proposal, and that this could not have been an irrelevant consideration.
- 13.687. It appears to me that Assistant Commissioner Crandell appreciated that it would be challenging to present the findings of Strike Force Parrabell—which were, in effect, the result of police investigating police—in the absence of an independent review of those findings. I do not need to attribute any ulterior motives to Assistant Commissioner Crandell or the academic to conclude that the proposal and process was flawed in certain important respects.
- 13.688. I consider that, in comparison to the other two tenders, Assistant Commissioner Crandell and the QEC considered that the Dalton/de Lint/Tyson were a safe pair of hands. They were clearly willing to collaborate with the NSWPF and, at the same time, appeared to be the most distanced from any activism associated with the list of 88 deaths and the concerns voiced by the LGBTIQ community in respect of that list. The fact that Dr Dalton, Dr de Lint and Dr Tyson were in no way associated with that scene (which had a particularly strong presence in NSW) was perceived as an advantage to members of the QEC. It is telling that Dr Dalton repeatedly emphasised the fact that he and his team would support the NSWPF and were available to collaborate fully in achieving a favourable outcome for them. It appears to me that Assistant Commissioner Crandell was no doubt reassured by that approach.
- 13.689. I conclude that the selection process was compromised in the following ways:
- a. First, the experience and expertise of the Dalton/de Lint/Tyson team in relation to the subject matter of hate crime was not comparable to that of the other two teams, yet the team was ranked equally with the other two (scoring five out of five) for “Capability” and “Demonstrated experience”.

- b. Secondly, I consider that the NSWPF efforts to avoid choosing a team with any connection to “activism”—on the basis that a team with those connections might exhibit bias against the NSWPF in their analysis of Strike Force Parrabell—arguably distorted the process.
- c. Thirdly, it was problematic that the Dalton/de Lint/Tyson team was perceived as being more “objective” in circumstances where that perception of objectivity was based mostly on the team’s geographical location. As a result, the selection criteria were interpreted in a manner that effectively advantaged the Dalton/de Lint/Tyson team, and disadvantaged both the Lee/Crofts/Tomsen team and the Asquith/Dwyer team. The result of this was that the academics with the most experience and expertise in hate crime were rejected in favour of academics with far less experience in that particular area.

## E. The Academics' Methodology

- 13.690. As outlined above, a team of academics from Flinders University and Deakin University were engaged by the NSWPF to review the results of the Strike Force Parrabell officers.<sup>3224</sup>
- 13.691. The academic team commenced its work in October 2016 and concluded in September 2017.<sup>3225</sup> I explain the meaning of the “academic team” and the varied involvement of its members below.
- 13.692. The academic team was provided with the completed BCIFs from the Strike Force Parrabell team.<sup>3226</sup> They were not provided with any of the historical files on which those completed forms were based.<sup>3227</sup>
- 13.693. The academic team adopted a completely different methodology from that employed by the Strike Force Parrabell team. They did not use or rely upon the 10 bias crime indicators, or on the BCIF. They expressly declined to endorse the BCIF, instead devising a set of concepts and definitions of their own.<sup>3228</sup>
- 13.694. Nevertheless, notwithstanding their entirely different methodology, the academic team arrived at similar numerical conclusions to the Strike Force Parrabell officers (as discussed later in this Chapter).
- 13.695. Before proceeding with my discussion of the academic review, I note that the Inquiry was assisted by oral and written evidence of Dr de Lint and Dr Dalton, both of whom were unrepresented. The Inquiry’s correspondence with the three academics, in which they were given the opportunity to provide comment as to the issues canvassed in this Chapter, is discussed in **Chapter 9**.

### Purpose and scope of academic review

- 13.696. I have discussed the general purpose of the academic review above. Further to that discussion, I note the following descriptions of the purpose and scope of the academic review in the documentary evidence before me.

<sup>3224</sup> Exhibit 6, Tab 31, Supply Agreement with Flinders University – Contract Number 001286, executed 30 September 2016 (SCOI.77325).

<sup>3225</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 4 (SCOI.76959).

<sup>3226</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 5 (SCOI.76959), where the BCIFs are referred to as “case summaries”. See also Exhibit 6, Tab 76, Email correspondence between Craig Middleton, Shoba Sharma and others, 10–16 November 2016 (SCOI.74377); Exhibit 6, Tab 78, Email correspondence between Craig Middleton and Derek Dalton, 13 December 2016 (SCOI.74391).

<sup>3227</sup> Exhibit 6, Tab 258, Response to Expert Reports by Willem de Lint, Undated, 1 (SCOI.82365); Transcript of the Inquiry, 2 March 2023, T2653.33–35 (TRA.00031.00001).

<sup>3228</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 5–6 (SCOI.76959); Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 68 n 20, 70–71 (SCOI.02632).



- 13.697. First, the RFQ, issued on 22 July 2016, outlined the objective of the academic review as follows (emphasis added):<sup>3229</sup>

*The objective of the RFQ is to assist the NSW Police Force in their conduct of Strikeforce Parrabell. ...*

*Specifically, the RFQ seeks independent advice, analysis and commentary on the overall methodology and conclusions of the Strikeforce, from a qualified and credible, independent researcher/research team.*

- 13.698. Clause 4.1 of the RFQ stated that the “services required” from the academic team were (emphasis added):<sup>3230</sup>

- *A collaborative approach to working with NSWPF on Strikeforce Parrabell*
- *Independent advice on Strikeforce Parrabell’s (SP) review of the identified 88 deaths during the late 70s, 80s, 90s to early 2000s*
- *An examination of the process and method used to conduct [Strike Force Parrabell] including the application of NSWPF Bias Crime indicators*
- *Access and review original source materials as required*
- *Research and provide an introductory section detailing the historical context of policing during this period and a commentary on investigating deaths of men identified as gay or transgender during this period*
- *Provide a conclusion including comment on the efficacy and quality of [Strike Force Parrabell]’s review, the outcomes of the review, does the researcher agree with [Strike Force Parrabell] outcomes/ determinations?*
- *Provide recommendations for future policing, community engagement, training, development of bias crime indicators/processes*
- *Provide relevant recommendations for future directions of the GLLO program*
- *Produce and publish a research article*

<sup>3229</sup> Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project – RFQ Number: 001286, 22 July 2016, cl. 2.2 (SCOI.76961.00007).

<sup>3230</sup> Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project – RFQ Number: 001286, 22 July 2016, cl. 4.1 (SCOI.76961.00007); See also Exhibit 6, Tab 24, Terms and Conditions of Supply for Strike Force Parrabell Project: Supply Agreement – RFQ Number: 001286, Undated, Schedule 1, cl. 2.1 (SCOI.76961.00008).

- *Throughout this entire process maintain close contact with the Corporate Sponsor Sexuality & Gender Diversity and the Senior Programs Officer (Sexuality & Gender Diversity).*

13.699. Secondly, Schedule 1 of the Draft Supply Agreement, which was circulated with the RFQ, noted that (emphasis added):<sup>3231</sup>

*There is significant media interest in the work of Strikeforce Parrabell and it is strongly suggested that the engagement of independent and qualified external researchers will add a completely independent perspective to outcomes and findings.*

13.700. As these highlighted extracts from the RFQ and Draft Supply Agreement illustrate, the notion of “independence” in the academic review was heavily emphasised in the initial stages of the tender process.

13.701. Thirdly, the “independence” of the academic review was also prominent in the Police Report, where the NSWPF described the purpose of engaging the academic team as follows (emphasis added):<sup>3232</sup>

*The purpose of academic review was to provide an independent account of Strike Force Parrabell’s systemic validity; where possible, identify evidence of poor or biased police investigations; guide future policing strategies of community engagement; and develop a more suitable bias crime identification process.*

13.702. Fourthly, in the Academic Report, the academic team described their task as follows:<sup>3233</sup>

*The principal task of the academic team was to comment on the efficacy and quality of [Strike Force Parrabell]’s review and to comment on the extent of agreement with the [Strike Force Parrabell] outcomes and determinations. Additionally, the academic team was to provide recommendations for future policing, community engagement, training and development of bias crime indicators and processes.*

13.703. Fifthly, in the Dalton/de Lint Statement, Dr de Lint and Dr Dalton described their brief as:<sup>3234</sup>

- a. A “review [of] the NSWPF findings concerning the determination of these crimes as involving or not involving hate/bias”;

<sup>3231</sup> Exhibit 6, Tab 24, Terms and Conditions of Supply for Strike Force Parrabell Project: Supply Agreement – RFQ Number: 001286, Undated, Schedule 1, cl. 1.3 (SCOI.76961.00008).

<sup>3232</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 14 (SCOI.02632).

<sup>3233</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 56 (SCOI.02632).

<sup>3234</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 4 (SCOI.76959).

- b. To “provide independent advice on [Strike Force Parrabell]’s review of these investigations”;
  - c. To “comment on the extent of agreement with the [Strike Force Parrabell] outcomes and determinations”; and
  - d. To “provide recommendations for future policing, community engagement, training and development of bias crime indicators and processes.”
- 13.704. These descriptions of the scope and purpose of the academic review need to be kept in mind when considering the methodology ultimately implemented by the academic team.
- 13.705. As Counsel Assisting observed, three points may be made at the outset.<sup>3235</sup>
- 13.706. First, there is an obvious tension in the RFQ between the requirement for a “collaborative approach” and the requirement of “independence”.<sup>3236</sup>
- 13.707. Secondly, the RFQ envisaged that the academic team would “access and review original source materials as required”. This did not occur. In fact, the academic team reviewed only the BCIFs completed by Strike Force Parrabell.<sup>3237</sup>
- 13.708. Thirdly, the Parrabell Report acknowledged that the services described in the fifth, seventh and eighth bullet points of clause 4.1 of the RFQ were not ultimately pursued.<sup>3238</sup>

### Timeline of the academic review

- 13.709. Upon being awarded the tender, Dr Dalton acted as liaison between the NSWPF and the academic team.<sup>3239</sup>
- 13.710. On 20 and 21 October 2016,<sup>3240</sup> Dr Dalton undertook an initial two-day exploratory trip to Sydney to meet with the Strike Force Parrabell team.<sup>3241</sup> The purpose of this meeting was for Dr Dalton to spend some time with the BCU and the Strike Force Parrabell team, and to understand the origins, history and methodology of Strike Force Parrabell.<sup>3242</sup> During his time in Sydney, Dr Dalton met with Mr Willing (then Homicide Commander), Assistant Commissioner Crandell, Sergeant Steer and Ms Braw.<sup>3243</sup>

<sup>3235</sup> Submissions of Counsel Assisting, 7 June 2023, [1180]–[1183] (SCOI.84380).

<sup>3236</sup> Submissions of Counsel Assisting, 7 June 2023, [1181] (SCOI.84380).

<sup>3237</sup> Submissions of Counsel Assisting, 7 June 2023, [1182] (SCOI.84380).

<sup>3238</sup> Submissions of Counsel Assisting, 7 June 2023, [1183] (SCOI.84380).

<sup>3239</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 4 (SCOI.76959).

<sup>3240</sup> Exhibit 6, Tab 74, Draft agenda for Derek Dalton visit, 21 October 2016 (SCOI.78710).

<sup>3241</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 4 (SCOI.76959).

<sup>3242</sup> Exhibit 6, Tab 69, Email correspondence between Jacqueline Braw, Anthony Crandell, Shoba Sharma and Geoffrey Steer, 11 October 2016 (SCOI.74335).

<sup>3243</sup> Exhibit 6, Tab 69, Email correspondence between Jacqueline Braw, Anthony Crandell, Shoba Sharma and Geoffrey Steer, 11 October 2016 (SCOI.74335); Exhibit 6, Tab 74, Draft agenda for Derek Dalton visit, 21 October 2016 (SCOI.78710).

- 13.711. In around November 2016, the NSWPF began sending the academic team the completed BCIFs for their review.<sup>3244</sup> In around December 2016, each member of the academic team began to review the completed BCIFs independently from each other.<sup>3245</sup>
- 13.712. On 27 February 2017, the NSWPF finalised their assessment of the deaths and sent all the final, completed BCIFs to the academic team for their review.<sup>3246</sup>
- 13.713. On 22 March 2017, Dr Dalton wrote to Assistant Commissioner Crandell and informed him that the academic team:<sup>3247</sup>

*... have almost finished agreeing on our codings. This was a much more laborious process than first envisaged [and required unqualified quality control at our end]. Dr Tyson is reviewing some cases so that the 3 of us can reach absolute agreement about what we think (Like the NSW police, we have ultimately decided that we have to force ourselves to “agree” and reach a consensus. Otherwise the report will be potentially confusing).*

- 13.714. In around June 2017, the academic team began to review the Taradale cases. On 5 June 2017, Dr Dalton wrote to Superintendent Middleton saying, as to the case of John Russell:<sup>3248</sup>

*We are being driven mad by Russell (36). You guys say Suspected Bias Crime] (I agree with that 100%) but applying our classificatory tool is problematic. Coroner says he was thrown by person(s) unknown, but we think that [Insufficient Information] might be a better classification. And yet that clashes with the coronial ruling.*

- 13.715. On 29 June 2017, the academic team provided the NSWPF with the “first draft” of their final report, and wrote (emphasis added):<sup>3249</sup>

*We have diligently tried to strike a fair balance in composing this report. Sometimes (well, very rarely actually) we have had to criticise NSWPF but, more often than not, our sense is that we have taken pains to defend aspects of the review (e.g. we think we have explained how painstaking and thorough your review process was). However, it bears emphasizing that some inherent criticism (all of it levelled at police from a past era) will ensure our report is taken seriously by the public of NSW. We all appreciate that this report is going to be subject to rigorous scrutiny. The worst outcome for NSWPF would be for the report to be labelled/decreeed a “papering over the cracks” treatment. That would be disastrous for*

<sup>3244</sup> Exhibit 6, Tab 76, Email correspondence between Craig Middleton, Shoba Sharma and others, 10–16 November 2016 (SCOI.74377); Exhibit 6, Tab 78, Email correspondence between Craig Middleton and Derek Dalton, 13 December 2016 (SCOI.74391).

<sup>3245</sup> Exhibit 6, Tab 247, Email correspondence between Derek Dalton and Craig Middleton, 12 December 2016 (SCOI.79694).

<sup>3246</sup> Exhibit 6, Tab 90, Email from Craig Middleton to Derek Dalton, 27 February 2017 (SCOI.74455).

<sup>3247</sup> Exhibit 6, Tab 97, Email from Derek Dalton to Anthony Crandell, 22 March 2017 (SCOI.74471).

<sup>3248</sup> Exhibit 6, Tab 102, Email correspondence between Derek Dalton and Craig Middleton, 29 May–5 June 2017 (SCOI.74496).

<sup>3249</sup> Exhibit 6, Tab 106, Email correspondence between Derek Dalton, Anthony Crandell and Jacqueline Braw, 29–30 June 2017 (SCOI.74518).

*NSWPF and compromise the hard work that underpins the review that you conducted.*

*We hope that you don't ask for any content to be excised that we (the academic team) feel is a necessary inclusion in the final version. It may well be that we end up having to insist that some content remains. That said, let us cross this bridge if and when we come to it. In any event, we are keen to hear your thoughts.*

- 13.716. In July 2017, the NSWPF provided its comments on the draft report.<sup>3250</sup>
- 13.717. On 30 August 2017, the academic team provided what was to be a final draft of the Academic Report to the NSWPF.<sup>3251</sup> On 13 October 2017, following some further suggested changes by Ms Braw, a further version of the final Academic Report was circulated by the academic team to the NSWPF.<sup>3252</sup>

### The differing levels of involvement of the academic team

- 13.718. I pause to clarify the different roles of the three members of the academic team in their review, and what is meant by references to “the academic team” in this Chapter.
- 13.719. All three academics reviewed the BCIFs relating to the list of 88 deaths and engaged in the coding and scoring process.<sup>3253</sup>
- 13.720. However, the evidence demonstrates that Dr Dalton played the primary role in the academic review process, for instance:
- a. Dr Dalton was the academic who was originally approached by Ms Braw to tender for the Strike Force Parrabell review, made the decision to tender for the work, and was the sole academic involved in negotiating the tender and preparing the tender documentation;<sup>3254</sup>

<sup>3250</sup> Exhibit 6, Tab 109, Email from Jacqueline Braw to Derek Dalton, 19 July 2017 (SCOI.74542). The nature of this feedback is discussed further below.

<sup>3251</sup> Exhibit 6, Tab 115, Email from Derek Dalton to Anthony Crandell, 30 August 2017 (SCOI.74570).

<sup>3252</sup> Exhibit 6, Tab 117, Email correspondence between Derek Dalton, Anthony Crandell and Craig Middleton, 16 October 2017 (SCOI.74590).

<sup>3253</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 5 (SCOI.76959); Exhibit 6, Tab 504B, Email from Danielle Tyson to Enzo Camporeale, 5 September 2023, 1 (SCOI.85563); Exhibit 6, Tab 247, Email correspondence between Derek Dalton and Craig Middleton, 12 December 2016 (SCOI.79694).

<sup>3254</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 3 (SCOI.76959); Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint (endorsed by Associate Professor Derek Dalton), Undated, 1 (SCOI.82365).

- b. Dr Dalton was the primary point of contact with the NSWPF,<sup>3255</sup> with limited exceptions;<sup>3256</sup> and
  - c. Dr Dalton “led” the “project team”, “conducted negotiations regarding the terms of the review”, and attended the NSWPF offices in Sydney to meet with NSWPF personnel.<sup>3257</sup>
- 13.721. Dr De Lint played a significant, albeit comparatively confined, role in the review. He was the primary driver of the development of the academic team’s alternative methodology,<sup>3258</sup> but engaged in relatively limited communication with the NSWPF. For instance:
- a. Dr De Lint attended a second trip to Sydney with Dr Dalton for “further discussions”,<sup>3259</sup> but did not attend the first two-day trip;<sup>3260</sup>
  - b. Dr de Lint drafted the article titled “Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism” (‘Moral Panic’ article), with some input from Dr Dalton;<sup>3261</sup>
  - c. Dr de Lint took charge of developing the academics’ alternative methodology, including by developing a “concept matrix and definition”,<sup>3262</sup> and
  - d. Dr de Lint worked with Dr Dalton to draft the Academic Report.<sup>3263</sup>

<sup>3255</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 4 (SCOI.76959).

<sup>3256</sup> Exhibit 6, Tab 103, Email correspondence between Willem de Lint, Derek Dalton and Craig Middleton, 21–22 June 2017, 1–2 (SCOI.74503). I note that Dr de Lint and Dr Tyson were copied into email correspondence between Dr Dalton and various members of the NSWPF: see, for example, Exhibit 6, Tab 88, Email correspondence between Dr Dalton and Craig Middleton, 10–13 February 2017 (SCOI.74447) (in respect of “preliminary codings”); Exhibit 6, Tab 91, Email from Dr Dalton to Sergeant Steer, 28 February 2017 (SCOI.74458) (in respect of the BCIF); and Exhibit 6, Tab 114, Email correspondence between Dr Dalton and Craig Middleton, 9–10 August 2017 (SCOI.74561) (a request for clarification by Dr Dalton concerning a section of the Academic Report which Dr de Lint had been allocated to draft).

<sup>3257</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 4 (SCOI.76959).

<sup>3258</sup> See, e.g., Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 6 (SCOI.76959).

<sup>3259</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 5 (SCOI.76959).

<sup>3260</sup> Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint (endorsed by Associate Professor Derek Dalton), Undated, 1 (SCOI.82365).

<sup>3261</sup> See, e.g., Exhibit 6, Tab 277, Email correspondence between Nicolas Parkhill, Anthony Crandell, Jacqueline Braw, Derek Dalton and Willem de Lint, 23 February – 18 April 2018 (SCOI.80025); Transcript of the Inquiry, 1 March 2023, T2545.25–44 (TRA.00030.00001)

<sup>3262</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 6 (SCOI.76959).

<sup>3263</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 5 (SCOI.76959); Exhibit 6, Tab 97, Email from Derek Dalton to Anthony Crandell, 22 March 2017, 1 (SCOI.74471); Exhibit 6, Tab 114, Email correspondence between Dr Derek Dalton and Craig Middleton, 9–10 August 2017 (SCOI.74561).

- 13.722. Dr Tyson played a limited role in the academic review. She participated in the review of the list of 88 deaths (including reviewing the BCIFs and engaging in the scoring process and “consensus discussion”),<sup>3264</sup> and provided feedback on early drafts of the Academic Report.<sup>3265</sup> By email of 5 September 2023 to the Inquiry, Dr Tyson indicated that she had requested she not be listed as a co-author of the Academic Report due to a change of employment and “high teaching and administrative load”.<sup>3266</sup> As there is no evidence before the Inquiry to suggest that she made a substantial contribution to drafting the Academic Report, I accept her indication in this respect.
- 13.723. On the basis of the differing levels of involvement of Dr Dalton, Dr de Lint, and Dr Tyson:
- a. I consider that Dr Dalton had the highest level of involvement in communicating with the NSWPF in relation to the BCIF and navigating how the review should be conducted given the limitations in the material received by the academic team, which are canvassed below;
  - b. When I refer to the methodology of the academic team or their approach to the academic review in general (including in relation to the level of collaboration and consensus between the academic team and the NSWPF), I intend to refer to the work of Dr Dalton and Dr de Lint. I consider that Dr Tyson played a more limited role in the overall strategy of the academic review, and development of the academic team’s alternative methodology, and note that there is no evidence before the Inquiry to suggest that she was involved in these more strategic aspects of the review; and
  - c. When I refer to the contents of the Academic Report or actions of the academic team, I intend to attribute these matters to Dr Dalton and Dr de Lint, except to the limited extent that they reflect Dr Tyson’s involvement.

## Rejection of the BCIF

- 13.724. As outlined earlier in this Chapter in respect of the ‘Police Methodology’, the academic team considered that the BCIF was not a suitable instrument for the assessment of bias crimes. How and why the academic team reached that view is set out in the following paragraphs.

<sup>3264</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 6 (SCOI.76959), See also Exhibit 6, Tab 504B, Email from Danielle Tyson to Enzo Camporeale, 5 September 2023, 1 (SCOI.85563); Exhibit 6, Tab 247, Email correspondence between Derek Dalton and Craig Middleton, 12 December 2016 (SCOI.79694).

<sup>3265</sup> Exhibit 6, Tab 504B, Email from Danielle Tyson to Enzo Camporeale, 5 September 2023, 1 (SCOI.85563).

<sup>3266</sup> Exhibit 6, Tab 504B, Email from Danielle Tyson to Enzo Camporeale, 5 September 2023, 1 (SCOI.85563).

13.725. In the Academic Report, the academic team wrote:<sup>3267</sup>

*we commenced our assessment of the [Strike Force Parrabell] review with a query concerning the authorities cited by the police to support the use of the BCIRF instrument ... We were informed ... [by the NSWPF] that the factors were used as prompts and that there is no necessary correlation between or weighting of any of the factors and a determination of bias.*

13.726. Upon attempting to use the BCIF in categorising cases, the academic team found that it was “too ambiguous”<sup>3268</sup> and produced a lack of distinction between categories of bias, such as evidence of the character of motivation, that they considered to be germane to their investigation.<sup>3269</sup>

13.727. At some stage, the academic team determined that they needed “to get behind” the BCIF and “re-interpret the summary evidence” (i.e., the BCIFs) they were given.<sup>3270</sup> According to the Academic Report:<sup>3271</sup>

*As we scanned the summaries, we became aware that we needed to distinguish the direction of the animus, because it appeared that there were many cases in which there was a potential to over-categorise anti-gay bias. We determined that a proper evaluation of the cases required more than a reproduction of the methodology used by the NSWPF and its BCIRF, comprising of an ‘indicative’ list of ten factors. In our re-assessment, we found it necessary to develop a short list of necessary, research-informed factors directly from a definition of bias crime that could then be drawn down to mostly binary categorisations.*

13.728. However, the academic team did not “get behind” the BCIF in the sense of seeking or obtaining access to the original case holdings on which the BCIFs were based.<sup>3272</sup>

13.729. The Academic Report said that “[t]he detectives scored each case using the indicators on the BCIRF”.<sup>3273</sup> However, as became apparent in the oral evidence of both Dr Dalton and Dr De Lint, the Strike Force Parrabell officers had not actually engaged in a “scoring” process in the usual sense of that word.<sup>3274</sup>

<sup>3267</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 70 (SCOI.02632). See also Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 5 (SCOI.76959).

<sup>3268</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 5 (SCOI.76959).

<sup>3269</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 70–71 (SCOI.02632).

<sup>3270</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 71 (SCOI.02632).

<sup>3271</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 71 (SCOI.02632).

<sup>3272</sup> Transcript of the Inquiry, 28 February 2023, T2400.37–43 (TRA.00029.00001); Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint, Undated, 2 (SCOI.82365); Transcript of the Inquiry, 2 March 2023, T2653.33–2654.29 (TRA.00031.00001).

<sup>3273</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 69 (SCOI.02632).

<sup>3274</sup> Transcript of the Inquiry, 28 February 2023, T2383.14–36 (TRA.00029.00001); Transcript of the Inquiry, 2 March 2023, T2656.45 (TRA.00031.00001).



- 13.730. Dr Dalton stated that his understanding was that the officers in Strike Force Parrabell:<sup>3275</sup>

*...read the case material that they had and they used the Bias Crime Indicator Form, they would occasionally tick it, type notes, et cetera, do various things with it, and, as a result of that, determine the cases.*

- 13.731. He did not consider that the language of “scoring” had been used in the sense of attributing numbers or scores.<sup>3276</sup> Rather, the Strike Force Parrabell officers would read the material available for a given case and “arrive at a view”, “intuitive[ly]”.<sup>3277</sup>

- 13.732. Dr de Lint said that the word “scored” merely referred to the Strike Force Parrabell officers filling in the BCIF, with answers to various questions; it was “not a scoring in the sense of a numerical ranking”.<sup>3278</sup>

- 13.733. I interpolate to record, as discussed elsewhere, that the academics were plainly under the misapprehension that multiple different officers filled out the 86 BCIFs. (Assistant Commissioner Crandell had the same incorrect understanding, as is apparent both from the Police Report, which he authored, and his own written and oral evidence to this Inquiry.) In fact, as revealed by the evidence in September 2023 from Detective Acting Sergeant Bignell in particular, that was not so. Every single one of the BCIFs was in fact filled out solely by Detective Acting Sergeant Bignell himself.

- 13.734. The academic team said they were “unable to follow the NSWPF in applying the BCIF to score the cases”, due to various problems which they encountered.<sup>3279</sup> They expressed their reservations in footnote 20 of the Academic Report:<sup>3280</sup>

*Whilst the NSWPF placed great faith in this instrument, the academic team were surprised to discover that scarcely any academic literature exists that has evaluated or critiqued this instrument. Indeed, our search efforts could not even locate one academic article. Nor could the NSWPF supply such an article when requested to do so. In the face of an apparent dearth of such literature, the academic team are reluctant to endorse these indicators. The academic team are not decreeing they are wholly deficient and needing to be dropped, but we would have liked to garner independent evidence that they are indeed ‘best practice’ for law enforcement. We note here that with few choices available (the UK model is over-inclusive because it pivots on victim perceptions), the NSWPF worked with this instrument despite [no] empirical evidence for its efficacy.*

<sup>3275</sup> Transcript of the Inquiry, 28 February 2023, T2383.26–31 (TRA.00029.00001).

<sup>3276</sup> Transcript of the Inquiry, 28 February 2023, T2383.36 (TRA.00029.00001).

<sup>3277</sup> See the discussion of Police Methodology earlier in this Chapter; Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 69 (SCOI.02632); Transcript of the Inquiry, 28 February 2023, T2384.11–2385.41 (TRA.00029.00001).

<sup>3278</sup> Transcript of the Inquiry, 2 March 2023, T2656.45 (TRA.00031.00001).

<sup>3279</sup> Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint, Undated, 4–5 (SCOI.82365).

<sup>3280</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 68 n 20 (SCOI.02632).

13.735. Dr Dalton agreed that this was the view of the entire academic team.<sup>3281</sup> He agreed not only that the academic team were reluctant to endorse the indicators, but also that they did not, in fact, endorse them. Instead, the academic team pointed out the shortcomings of the instrument.<sup>3282</sup> Dr de Lint similarly agreed that the academic team had been reluctant to endorse the BCIF indicators.<sup>3283</sup>

13.736. The Lovegrove Report noted the academic team’s reservations about the BCIF as follows:<sup>3284</sup>

*The academic team does not regard the BCIF as adequate to the task for two reasons. First, it is accompanied by no evidence regarding its reliability and validity; this includes the constituent elements themselves and the assessments made in relation to these elements considered individually and together ...*

*Second, the academic team asserts that as an instrument for the identification of hate, the BCIF is not soundly based or sufficiently nuanced. Assessments not based on key elements of bias as a measure are too crude. With this, they say, the BCIF does not differentiate between different expressions of hate, which reveal variation in motive and have different implications for certainty of classification and for social policy and, consequently (from this perspective), the potential to ‘over-categorise’ gay bias.*

13.737. In the Academic Report, the academic team put it this way: “Whilst we most often agreed on the result, we were less enthused about the means.”<sup>3285</sup>

13.738. In his oral evidence, Dr Dalton was more blunt. He said that “to have adopted the instrument was the first step to misusing it, if that makes sense”,<sup>3286</sup> and he described the BCIF as “a pretty appalling instrument”.<sup>3287</sup>

13.739. The academic team’s concerns with the BCIF were not limited to the abstract; they also had concerns with the manner in which the BCIFs were completed.

13.740. At an early stage, Dr Dalton and Sergeant Steer corresponded about the way in which Strike Force Parrabell officers were using the BCIF. On 12 December 2016, following a meeting about the progress of the Strike Force Parrabell review, Dr Dalton wrote to Sergeant Steer that he “really appreciate[d] what you said about the ‘tick sheet’ approach and that the suggestion that the Parrabell detectives seem to have misused the instrument”.<sup>3288</sup>

<sup>3281</sup> Transcript of the Inquiry, 28 February 2023, T2395.41–44 (TRA.00029.00001).

<sup>3282</sup> Transcript of the Inquiry, 28 February 2023, T2397.45–2398.6 (TRA.00029.00001); Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 70–71 (SCOI.02632).

<sup>3283</sup> Transcript of the Inquiry, 3 March 2023, T2659.17 (TRA.00032.00001).

<sup>3284</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [119]–[120] (SCOI.82366.00001).

<sup>3285</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 71 (SCOI.02632).

<sup>3286</sup> Transcript of the Inquiry, 1 March 2023, T2442.6–8 (TRA.00030.00001).

<sup>3287</sup> Transcript of the Inquiry, 1 March 2023, T2446.38–40 (TRA.00030.00001).

<sup>3288</sup> Exhibit 6, Tab 246, Email from Derek Dalton and Geoffrey Steer, 12 December 2016, 1 (SCOI.79856).

- 13.741. In February 2017, Dr Dalton wrote to Sergeant Steer to ask for more information about the BCIF (emphasis in original):<sup>3289</sup>

*We fully appreciate that the instrument is just used as “tick sheet” or guide to identifying a range of BLAS crimes [which is fine], but we really need to know if you have any **data or research findings** (that you may have gleaned whilst on training in the USA perhaps?) that speaks to the **reliability** and grounding that underpins its **accuracy** use [sic] as an instrument.*

- 13.742. Sergeant Steer’s reply pointed out that his position was quite different. He said that if the BCIF indicators “are used as a checklist they do not work”.<sup>3290</sup> In reply to that email, Dr Dalton wrote:<sup>3291</sup>

*To be clear ... I completely appreciate that the indicators are not a definitive checklist or tick sheet. Mind you, the detectives did somewhat [partially] use them in this way as a tool to identifying bias.*

- 13.743. In oral evidence, Dr Dalton identified numerous weaknesses in the completed BCIFs that were received by the academic team, including the following:

- a. He emphasised that the completed BCIFs were “often rich in details, but not always”.<sup>3292</sup>
- b. He agreed that the descriptions in the ‘General Comments’ sections were “a subjective view on the part of the officer or officers who are handling each particular case”.<sup>3293</sup>
- c. He said that “the wider problem is the paucity of data that the instrument is applied to. You would often read these cases, sometimes they would run to 20 pages, and there was almost nothing in it - they were enigmatic.”<sup>3294</sup>
- d. He agreed that the BCIF instrument itself was the source of the problem and that that was why, in the end, the academic team declined to endorse it.<sup>3295</sup>

- 13.744. Dr Dalton was not prepared to go so far as to say that, because of such problems, Strike Force Parrabell was “beyond redemption”.<sup>3296</sup> He said he thought the NSWPF “were doing the best they could with good intentions”.<sup>3297</sup>

<sup>3289</sup> Exhibit 6, Tab 248, Email chain between Geoffrey Steer, Derek Dalton and Danielle Tyson, 2 (SCOI.79391).

<sup>3290</sup> Exhibit 6, Tab 248, Email chain between Geoffrey Steer, Derek Dalton and Danielle Tyson, 2 (SCOI.79391).

<sup>3291</sup> Exhibit 6, Tab 248, Email chain between Geoffrey Steer, Derek Dalton and Danielle Tyson, 1–2 (SCOI.79391).

<sup>3292</sup> Transcript of the Inquiry, 28 February 2023, T2385.20–21 (TRA.00029.00001).

<sup>3293</sup> Transcript of the Inquiry, 28 February 2023, T2386.2–17 (TRA.00029.00001).

<sup>3294</sup> Transcript of the Inquiry, 28 February 2023, T2398.41–23999.3 (TRA.00029.00001).

<sup>3295</sup> Transcript of the Inquiry, 1 March 2023, T2443.43–47 (TRA.00030.00001).

<sup>3296</sup> Transcript of the Inquiry, 1 March 2023, T2447.25–34 (TRA.00030.00001).

<sup>3297</sup> Transcript of the Inquiry, 1 March 2023, T2447.37–40 (TRA.00030.00001).

## Development of alternative methodology

13.745. In light of the conceptual and practical difficulties with the BCIF, the academic team decided that it was necessary to develop their own approach for reviewing the completed BCIFs.

13.746. The new approach has been described in different ways by those who gave evidence to the Inquiry. Professor Asquith describes the academic team’s framework as a “typology”.<sup>3298</sup> Associate Professor Lovegrove refers to it as a “classificatory framework”.<sup>3299</sup> Ms Coakley refers simply to the academic team’s “categories”.<sup>3300</sup> In the Academic Report itself, the academic team expressed their approach this way:<sup>3301</sup>

*In our re-assessment, we found it necessary to develop a short list of necessary, research-informed factors directly from a definition of bias crime that could be drawn down to mostly binary categorisations.*

13.747. It is not clear quite when the academic team developed their own methodology, but it seems that they had started doing so by February 2017.<sup>3302</sup> I explore this process of development below.

13.748. First, the academic team formulated its own definition of “bias crime”, said to have been based on a review of the literature, from which they took “selectively”.<sup>3303</sup> The quality of this literature review is discussed below. The definition of “bias crime” arrived at by the academic team was as follows (emphasis in original):<sup>3304</sup>

*Bias crime:*

*a. expresses a categorical animus (directed at a person or group on the basis of his/ her perceived identification with a vulnerable group).*

*b. produces an act that intentionally, by way of criminal predation on the basis of that categorical animus, causes harm to that person or group.*

*c. is mitigated or aggravated by an offender’s contemporaneous associations that are linked by a commitment of denunciatory non-identification with the vulnerable person or group.*

13.749. The Academic Report went on to discuss each limb of this definition, in detailed and somewhat dense terms.<sup>3305</sup>

<sup>3298</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [176] (SCOI.82368.00001).

<sup>3299</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [116], [119], [125] (SCOI.82366.00001).

<sup>3300</sup> Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [40] (SCOI.82367.00001).

<sup>3301</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 71 (SCOI.02632).

<sup>3302</sup> See Exhibit 6, Tab 92, Document titled ‘Notes Bias3’, Undated (created 28 February 2017), [3]–[4] (SCOI.77540).

<sup>3303</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 81–82 (SCOI.02632).

<sup>3304</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 82–83 (SCOI.02632).

<sup>3305</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 83–84 (SCOI.02632).

- 13.750. In oral evidence, Dr de Lint agreed that under the first limb of the definition, it is essential that the relevant act expresses an animus, by some form of communication.<sup>3306</sup> His reasoning was that without some trace of communication, a bias crime could not be discovered.<sup>3307</sup> In the absence of such a “communication”, a case could not be classified as a “bias crime”.<sup>3308</sup> However, he did not consider that this would inevitably result in a low number of cases meeting the threshold.<sup>3309</sup>
- 13.751. Secondly, the academic team developed a “short list of necessary, research-informed factors”, “that could then be drawn down to mostly binary categorisations”.<sup>3310</sup> According to Dr Dalton and Dr de Lint the “key concepts” were as follows:<sup>3311</sup>
- a. The “degree or value of animus” (proactive or reactive);
  - b. The “target” (anti-gay or other) of the animus; and
  - c. The “communication of the bias in association with others” (yes or no).
- 13.752. Thirdly, the academic team conceived of three “types” of bias crimes, as follows (emphasis in original):<sup>3312</sup>

***Type A Bias Crime** denotes events which have two features. First, offenders proactively seek out opportunities in which to brutally express their animus. Second, they communicate and associate with others on the basis of this animus.*

...

***Type B Bias Crime** denotes events in which offenders proactively seek out opportunities to brutally express their animus, but do so furtively or in isolation from others, and act individually against victims.*

...

***Type C Bias Crime** denotes an event in which an offender is reacting with criminal violence on the basis of the victim’s perceived identity in an included category, usually as an over-reaction to a perceived slight against his identity.*

<sup>3306</sup> Transcript of the Inquiry, 2 March 2023, T2691.3 (TRA.00031.00001).

<sup>3307</sup> Transcript of the Inquiry, 2 March 2023, T2691.30–34 (TRA.00031.00001).

<sup>3308</sup> Transcript of the Inquiry, 2 March 2023, T2691.39–45 (TRA.00031.00001).

<sup>3309</sup> Transcript of the Inquiry, 2 March 2023, T2692.4 (TRA.00031.00001).

<sup>3310</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 5 (SCOI.76959).

<sup>3311</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 5 (SCOI.76959).

<sup>3312</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 89 (SCOI.02632); see also Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 5 (SCOI.76959).

- 13.753. Fourthly, a “concept matrix”,<sup>3313</sup> or “checklist”<sup>3314</sup> was then developed by Dr de Lint.<sup>3315</sup> This matrix, or checklist, is reproduced below. This checklist was then used by the academic team to analyse and classify each of the cases they had to assess.<sup>3316</sup>

Type	Motivation	Indicators
A	<i>Associative and proactive</i> The offender has gone out of his way to place himself in a situation in which he can subordinate a person on the basis of his/her perceived identity <b>AND</b>	<ul style="list-style-type: none"> <li>• Witness statements, comments</li> <li>• Formalised hate associations</li> <li>• Previous existence of hate crime incidents</li> <li>• Location of incident [proximity to a ‘beat’ may be significant]</li> </ul>
	The offender has engaged in bias <i>communications</i> in the course of carrying out a harmful act or activity against a person identified by that bias, (eg. anti-gay) <b>and/or</b> the offender <i>associates</i> with others on the basis of a shared bias	
B	<i>Proactive, non-associative</i> A non-associative offender has gone out of his way to place himself in a situation in which he can subordinate a person on the basis of his/her perceived identity	
C	<i>Reactive</i> An offender has reacted to a situation in a manner that suggests that an animus towards a vulnerable group contributed to the motivation for the crime	

- 13.754. According to the Academic Report, each member of the academic team used the above method to “independently code” each of the cases before engaging a process whereby they were to “reach consensus as a team”.<sup>3317</sup> They conducted this coding exercise by reference to the definition of bias crime outlined above at [13.748].<sup>3318</sup>
- 13.755. In the Academic Report, the academic team said, of this exercise, that they “scored cases on whether we could find that the bias involved an association with others”.<sup>3319</sup> “Broadly speaking”, this meant looking for “evidence that the crime involved a communication to another perpetrator or other potential perpetrators”.<sup>3320</sup>

<sup>3313</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 6 (SCOI.76959); Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 56 (SCOI.02632).

<sup>3314</sup> *Exhibit 1, Tab 2, NSW Police Force, Strike Force Parrabell Final Report* (Report, June 2018) 89–90 (SCOI.02632).

<sup>3315</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 6 (SCOI.76959).

<sup>3316</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 90 (SCOI.02632); Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 6 (SCOI.76959).

<sup>3317</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 90 (SCOI.02632).

<sup>3318</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 90 (SCOI.02632).

<sup>3319</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 88 (SCOI.02632).

<sup>3320</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 88 (SCOI.02632).

- 13.756. However, in oral evidence, Dr Dalton clarified that the academic team did not “score” the cases, in terms of adding up numbers to reach a score. He said that “scoring” in this exercise meant “categorising”, or placing cases into “categories”, because “our instrument wasn’t about numbers, it was about the different attributes that you’ve seen”.<sup>3321</sup>
- 13.757. It appears that at some stage the methodology used by the academic team underwent some refinement. After an “initial scoring” process, the academic team undertook a further coding exercise “on the revised instrument” which was then also subject to “concordance consultation” that resulted in the “final scores”.<sup>3322</sup> The Academic Report indicates that the second coding exercise against the “revised instrument” occurred because the academic team decided to “clearly distinguish” between “anti-gay bias” and “anti-gay paedophile animus”.<sup>3323</sup> Despite some disagreement, the academic team were eventually able to reach internal consensus.<sup>3324</sup>
- 13.758. The end result of the academic team’s exercise was the categorisation of each of the 85 deaths<sup>3325</sup> into the following groups:<sup>3326</sup>
- a. Insufficient information to make a determination, or “II”;
  - b. No evidence of bias, or “NB”; or
  - c. One of two categories of bias crime, namely:
    - i. “anti-gay bias”; or
    - ii. “anti-paedophile animus”.
- 13.759. These categories of “anti-gay bias” and “anti-paedophile animus” are discussed below.
- 13.760. The cases designated as being motivated by “anti-paedophile animus” were noted separately from the cases where the academic team otherwise concluded that there was evidence of “anti-gay bias”.<sup>3327</sup> In addition, there was no equivalent of Strike Force Parrabell’s “suspected bias crime” category in the categorised utilised by the academic team.

<sup>3321</sup> Transcript of the Inquiry, 1 March 2023, T2519.46–2520.8 (TRA.00030.00001).

<sup>3322</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 90 (SCOI.02632).

<sup>3323</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 90 (SCOI.02632).

<sup>3324</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 90 (SCOI.02632).

<sup>3325</sup> The academic team did not review the cases of Kenneth Brennan, Scott Johnson and Brian Travers: Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 69–70 (SCOI.02632).

<sup>3326</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 92 (SCOI.02632).

<sup>3327</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 84–86 (SCOI.02632).

- 13.761. The 85 deaths were ultimately classified by the academic team as follows:<sup>3328</sup>
- a. Anti-gay bias: 17 cases (two unsolved, 15 solved);
  - b. Anti-paedophile animus: 12 cases (zero unsolved, 12 solved);
  - c. Insufficient Information: 33 cases (19 unsolved, 14 solved); and
  - d. No Evidence of Bias Crime: 23 cases (two unsolved, 21 solved).
- 13.762. The academic team then proceeded to further categorise the cases by “type”, namely according to whether they were a Type A, B or C crime (see above).<sup>3329</sup>
- 13.763. The academic team also volunteered the view that “for the purpose of public policy, the most serious kind of bias is proactive and associative”, or “Type A” motivated crime.<sup>3330</sup> As will become evident later in this Chapter, Professor Asquith expressed a very different view.
- 13.764. The first draft of the Academic Report was provided to Assistant Commissioner Crandell on 29 June 2017.<sup>3331</sup> Subsequent revised drafts were not substantially different, in terms of these various categorising methods adopted by the academic team.
- 13.765. Assistant Commissioner Crandell appears to have had no concerns with the approach of the academic team in this regard; his evidence was:<sup>3332</sup>

*The methodology, protocols and arrangements pursuant to which the Flinders University team were to, and/or did, carry out their respective tasks is outlined on the academic review which is annexed to the Strike Force Parrabell Final Report. I had general discussions with the Flinders University academic team in the preparation of the academic review in relation to their findings. I had no oversight of the Flinders University academic team’s methodology or conclusions. From my review of the report and my discussions with the members of the Flinders University team, I have no concerns about the validity of their approach.*

## “Anti-gay bias” and “anti-paedophile animus”

### Origins and rationale of this distinction

- 13.766. In addition to developing three categories of bias (namely, insufficient information, no evidence of bias and bias crime), the academic team drew a distinction between “anti-gay bias” and “anti-paedophile animus” (as noted above).

<sup>3328</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 92 (SCOI.02632).

<sup>3329</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 93–94 (SCOI.02632).

<sup>3330</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 88 (SCOI.02632).

<sup>3331</sup> See above at [13.715].

<sup>3332</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [92] (SCOI.76961).



- 13.767. The academic team ultimately categorised 12 deaths as “anti-paedophile animus”.<sup>3333</sup> However, they began their discussion of these deaths in the Academic Report by reference to seven such cases, in which young men between the ages of 15 and 25 killed older men aged 45 years or older.<sup>3334</sup> These cases appear to have prompted the academic team to consider drawing the following distinction:<sup>3335</sup>

*It seemed apparent or at least more than plausible that the animus that was present was directed at men who were accused or perceived to have been sexually exploiting boys, whatever the facts. In some cases it also appeared as though a strong animus against homosexual paedophiles may have developed from historical sexual abuse. It is not clear to us that the bias expressed in these cases was motivated against homosexuality per se as against homosexual men that were assumed, rightly or wrongly, to be paedophiles.*

- 13.768. In his oral evidence, Dr Dalton said: “It seems to me that if you’re attacking someone and you’re doing so because you hate paedophiles, as opposed to whether you just hate gay people, that the distinction is worth preserving”.<sup>3336</sup> He explained some of the complexity with which the academic team was grappling:<sup>3337</sup>

*...it gets really messy, because back in the ‘90s, et cetera, for some men who hated homosexuals, a paedophile and a rock spider and a poofter and a this and a that, they were all inter-dispersed and they made no distinction between the two.*

- 13.769. Dr de Lint similarly expressed reservations about the distinction, in the course of his oral evidence. He said: “It’s a – it’s a very fraught issue, problem, and I’m – I’ve never been very comfortable with it, you know, even although it’s there”.<sup>3338</sup>

- 13.770. In the Academic Report itself, the academic team gave various explanations of its reasons for this distinction, not always consistently. One statement justified the distinction by reference to “public policy”, as follows:<sup>3339</sup>

*We reasoned is that [sic] it is not sound public policy to conflate an animus towards homosexual paedophilia and an animus towards homosexuals. There are not too many social analysts who would want to support the historical slander that gays and paedophiles can be understood under a common moniker. Failing to distinguish the direction of animus and, as a consequence, over-including anti-paedophile animus under a straightforward anti-gay animus would be to lend inadvertent support to this historical slander.*

<sup>3333</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 92, 97 (SCOI.02632).

<sup>3334</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 84 (SCOI.02632).

<sup>3335</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 84 (SCOI.02632).

<sup>3336</sup> Transcript of the Inquiry, 28 February 2023, T2413.5–8 (TRA.00029.00001).

<sup>3337</sup> Transcript of the Inquiry, 28 February 2023, T2411.15–19 (TRA.00029.00001).

<sup>3338</sup> Transcript of the Inquiry, 2 March 2023, T2706.25–27 (TRA.00031.00001).

<sup>3339</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 85 (SCOI.02632).

- 13.771. The academic team reiterated at different points that homosexuality and paedophilia are “not synonymous” and that it would be simply wrong to categorise anti-paedophile animus “generically as anti-gay” if an offender is targeting a victim based on their belief that the person is a paedophile.<sup>3340</sup> The academic team sought to illustrate their point by way of an analogy:<sup>3341</sup>

*For instance, we believe that a person who acts out once in sudden violence without planning on apparent animus or fear toward a much older male may well not be homophobic just, as a woman who acts out aggressively against an unwanted sexual solicitation by a male is not necessarily anti-heterosexual.*

- 13.772. Dr Dalton was asked whether he would endorse and adopt that analogy. After initially replying that he “didn’t write those sentences”, he was pressed about whether he considered this to be a suitable analogy. He replied: “I guess so”.<sup>3342</sup>
- 13.773. A second reason for the distinction appears to have arisen from a concern that the results not “mis-categoris[e]” or “over-categoris[e]” the instances of bias related crimes, and that there be a “concordance between offender motivation and target category”.<sup>3343</sup> Such over-recording may occur, according to the academic team, “where the *subtlety* of that motivation cannot be registered” (emphasis in original).<sup>3344</sup> As was submitted by Counsel Assisting, the concerns about over-recording echo the academic team’s views on “moral panic”, which are addressed below.
- 13.774. In the Academic Report, the academic team used the term “anti-paedophile animus” to “refer to a (greater than usual or vigilante) anti-paedophile animus toward homosexually attracted paedophiles”.<sup>3345</sup> They suggested that “[i]t helps if one thinks of anti-paedophile animus as sitting on a continuum of gay hate bias”.<sup>3346</sup> As Counsel Assisting observed, why this might be so was not explained.
- 13.775. The academic team considered that when “anti-paedophile animus” coalesced with “anti-homosexual bias”, it can produce a “particularly potent form of animus”.<sup>3347</sup> However, the academic team also conceded that “disentanglement” of one form of animus from the other is “not straightforward”.<sup>3348</sup> Elsewhere, the academic team suggested that where both forms of animus are at play, there would be a “primary animus” that needs to be distinguished from the “secondary animus”.<sup>3349</sup>

<sup>3340</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 51 (SCOI.02632).

<sup>3341</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 50–51 (SCOI.02632).

<sup>3342</sup> Transcript of the Inquiry, 28 February 2023, T2415.27–2416.1 (TRA.00029.00001).

<sup>3343</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 51 (SCOI.02632).

<sup>3344</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 50 (SCOI.02632).

<sup>3345</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 84–85 (SCOI.02632).

<sup>3346</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 84–85 (SCOI.02632).

<sup>3347</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 85 (SCOI.02632).

<sup>3348</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 85 (SCOI.02632).

<sup>3349</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 86 (SCOI.02632).

- 13.776. Assistant Commissioner Crandell’s views on this issue were much more straightforward. He said he shared the stated desire of the academic team to avoid conflating homosexuality with paedophilia. However, his view was simply that: “I felt that if a perpetrator believed that all gay men were homosexual – sorry, were paedophile [sic], then it was still gay hate, from my perspective.”<sup>3350</sup>
- 13.777. In that evidence, Assistant Commissioner Crandell reiterated concerns to which he had earlier referred in his statement:<sup>3351</sup>

*I also note that I did not wish for the ‘anti-paedophile bias’ to be included and referred to as part of Strike Force Parrabell. I was conscious that this may suggest a connection between homosexuality and paedophilia, which is not synonymous, is erroneous and often broadly misunderstood. However, the animus towards paedophilia was subsequently included in the academic review because of perceptions at the time, which the academics believed were often independent or inseparable from the animus towards homosexuality due to attitudes and widespread ignorance of the times.*

### The experts’ views

- 13.778. The academic team’s “anti-paedophile animus” distinction was the subject of attention by the expert witnesses who gave evidence before the Inquiry.
- 13.779. Associate Professor Lovegrove discussed this distinction as follows:<sup>3352</sup>

*Now to the distinction that the academics make in respect of anti-gay bias and anti-paedophile animus. The argument here is that it is important to distinguish between a pure anti-gay hate and an anti-paedophile hate. The argument is that these two categories sometimes get conflated in the minds of perpetrators, as a result producing a particularly potent hatred. The academic team insist that the two must be distinguished on public policy grounds, namely, that not making the distinction is to perpetuate the slander that they are one and the same people. This is surely problematic. If the aim is to identify gay-hate crime, then motive counts whether or not it is based on a misperception. And in situations where a paedophile is involved, the ‘gay’ component of the bias may not be expressed either at or outside of the scene of the crime. To the offender this may be self-evident.*

...

<sup>3350</sup> Transcript of the Inquiry, 9 December 2022, T983.7–11 (TRA.00014.00001).

<sup>3351</sup> Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [72] (SCOI.76961).

<sup>3352</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [124], [130]–[132] (SCOI.82366.00001).

*As noted above ... , the academic team observed: ... a variety of animuses at play ... the team wanted to capture the element of paedophile hatred... ”. This leads one to infer that where both anti-gay and anti-paedophile hatred were at play, there was a prevailing team disposition to preference the classification of paedophile over gay.*

*It appears that any offenders who took it as self-evident that most paedophiles were in fact gay (an assumption unexpressed at the scene of the crime) would not be counted as anti-gay. The academic team’s discussion of the case of Tuckey illustrates the problem “... when a crime is categorised (in this case as Anti-paedophile because the killer used the terms ‘poofster’ and ‘rock spider’ to describe the victim)”. The academic team reach this conclusion, although in the offender’s mind the two were apparently closely associated and the animus expressed at the scene was joint, and although the academic team acknowledges that at the time of the offending the presumption was certainly common among the community of potential perpetrators.*

*In these circumstances one might have thought the more reasonable approach would have been to categorise all such cases as anti-gay, unless there was clear evidence to the contrary. Of course, this would carry the error of over-inclusion, just as their approach carries the error of under-inclusion. Yet in the milieu of the two animuses being not uncommonly conflated, the former error might be expected to be the smaller of the two. It would appear that the academics’ approach allows for a case where minor anti-gay bias would be trumped by antipaedophile bias in the categorisation of cases.*

13.780. Professor Asquith said the following:<sup>3353</sup>

*Dalton et al then make the further distinction between anti-gay bias and anti-paedophile animus. The authors suggest that a perpetrator animated by anti-paedophile animus “...may well believe... has some tacit social approval in subjecting a man... to a violent assault”, as if, at the time of most of the Parrabell cases, this social approval was not also present in attacks against gay men.*

*This distinction between anti-gay bias and anti-paedophile animus is not articulated in other research on heterosexist and cissexist hate crimes—though Mason has discussed the Snowtown cases in light of hate crime provisions (and rejected their recognition as deserving victims)—and this distinction was not a requisite of the independent analysis undertaken by [Strike Force Parrabell].*

*The academic team claim that they make the distinction between anti-gay bias and antipaedophile animus in order to revoke the “inadvertent support to... [the]... historical slander” that “...gays and paedophiles can be understood under a common moniker”. Whilst this distinction is important*

<sup>3353</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [193]–[195], [207], [209] (SCOI.82368.00001).

*from the perspective of the rights of LGBTIQ people, for much of period under analysis in [Strike Force Parrabell], being gay and being a paedophile were considered by many as the same thing. As illustrated in my own PhD research, the popular misconception of homosexuality as paedophilia continued to enliven heterosexist and cissexist violence into the 1990s when there was an uptick in violence against gay men containing anti-paedophile verbal-textual hostility, which occurred concurrently with the Wood Royal Commission.*

...

*The distinction made by Dalton et al and de Lint and Dalton between anti-paedophile animus and anti-gay bias was confusing and seemed to imply that animus was justifiable whilst bias was not. It is also bizarre, particularly given the context at the time in Sydney, that they differentiate between anti-paedophile animus and anti-gay bias.*

...

*Again, as noted above, I do not know of any other hate crime research that has sought retrospectively to reassess alleged heterosexist hate crimes as motivated by anti-paedophile animus. This is a distinction that assumes knowledge about a victim's (perceived and recorded) criminal behaviour, and in some cases, may in fact rely on the perpetrator's own justification for their violence.*

## The 'Moral Panic' article

- 13.781. One of the “services required”, in the RFQ, was that the academic team would produce and publish a research article.<sup>3354</sup>
- 13.782. On 31 July 2020, in fulfilment of that requirement, the ‘Moral Panic’ article by Dr de Lint and Dr Dalton was published online in *Critical Criminology*.<sup>3355</sup>
- 13.783. Before turning to that article and its genesis, I draw attention to the candid evidence of Assistant Commissioner Crandell on this topic. In the Police Report, the term “moral panic” appears twice.<sup>3356</sup> Assistant Commissioner Crandell explained in his oral evidence that he had deliberately used the term “moral panic” in the Police Report to describe the real “alarm”, that was actually felt in the gay community at the time, about the violence to which they were being exposed.<sup>3357</sup> In his view the “moral panic” was both genuine and justified.<sup>3358</sup>

<sup>3354</sup> Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project – RFQ Number: 001286, 22 July 2016, cl. 4.1 (SCOI.76961.00007).

<sup>3355</sup> Exhibit 6, Tab 205, Willem de Lint and Derek Dalton, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (2021) (29)4 *Critical Criminology* 723, 16 (SCOI.82022).

<sup>3356</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 13, 15 (SCOI.02632).

<sup>3357</sup> Transcript of the Inquiry, 9 December 2022, T908.6–14 (TRA.00014.00001).

<sup>3358</sup> Transcript of the Inquiry, 9 December 2022, T908.16–18 (TRA.00014.00001).

- 13.784. In stark contrast, Dr Dalton and Dr De Lint deployed the term in a very different way.
- 13.785. In the ‘Moral Panic’ article, the two authors refer to academic literature regarding the expression. They begin with a definition of moral panic as “a public outburst of sentiment – a societal reaction – that draws attention to the extent or scale of a social problem, intimating the dangers of inattention to certain widely accepted values.”<sup>3359</sup>
- 13.786. They emphasise that a moral panic must be disproportionate to the true extent of the problem (which, it becomes clear, is their view of any suggestion of 88 “gay hate” motivated deaths):<sup>3360</sup>

*Too much moral outrage to the societal reaction side of the ledger suggests that it is not a problem, whatever its scale, that demands such extensive and intensive response, and moral panic analysis ‘has always sought to do this’ (Citcher 2009: 30). In other words, the use of the term suggests a view that the emotive response supersedes or is too large in relation to the objective stimulus.*

- 13.787. These two aspects of a moral panic are described by the academic team, in the abstract of their article, as “a discovered crime fact and demand for an enforcement response disproportionate to the fact”.<sup>3361</sup>
- 13.788. The view that there was a “moral panic”, so understood, about the Strike Force Parrabell cases is clearly reflected in the Academic Report. The Executive Summary asserts (emphasis added):<sup>3362</sup>

*Altogether, the policy question on combatting anti-gay bias is not as simple as some moral crusaders make it out to be. Publicity around anti-gay bias can be a two sided-coin. Promotion of a social problem may, however paradoxically, draw attention to the issue and foster more anti-social behaviour. The publicity may also fuel fear of crime in the wider community and somewhat distort the risk of victimisation that actually exists.*

- 13.789. As to who these “moral crusaders” were, Dr Dalton nominated:<sup>3363</sup>

*Anyone who was promulgating the idea that there was a major and serious problem with too many homicides, proportionate to other places or cities in the world – that there was an epidemic, if you like, or whatever the phrases were that were being touted at the time.*

<sup>3359</sup> Exhibit 6, Tab 205, Willem de Lint and Derek Dalton, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (2021) (29)4 *Critical Criminology* 723, 726 (SCOI.82022).

<sup>3360</sup> Exhibit 6, Tab 205, Willem de Lint and Derek Dalton, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (2021) (29)4 *Critical Criminology* 723, 727 (SCOI.82022).

<sup>3361</sup> Exhibit 6, Tab 205, Willem de Lint and Derek Dalton, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (2021) (29)4 *Critical Criminology* 723, 723 (SCOI.82022).

<sup>3362</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 53 (SCOI.02632).

<sup>3363</sup> Transcript of the Inquiry, 28 February 2023, T2417.19–23 (TRA.00029.00001).

- 13.790. More specifically, Dr Dalton identified, as “moral crusaders”, “people that seemed to be in the media reports” including Ms Thompson, Professor Tomsen and “anyone who would support the proposition that there may have been as many as up to 88 deaths which were or might have been gay hate”.<sup>3364</sup> He conceded that it sounded like “a pejorative sort of term” but suggested that Dr de Lint had used it in a “non-pejorative” way.<sup>3365</sup>
- 13.791. Dr Dalton was himself, however, pejorative about moral crusaders in correspondence; at one point, he described Professor Tomsen’s “devotees” (presumably including, *inter alia*, Ms Thompson and ACON) as “imbecilic”.<sup>3366</sup>
- 13.792. Dr Dalton said that he used the phrase “moral crusader” because “it seemed as though, from the second I started doing this work, if you were to find that there was any number less than 88, you were somehow a police apologist, which is an offensive sort of assertion.”<sup>3367</sup>
- 13.793. That evidence might be thought to indicate a mindset supportive of, or at least sympathetic to, the view of Mr Willing, Ms Young, Mr Lehmann and other senior police that the number of “gay hate” deaths had been exaggerated. In that regard it is relevant to note that by the early stages of his engagement with Strike Force Parrabell, Dr de Lint knew that there was a strongly held view within the NSWPF that claims of 80-plus “gay hate” homicides were a “gross exaggeration” and that by February 2017, Dr de Lint shared that view.<sup>3368</sup>
- 13.794. The Academic Report emphasised the academic team’s concerns with moral panic and moral crusaders under the heading ‘Dimensions of the Issue’.<sup>3369</sup>
- 13.795. The first two sub-sections under this heading considered the history of the list of 88 deaths. In the view of the academic team, the “list” should be considered as a symbol that has effectively taken on “a life of its own” and that generates or represents a particular “mythology” or “folklore” connected to LGBTIQ hate crimes in NSW.<sup>3370</sup>
- 13.796. The academics characterised the list as both “an indicator of the truth of a social problem”<sup>3371</sup> and an emblem that “has come to support the case that there was in NSW extraordinary anti-gay bias and questionable anti-bias policing”.<sup>3372</sup> The academic team contended that this means that:<sup>3373</sup>

<sup>3364</sup> Transcript of the Inquiry, 28 February 2023, T2417.27, 2417.33, 2417.37, 2418.3–20 (TRA.00029.00001).

<sup>3365</sup> Transcript of the Inquiry, 28 February 2023, T2418.20–23 (TRA.00029.00001).

<sup>3366</sup> Exhibit 6, Tab 129, Email correspondence between Derek Dalton and Craig Middleton, 24 October 2018 (SCOI.74734).

<sup>3367</sup> Transcript of the Inquiry, 28 February 2023, T2418.27–30 (TRA.00029.00001).

<sup>3368</sup> Transcript of the Inquiry 3 March 2023, T2778.28–40 (TRA.00032.00001).

<sup>3369</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 61ff (SCOI.02632).

<sup>3370</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 64 (SCOI.02632).

<sup>3371</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 65 (SCOI.02632).

<sup>3372</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 64 (SCOI.02632).

<sup>3373</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 65 (SCOI.02632).

*to the extent that [the] wider community of NSW citizens know about the 'problem' of murders in NSW during this two decade period, it is because the trope of the list has helped shape this understanding.*

13.797. Later in the Academic Report, the academic team stated:<sup>3374</sup>

*We determined that the list of cases developed by Thompson and Tomsen did not have a known relationship with the actual number of gay bias homicides during the period in which the cases were collected. Possible errors related to the list includes under-recording and uneven or inconsistent application of inclusion criteria, where cases come to attention of investigators by a variety of means. The cases may well represent most of the possible gay-related deaths during this time period, but in our view it was not informed by any one means consistently and this is surmised to result in an uneven and somewhat unpredictable under- and over-recording.*

13.798. The academic team referred to the risks of under-reporting and over-reporting of hate crimes:<sup>3375</sup>

*Where there is an under-recording of bias crime, there may be systemic or institutional bias against a social group that is not being adequately redressed by public resources or that may, as has been suggested, indicate a malfeasance by those public institutions. Where there is an over-recording of bias crime, the opposite distortion may occur. There will be over-criminalisation and the potential for public or moral panic that will have impact on freedoms.*

13.799. In respect of the Strike Force Parrabell cases, the academic team contended that the latter “distortion” arose. However, they did not identify the “demand for an enforcement response disproportionate to the fact”.<sup>3376</sup> They did not identify any “freedoms” which would be “impacted” by the so-called moral panic.<sup>3377</sup> Nor did they identify any policy reforms (proposed or implemented) which have arisen from the so-called moral panic, let alone how those policy reforms have overreached.

<sup>3374</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 70 (SCOI.02632).

<sup>3375</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 79–80 (SCOI.02632).

<sup>3376</sup> Exhibit 6, Tab 205, Willem de Lint and Derek Dalton, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (2021) (29)4 *Critical Criminology* 723, 726–727 (SCOI.82022).

<sup>3377</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 80 (SCOI.02632).



- 13.800. As was submitted by Counsel Assisting, their concern about “moral panic” and “moral crusaders” appeared to reduce to a view that the list of 88 deaths amounted to “fake news”<sup>3378</sup> and that the criticism of the NSWPF was disproportionate to the actual extent of its failings.<sup>3379</sup> The ‘Moral Panic’ article concludes:<sup>3380</sup>

*And so, the number continues to haunt. It is not just the police who are vexed by the figure; the wider community is jolted by a ‘false news’ imprimatur, whatever the social reality of the period in history the number is meant to represent.*

- 13.801. When questioned about the ‘Moral Panic’ article in their oral evidence, both Dr Dalton and Dr de Lint expressed their sincere regret regarding several aspects of the article, including the following:
- a. The inaccurate framing of why the academic team developed its own assessment tool, which “omitted” the true reason (namely that the “police instrument wasn’t fit for purpose”);<sup>3381</sup>
  - b. The article’s reference to gay homicide as a “so-called problem”,<sup>3382</sup> which Dr Dalton described as “terrible”, “sloppy” language;<sup>3383</sup> and
  - c. The use of the terms “fake news” and “false news” to describe the figure of 88 deaths.<sup>3384</sup>
- 13.802. Dr de Lint ultimately said that he regretted that the article was ever submitted for publication.<sup>3385</sup>

<sup>3378</sup> Exhibit 6, Tab 205, Willem de Lint and Derek Dalton, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (2021) (29)4 *Critical Criminology* 723, 723 (SCOI.82022).

<sup>3379</sup> Exhibit 6, Tab 205, Willem de Lint and Derek Dalton, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (2021) (29)4 *Critical Criminology* 723 (SCOI.82022).

<sup>3380</sup> Exhibit 6, Tab 205, Willem de Lint and Derek Dalton, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (2021) (29)4 *Critical Criminology* 723, 740 (SCOI.82022).

<sup>3381</sup> Transcript of the Inquiry, 1 March 2023, T2551.13–2552.13 (TRA.00030.00001); Transcript of the Inquiry, 2 March 2023, T2645.28 (TRA.00031.00001) (Dalton); 3 March 2023, T2850.11–40, 2851.46, 2852.41 (TRA.00032.00001) (De Lint) referring to Exhibit 6, Tab 205, Willem de Lint and Derek Dalton, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (2021) (29)4 *Critical Criminology* 723, 734–736 (SCOI.82022).

<sup>3382</sup> Transcript of the Inquiry, 1 March 2023, T2554.2–18 (TRA.00030.00001) referring to Exhibit 6, Tab 205, Willem de Lint and Derek Dalton, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (2021) (29)4 *Critical Criminology* 723, 737 (SCOI.82022).

<sup>3383</sup> Transcript of the Inquiry, 1 March 2023, T2554.11–18 (TRA.00030.00001). See also Transcript of the Inquiry, 3 March 2023, T2853.5–29 (TRA.00032.00001).

<sup>3384</sup> Transcript of the Inquiry, 1 March 2023, T2547.33–35, 2549.21–22, 2550.36–44, 2557.2–11 (TRA.00030.00001) (Dalton); Transcript of the Inquiry, 3 March 2023, T2830.22, 2838.33, 2838.45, 2839.9, 2839.15 (TRA.00032.00001) (De Lint) referring to Exhibit 6, Tab 205, Willem de Lint and Derek Dalton, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (2021) (29)4 *Critical Criminology* 723, 723, 740 (SCOI.82022).

<sup>3385</sup> Transcript of the Inquiry, 3 March 2023, T2866.42–2867.15 (TRA.00032.00001).

## The Inquiry's expert evidence

- 13.803. As noted earlier in this Chapter in respect of the 'Police Methodology' regarding Strike Force Parrabell, the Inquiry has been assisted by the evidence of Associate Professor Lovegrove, Professor Asquith and Ms Coakley. Their views on the methodology of the academic team are outlined below (except in respect of "anti-paedophile animus", as to which their views are outlined above).
- 13.804. The Inquiry was also assisted by the evidence of Dr Dalton and Dr de Lint. Where their evidence relates to an issue raised by the Inquiry's experts, it is discussed below.

### Common issues addressed by all experts

- 13.805. As with the methodology of the Strike Force Parrabell officers,<sup>3386</sup> the Inquiry's experts expressed similar views about a number of issues concerning the methodology adopted by the academic team. Those issues are dealt with first, before the issues to which each expert gave particular attention.

### RELIANCE ON BCIFS

- 13.806. As outlined above, the academic team disavowed the BCIF as an instrument. Dr Dalton went as far as to call it a "pretty appalling instrument".<sup>3387</sup>
- 13.807. However, the academic team do not appear to have reflected on the extent to which their own views were dependent on the BCIFs. Despite the RFQ indicating that the academic team would refer to the original source documents,<sup>3388</sup> they did not ultimately do so.<sup>3389</sup> The academic team did not go back and create their own summaries based on the source material. Their methodology was overlaid on the summarised and filleted information that they had: namely the BCIFs, on which they were entirely reliant.
- 13.808. All three of the expert reports identified this as an issue with the academic team's methodology. Associate Professor Lovegrove put it this way:<sup>3390</sup>

*Nonetheless, in one respect Police understandings did constrain the academic team's capacity to identify gay hate in the 88 crimes. This arises from the quality of the raw data with which the academic team had to work. These data were the 'case summaries' (apparently the BCIF forms completed by the police investigators). It must be presumed that any prejudices or limitations of understanding of what constitutes gay hate*

<sup>3386</sup> For further information, see the discussion of Police Methodology earlier in this Chapter.

<sup>3387</sup> Transcript of the Inquiry, 1 March 2023, T2446.38–40 (TRA.00030.00001).

<sup>3388</sup> Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project – RFQ Number: 001286, 22 July 2016, cl. 4.1 (SCOI.76961.00007).

<sup>3389</sup> Exhibit 6, Tab 258, Response to Expert Reports by Willem de Lint, Undated, 1 (SCOI.82365); Transcript of the Inquiry, 2 March 2023, T2653.33–35 (TRA.00031.00001).

<sup>3390</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [152] (SCOI.82366.00001).

*would infect these case summaries and exclude or distort information which the academics might have considered material to the finding of gay hate.*

13.809. Ms Coakley said:<sup>3391</sup>

*The academic team seems to recognize that their process is not likely to produce different or other results from the original case files, noting that there are limits on archival information: “an archive can only yield something that was captured in the first instance”.*

...

*The academic team seems to understand the shortcomings of the original investigations, and thus the limited ability of [Strike Force Parrabell] to have success in further identifying, or even categorising, gay bias/hate crimes. They of course are limited by the same shortcomings. Even more so as they are merely reviewing summaries that [Strike Force Parrabell] compiled.*

13.810. Professor Asquith addressed the issue in this way (emphasis in original):<sup>3392</sup>

*That the academic team developed this typology from the case summaries drafted by [Strike Force Parrabell] officers, and not on the original evidence in these cases, is problematic because they assumed that:*

*a. the case summaries are a true reflection of the evidence and holdings, which requires not only trust in [Strike Force Parrabell] officers and NSWPF as it exists now, but also as it existed at the time of the original creation of these holdings;*

*b. the case summaries (based on NSWPF case holdings) are sufficient to create a bespoke typology, despite noting that over a third of cases had insufficient information to make a determination;*

*c. they could assess the motivation based on these case summaries despite noting the inadequacy of record keeping—with or without bias, or with or without incompetence— at the time of many of the incidents, and that the subsequent archiving may also be deficient; and*

*d. a bespoke typology created from the summary data written by [Strike Force Parrabell] officers could elicit a robust evaluation of the competence of the original [Strike Force Parrabell] assessments of bias, and the methodology of such assessments by [Strike Force Parrabell] officers.*

*Given the quality of data, the context of data consolidation into summaries, and the use of these summaries by the [Strike Force Parrabell] academic*

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<sup>3391</sup> Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [39], [45] (SCOI.82367.00001), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 80 (SCOI.02632).

<sup>3392</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [198]–[204] (SCOI.82368.00001).

*review team to create a bespoke typology—and one that does not address the existing literature or typologies and indicators, nor the significant differences in the heterosexual and cissexist violence in the “88/85” cases—I believe that the typology created by Dalton et al has limited utility in evaluating the [Strike Force Parrabell] methodology or whether any of the existing “88/85” cases are hate-motivated or aggravated. I also believe that it does not meet the expected academic conditions required of either a process evaluation or an outcome evaluation.*

### **Data provided by NSWPF**

*The academic team were not granted access to the holdings for the “88/85” cases, and were reliant upon the initial BCIF review conducted by the [Strike Force Parrabell] team. Inconsistencies or inaccuracies in the first order review would necessarily be replicated in the second order review by Dalton et al.*

*As with much crime data, the technological, cultural, social, and political contexts of when that data was collected will shape what is collected, recorded, and archived. Returning to this “dirty data” decades later does not imbue it with new insights; on the contrary, with fresh eyes on old data we can better see its inadequacy in light of better, more contemporary policing practices.*

*Too often policing organisations make decisions about strategy and resourcing based on the data collected, recorded, and archived by the organisation, even when that data was clearly collected under different cultural and social expectations. Using that data to contemporaneously assess bias—or in the case of the academic team, the competency of NSWPF officers’ historical investigations—is deeply flawed given the different contexts of police work.*

*However, in effect, Dalton et al had to trust that the work completed by [Strike Force Parrabell] officers was appropriate to the terms of reference, and that they could rely on these assessments to guide their evaluation of motivation.*

*If inadequate data was collected and recorded at the time of the homicide—which at least appears to be the situation in some of the earlier cases—then the [Strike Force Parrabell] team are assessing based on “dirty data”, which is then taken as fact by the academic teams to evaluate both the bias elements of the “88/85”, as well as the competency and possible presence of bias in the original investigations and [Strike Force Parrabell] review.*

- 13.811. In her oral evidence, Professor Asquith was asked what she would have done if she had been part of the academic team and she had only been granted access to the BCIFs. Her answer was compelling:<sup>3393</sup>

*In the first instance, I would have tried to negotiate with NSW Police to explain to them how their methodology would not result in the outcome that they were seeking if they were unprepared to share those extra resources, the original resources, to the - what I feel is that the academic team that were appointed were given third-hand data. What I would have been wanting to get is to get at least second-hand data, the summaries of those case files, not the BCIF forms. If that was not possible, then I would have handed back the money and told them that I could not meet the brief.*

## TERMINOLOGY

- 13.812. As to the terminology used in the Academic Report, Associate Professor Lovegrove noted, for example, that:<sup>3394</sup>

*As to their understanding of ‘gay’, they say little, other than it involves sexuality and gender, presumably meaning sexual orientation and the public flouting of gender norms. In respect of the LGBTIQ label, there is no reason not to take it as all-embracing; note, their apparent inclusion of transgender women and men who cross-dress as part of a discussion of nuancing sexuality and gender.*

- 13.813. Professor Asquith made similar, more detailed observations about the terminology adopted by the academic team:<sup>3395</sup>

*Previous reviews, inquiries, and [Strike Force Parrabell] itself did not make reference to the LGBTIQ community (or more appropriately, communities), and nor did they explore either the lethal or sub-lethal violence experienced by lesbians, bisexual women (or men for that matter), or intersex people. Furthermore, in the [Strike Force Parrabell] Final Report, transgender people appear to have been erased or deadnamed.*

...

*It is concerning that in both the [Strike Force Parrabell] Final Report, and in De Lint and Dalton’s subsequent academic review, the attention was primarily on the experiences of gay men—and especially the characteristics, cultural attributes, history, and politics of gay men murdered in public places such as beats.*

*In fact, the transgender women who were included in the original “88” (as well as the “85”) seem to have disappeared or have been deadnamed by the*

<sup>3393</sup> Transcript of the Inquiry, 3 March 2023, T2826.9–19 (TRA.00032.00001).

<sup>3394</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [117] (SCOI.82366.00001).

<sup>3395</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [62], [168]–[169] (SCOI.82368.00001).

*authors of both the [Strike Force Parrabell] Final Report and the academic review. This erasure of transgender women’s experiences of cissexist violence is concerning given that the “88/85” homicides were already skewed towards the experiences of heterosexist violence against gay men. As there are unique characteristics of cissexist hate crime (as noted above in Vergani et al’s indicators), the [Strike Force Parrabell] and the academic review may have missed the critical factors that shape this type of hate crime.*

#### DEFINITION OF BIAS CRIME, AND THE ISSUE OF PARTIAL MOTIVATION

- 13.814. As noted above, the academic team developed their own definition of bias crime. Unlike that of the NSWPF (with which they said they “largely agree[d]”),<sup>3396</sup> the academic team’s definition does not incorporate the notion of motivation “in whole or in part” by bias.
- 13.815. Associate Professor Lovegrove criticised the academic team’s approach to this issue, including as follows:<sup>3397</sup>

*The academic researchers state that they “largely agree” with the police definition of bias crime. Nonetheless, they do formulate their own definition of bias crime:*

...

*This definition excludes the qualification inserted by Police i.e., ‘motivated, in whole or in part ...’. In practice this may constitute a very significant difference. Since this is part of the one discussion, it would appear to be a conscious decision on the academic researchers’ part. This suggests that to the Police a crime in which hate was a secondary motive was still deemed a hate crime. The question arises whether the academic team required more in this respect; if they indeed did - the reference to ‘financial’ identified as the principal motive suggests this may be the case - they would find fewer hate crimes: see below at [129(4)]. In regard to the academic team’s elaboration, hate also requires some degree of overt expression of animus. The question must be asked, ‘Why?’ Again, if this informs the team’s interpretation of evidence, they will find fewer incidences of hate crime. The academics offer a second elaboration; it is in respect of ‘association’, which is more appropriately dealt with in the following discussion of their classificatory framework.*

<sup>3396</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 81 (SCOI.02632).

<sup>3397</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [115]–[116] (SCOI.82366.00001).

13.816. The Asquith Report also criticised the academic team’s definition of “bias crime”:<sup>3398</sup>

*Rather than rely on the subjectivity of victims’ (and witnesses’) assessments of motivation— who the academic members claim are “...in no better position to determine...” motive, leading to what they claim is over-reporting of bias crimes—Dalton et al take “selectively” from the hate crime scholarship to generate their own definition of bias crime, namely ...*

*This definition reduces hate crime victimisation to only those incidents that are:*

- a. wholly motivated (and not partially motivated);*
- b. not aggravated by other motivations; and*
- c. incidents where the offender, by contemporaneous actions, demonstrates a pre-existing hatred/bias/ prejudice/animus that they share with others (such as Organised Hate Groups [OHGs]).*

*In particular, the authors claim that “[a] person who seeks out a gay person against whom to do harm because of a perceived vulnerability is arguably more of a threat to the community than a person who reacts violently against an unanticipated gesture or sexual advance”.*

*Not only does this reduce aggravated hate crimes to a perceived sexual advance by the victim—as if offenders are not aggravated by the very presence of the hated other in a preexisting conflict over another matter—it incorrectly assumes lethality from the degree of an offender’s motivation.*

*While it is clear that in the US, and particularly in relation to racist, antisemitic and Islamophobic hate crimes, there is an increased lethality generated by OHGs, the absence of Australian OHGs that target LGBTIQ people, and the lethality of violence demonstrated in some of the “88/85” cases committed by individuals acting alone, appears to contradict this aspect of Dalton et al’s typology.*

## VICTIM PERCEPTIONS

13.817. In their literature review, the academic team rejected the subjective approach to hate crime which is favoured in the United Kingdom. The academic team wrote (emphasis added):<sup>3399</sup>

*victims are often in no better position to determine the motivation for behaviour than is the perpetrator or the bystander. England and Wales have enormous numbers of bias crimes, no doubt due to the over-inclusive definition used to discover the phenomenon.*

<sup>3398</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [188]–[192] (SCOI.82368.00001).

<sup>3399</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 82 (SCOI.02632).

- 13.818. One obvious difficulty with this view, among others, is that perpetrators are not always forthcoming, to say the least, about their motivations, particularly where their motivations are aggravating factors at sentencing. Putting that to one side, it is worth briefly touching on the subjective–objective debate.
- 13.819. The Asquith Report outlines the identification and analysis of different approaches to identifying and policing hate crimes internationally. Professor Asquith favours the subjective, UK approach to hate crime and she does not consider that this leads to an over-recording of hate crimes (as distinct from hate *incidents*).<sup>3400</sup>
- 13.820. Plainly, it is impossible to obtain victim perceptions in the case of a homicide (excluding cases in which there are multiple victims of an attack, some of whom survive). Professor Asquith notes that, in the UK:<sup>3401</sup>

*in cases of homicide or manslaughter where the victim is unable to declare their perception that it was hate-motivated, any other person with a 'legitimate interest' can make this claim, including family members, carers, police officers, and victim support groups.*

- 13.821. Both the Asquith Report and the Lovegrove Report identify a legitimate and important role for victim perceptions.
- 13.822. The Asquith Report describes victims as “experts in being hated” and suggests that their subjective assessment is “better placed to respond to the continuum and escalation of violence, as it captures all incidents, not just those that some may perceive as warranting increased police attention.”<sup>3402</sup> That is, the Asquith Report suggests that victim perceptions are useful in identifying patterns of hate crimes before they escalate to homicide.
- 13.823. The Lovegrove Report included the following passage:<sup>3403</sup>

*It is problematic that the academic team appears to eschew victim perceptions of gay hate so readily. In my view, these perceptions informing what victims understand to constitute gay hate must be attended to in any understanding of the phenomenon. Their observations should not be accepted uncritically in respect of this, since this may result in the over identification of gay hate. Rather, this input will be approached with the attitude that the gay community may be aware of manifestations of gay hate not in the awareness of individuals who are not in this community. The academics' argument is that gay victims are in no better position than anyone else to determine gay bias in the circumstances of a crime. Certainly, the observations of other witnesses to a crime are potentially valid, but the gay community's experiences and thoughts must be central to the understanding of what constitutes a gay-hate crime. It should not be*

<sup>3400</sup> See, e.g., Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [129], [244] (SCOI.82368.00001).

<sup>3401</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [123] (SCOI.82368.00001).

<sup>3402</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [222]–[223] (SCOI.82368.00001).

<sup>3403</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [118] (SCOI.82366.00001).



*forgotten that many in the gay community will be victims and associates of victims of anti-gay violence.*

13.824. This builds on the observation earlier in the Lovegrove Report that a person designing an instrument to measure “gay hate” should be “apprised of what the gay community would regard as the signs of gay hate”.<sup>3404</sup>

13.825. In the written response to the expert reports prepared by Dr de Lint (and endorsed by Dr Dalton), Dr de Lint disputed the “criticism that [they] did not sufficiently take advice from the ‘LGBTIQ community.’”<sup>3405</sup> He observed, correctly, that they had received and reviewed information from ACON, as described in Appendix A of the Parrabell Report.<sup>3406</sup>

13.826. However, as Appendix A records:<sup>3407</sup>

*In terms of the academic review, the ACON dossiers were read with a view to reveal if they had captured any new of [sic] fresh material that was not in the individual police case files.*

13.827. The academic team concluded that the ACON dossiers “did not ultimately provide any compelling reasons for the academic team to reclassify any cases”.<sup>3408</sup>

13.828. In addition, in correspondence, Dr Dalton expressed scepticism and criticism towards ACON’s dossiers and *In Pursuit of Truth and Justice* report, stating:

- a. On 22 March 2017, in an email to Assistant Commissioner Crandell: “I am finalising dealing with the ACON data (a bit problematic for various reasons – along with the detectives we too have ‘issues’ with its soundness and reliability. We will probably be somewhat dismissive of it [in the most polite and diplomatic way of course] in the report.”<sup>3409</sup>
- b. On 12 May 2017, in an email to Superintendent Middleton: “I wish I could bill ACON for all the hours I wasted reading their files”.<sup>3410</sup>
- c. On 24 July 2017, in an email to Superintendent Middleton: “Jackie convinced me I had to be nicer to ACON. I acquiesced (but I kept thinking of their outrageous criticisms of the “investigations” through my gritted teeth...”<sup>3411</sup>

<sup>3404</sup> See Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [40] (SCOI.82366.00001).

<sup>3405</sup> Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint (endorsed by Associate Professor Derek Dalton), Undated, 7 (SCOI.82365).

<sup>3406</sup> Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint (endorsed by Associate Professor Derek Dalton), Undated, 7 (SCOI.82365).

<sup>3407</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 119 (SCOI.02632).

<sup>3408</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 120 (SCOI.02632).

<sup>3409</sup> Exhibit 6, Tab 97, Email from Derek Dalton to Anthony Crandell, 22 March 2017 (SCOI.74471).

<sup>3410</sup> Exhibit 6, Tab 103, Email correspondence between Willem de Lint, Derek Dalton and Craig Middleton, 21–22 June 2017, 2 (SCOI.74503).

<sup>3411</sup> Exhibit 6, Tab 112, Email correspondence between Derek Dalton and Craig Middleton, 27–28 July 2017, 2 (SCOI.74554).

## INTUITION VS. OBJECTIVITY

- 13.829. Associate Professor Lovegrove and Professor Asquith queried the extent to which the academic team openly acknowledged the role of intuition in Strike Force Parrabell's assessment of the cases.
- 13.830. Associate Professor Lovegrove considered that the academic team ought to have incorporated additional guidance by clearly defining the factors used in the analysis of whether LGBTIQ bias was present. According to Associate Professor Lovegrove, this step was not taken:<sup>3412</sup>

*The purpose of the conceptual analysis by the academic team, in the preceding section, is to present and explain their understanding of the problem, and to identify the factors critical to this understanding. It also allows the reader to evaluate the soundness of this understanding and is the basis of any assessment of validity. The definitions of the factors identified are also critical in this analysis. These definitions should be used to determine how to measure or assess the relevant phenomenon, here, to identify the presence of gay hate in the circumstances of the 85 cases. However, the academic team do not take this step; they offer nothing more specific, no operational definitions. The team broadly favours the use of '(o)bjective facts, circumstances, or patterns attending a criminal act...' as bias crime indicators, yet offers nothing more than examples of classified cases, described in no more than several lines. Wide is the gap indeed between the behaviour described in the definitions and the detailed facts arising in the specific circumstances of the individual case.*

*Thus, when the researchers first individually assessed the cases according to their classificatory scheme they, as individuals, had inadequate guidance as to how the hate was manifested according to the scheme in the circumstances of actual cases. An elaboration on the academic team's thinking process used to classify cases is offered in Appendix C. I found it unenlightening; it lacked (but certainly required) an illustration of its application in a particular case. Problematic reliability among members of the research team was inevitable; so it proved to be. Though no numerical measure was made, we can discern this from their account of the coding process. Thus, cases were independently coded and then group reviewed in an effort to reach consensus. Moreover, the subsequent independent coding on the revised instrument also required a subsequent concordance consultation. The academic team's use of a review process would have been expected to improve rigour by increasing the coherence of the assessments. However, the group review process cannot make the application of the alternative framework inherently more reliable.*

<sup>3412</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [125]–[127] (SCOI.82366.00001).

*Again... let it be clear, there must always be room for intuition in the application of definitional guidance; a balance between specificity and generality. In my view, the academic team's definition erred in the former respect in that they left too much room for intuition.*

- 13.831. Professor Asquith similarly criticised the academic team for accepting the NSWPF's description of the Strike Force Parrabell methodology as "intuitive" and "contextual" without further interrogation:<sup>3413</sup>

*Dalton et al in their review of [Strike Force Parrabell] note that even though each case was "scored" by [Strike Force Parrabell] officers, any conclusions as to whether that case was bias-related was "...not determined by counting the number of 'yes' or 'no' indicators of bias and referencing that number to some sort of table that accorded a finding of bias to a particular threshold number (e.g. seven out of ten indicators)". Dalton et al instead accept a description of the process of determination, by the [Strike Force Parrabell] officers, as "intuitive" and "contextual", and say that the Summary of Findings section of the BCIF was "rich in detail".*

*While "intuition" is not necessarily a bad approach to investigating a complex phenomenon such as hate crime, Dalton et al's adamant declaration that for their part they deployed "objective" techniques to evaluate these cases seems counter to their acceptance that "intuition" was critical to the [Strike Force Parrabell] findings. Only the [Strike Force Parrabell] officers, and not the academics, had access to the full holdings of the cases. The "intuitive" reading and review of that full material was intrinsic to the composition and content of the summary documents (drafted by police officers barely briefed on hate crime offending, motivation, and victimisation), which were all that the academics had available to them.*

- 13.832. The Coakley Report likewise rejected the claims of objectivity on the part of the academic team as mere projection:<sup>3414</sup>

*Thus, the Parrabell Report projects a conclusion that a transparent and robustly verifiable review did not uncover evidence of either a large number of gay hate/bias crimes, or a failure by the Police to identify those crimes. The [Strike Force Parrabell] officers reached that conclusion by using the bias crime indicators for a purpose for which they were not intended. The academic team used even less relevant categories to assess the [Strike Force Parrabell] summary files. Neither conclusion is based on a sound methodology. Both are open to doubt.*

<sup>3413</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [173]–[174] (SCOI.82368.00001).

<sup>3414</sup> Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [46] (SCOI.82367.00001).

## Other aspects of the experts' reports

### LOVEGROVE REPORT

#### Development of a novel typology

- 13.833. As discussed in the 'Police Methodology' section of this Chapter, Associate Professor Lovegrove outlined in his report the ways in which a "valid" and "reliable" instrument for social science research would need to be developed.<sup>3415</sup>
- 13.834. In his view, the typology created by the academic team did not meet those requirements for validity and reliability. This is discussed in the Lovegrove Report, at [126], and as follows:<sup>3416</sup>

*Neither the police, in adopting the BCIF, nor the academic team, in adopting their own framework, appeared to test the reliability and validity of the instruments they applied to identify hate. In my view, neither instrument can be regarded, in view of the absence of appropriate evidence, as fit instruments for identifying gay-hate crimes in the list of 88 cases.*

- 13.835. In assessing the alternative classificatory framework developed by the academic team, Associate Professor Lovegrove observed:<sup>3417</sup>

*In view of this complexity and in the absence of well-considered operational definitions, there is only so far a researcher can go in producing an acceptable level of inter-rater consistency (reliability). Nonetheless, their instrument (framework) for categorising cases cannot be regarded as 'carefully defined', as they suppose; it did not go far enough in identifying the indicia of hate in the circumstances of actual cases.*

*There is no independent means of assessing the degree of dissensus present, and hence the magnitude of the problem for reliability. But one might reasonably suppose it was not insignificant: see above at [126]. If there was dissensus among a group who had already 'worked' the data prior to the coding process, an independent group would have great difficulty trying to replicate the study. There are problems here too for validity. Without knowledge of what is meant by hate in the circumstances of these cases, how can outsiders know what the study actually found, assess its soundness, or apply the results to public policy?*

- 13.836. Further discussion of this issue, at [126], [144(4)] and [144(5)] of the Lovegrove Report, is extracted elsewhere in this Chapter.

<sup>3415</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [38]–[52] (SCOI.82366.00001).

<sup>3416</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [51] (SCOI.82366.00001).

<sup>3417</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [134]–[135] (SCOI.82366.00001).

13.837. In the Dalton/de Lint Response, the academic team accepted that:<sup>3418</sup>

*it would have been preferable to subject the tool to the kind of reliability and validity exercises necessary in the development of such a device, as elaborated by Associate Professor Lovegrove. This was not possible with the time and resources available.*

13.838. The academic team had previously made a similar point in the Dalton/de Lint Statement, where they claimed that they “researched the tool to the extent that time permitted”.<sup>3419</sup>

### Associate Professor Lovegrove’s conclusions

13.839. Associate Professor Lovegrove summed up his overall conclusions, in respect of the academic team’s methodology, as follows:<sup>3420</sup>

*On the basis of this review of these matters, the following conclusions are drawn.*

*1. The term ‘gay’ is not clearly defined, leaving it somewhat open as to how what the academic team call ‘gay’ relates to the label ‘LGBTIQ’.*

*2. The academic researchers do not use an actual instrument for identifying gay hate but have a broad definition of hate. They do develop a framework for identifying the various circumstances in which gay hate is expressed and as it is related to motive, but this adds little to identifying the incidence of gay hate in the cases before them.*

*3. The academic team, in planning their research method, do not appear to have engaged the ‘gay’ community, in this way perhaps sacrificing validity in their measurement of gay hate.*

*4. The academic team do not provide evidence supporting the reliability of their assessments of gay hate in the cases. The acknowledged need for review suggests that reliability of the initial application of the framework to detect hate was not reliable.*

*5. The academic team’s reporting of their assessment and identification of gay hate in the case data is too obscure. They do engage a definition of hate, but the gap between this definition and the manifestation of hate in the circumstances of the individual cases is too great. Two consequences follow from this. They are:*

<sup>3418</sup> Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint (endorsed by Associate Professor Derek Dalton), Undated, 7 (SCOI.82365).

<sup>3419</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 5 (SCOI.76959).

<sup>3420</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [144] (SCOI.82366.00001).

*i. the reader has no means of assessing the soundness (validity) of the team’s judgements of bias, leaving the reader with no more than uncertain conclusions, and*

*ii. it fails a basic requirement of a social science research project, namely, the opportunity for independent researchers to replicate the actual study.*

*6. The academic team’s reporting of their tabular analysis opens the way for the ‘headline’ conclusion to be: ‘Only 17 of 85 cases positively found to involve ‘gay’ hate bias.’ This would represent a seriously misleading conclusion.*

*7. More generally, having regard to the present review of the method set out above, the Academic Report provides no sound basis for any conclusion about the incidence of ‘gay’-hate bias in the 85 deaths. The ‘true’ figure may be quite low; the ‘true’ figure might be alarmingly high. We are none the wiser as a result of this research.*

## COAKLEY REPORT

13.840. Ms Coakley expressed her overall conclusions, in relation to the academic team’s methodology, in this way:<sup>3421</sup>

*Nonetheless, they establish their own categories of “proactive, reactive ... associative or non-associative” crimes. In my view these different categories are not such as to produce any better results. The academics even note that “the distinction between ‘proactive’ and ‘reactive’ can be hard to determine, even when a great deal of forensic testimony and witness testimony is available...”, which was not the case here.*

*Moreover, most crimes, including homicides, can either be pre-planned or crimes of opportunity, or somewhere in between. Most crimes also can be committed alone or in concert with others. There is nothing unique about these categories in connection with gay hate/bias crimes or indeed any hate/bias crimes.*

*In my opinion, therefore, these categories of the academic team do not assist police in the [Strike Force Parrabell] exercise, or in the future for recognizing, investigating, and identifying hate/bias crimes. These categories provide possible parameters as to how and/or why a (known) perpetrator might have committed any homicide, but are not particularly helpful for investigators seeking to rule in or rule out a gay bias/hate crime.*

*The academic team categories might or might not be useful in sentencing a convicted offender, as they go to intent, or dangerousness, although the academic team was not engaged in an exercise relating to sentencing. The finding of whether any crime is proactive or reactive might go to the state of*

<sup>3421</sup> Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [40]–[44] (SCOI.82367.00001).

*mind of the perpetrator, the amount of planning involved, and the risk to the public in the future without appropriate general and specific deterrents employed in sentencing.*

*The academic team also recognized that in some cases, including that of Scott Johnson, there was a failure to determine, or sometimes even consider, that a death was a homicide, but rather they were labelled “suicide” or left undetermined. They seemed to recognize that where there is no sufficient investigation of a death at the time, a later review like that of [Strike Force Parrabell] will not remedy this problem. Their categories are even less useful than the BCIF in unsolved cases, because there is no suspect available to assess a motive or behaviour according to their categories.*

## ASQUITH REPORT

### Typology

- 13.841. The Asquith Report concluded that the academic team’s typology “misconstrues the harms of hate crimes as primarily emanating from the proactive, associative homicides they identified in a minority of cases”.<sup>3422</sup> As Professor Asquith explained earlier in her report, she considered that the academic team placed too much emphasis on Type A cases:<sup>3423</sup>

*The findings of Levin & McDevitt in their 2002 study are significant in relation to the typology created by Dalton et al to counter the perceived inadequacies of the BCIF used by [Strike Force Parrabell]. Levin & McDevitt’s “mission” motive most closely aligns with the Type A (proactive and associative) category of bias crimes created by the [Strike Force Parrabell] academic team, which is the most unlikely form of targeted violence to occur according to Levin & McDevitt. In Dalton et al’s typology, mission-motivated violence is given primacy over other motivations. They suggest this form of hate/bias/prejudice/animus is the most amenable to prosecution given that it is ideologically or socially organised. They also suggest that delimiting the types of motivation to proactive and, preferably, associative ensures that the law does not overreach or overcriminalise.*

- 13.842. Professor Asquith also took issue with Type C of the academic team’s typology:<sup>3424</sup>

*The Type C hate crime typology established by the [Strike Force Parrabell] academic team is a strange mix of both “retaliatory” and “defensive” motives created by Levin & McDevitt; yet, in Dalton et al, the motive is framed as solely, or primarily, as provocation—or retaliation or defence—from sexual advances. While a “homosexual advance defence” was*

<sup>3422</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [206] (SCOI.82368.00001).

<sup>3423</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [80] (SCOI.82368.00001).

<sup>3424</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [210] (SCOI.82368.00001).



*proffered by perpetrators (and sometimes accepted by courts) to justify their actions, it is difficult to know if an “advance” was made or just used as a way to mitigate their violence. And as this defence has been largely erased from the criminal justice system because of the bias contained in such a construction of motivation—for women do not respond to advances by murdering the perpetrator—it is unusual for Dalton et al and de Lint and Dalton to create a typology that rests on such a construction of motivation.*

## Engagement with hate crimes literature

- 13.843. Professor Asquith makes in my opinion a powerful criticism of the work of the academic team in her Report, in that they did not engage sufficiently with the existing academic literature:<sup>3425</sup>

*In their critique of Levin & McDevitt’s typology, Gruenewald & Kelley, using open-source data (rather than reported crime data) on homicides of LGBT people, reconceptualised existing offender motivation typologies such as Levin & McDevitt’s typology, to consider what they call the offender mode of victim selection. Here they focus on “how, not why, offenders discriminately select victims”, and avoid the “impossible task of reading offenders’ minds and evaluating their feelings”.*

*What the Levin & McDevitt and the Gruenewald & Kelley typologies demonstrate is that over the years preceding [Strike Force Parrabell], there was already a large corpus of research and theorisation about hate crime motivation. While much of this has yet to be subject to a robust evaluation using the gold-standard random control trials (RCT) methodology, the follow up study conducted by Levin & McDevitt, along with others such as Gruenewald & Kelley, and Phillips (and those noted at f16) provide ample evidence of the two typologies’ efficacy in capturing most contexts in which hate crime occurs.*

*The original set of nine indicators was developed by McLaughlin et al based on Levin & McDevitt’s typology, first published in 1993 and expanded in 2002.*

*As far as I am aware, and as identified by Dalton et al in their contribution to the [Strike Force Parrabell] Final Report, the BCIF—whilst 9 of the 10 indicators found within it were in wide use across the US as an assessment tool used by police—has not been evaluated either by policing organisations or independent researchers.*

*As noted in the different results reported by McDevitt et al and Phillips, and as with some of the research cited at footnote 16, researchers have sought to test the Levin & McDevitt expanded typology, but no consistent*

<sup>3425</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [82]–[87] (SCOI.82368.00001).



*and reliable results have been reported as each study uses different data sets, collected by different agencies, often with different purposes or intents.*

*I have referred to the Levin & McDevitt typology—as well as that of Gruenewald & Kelley—to illustrate the limited understanding of hate crime typologies and motivations demonstrated by Dalton et al in their academic review of [Strike Force Parrabell], and to demonstrate that despite their limitations, these typologies continue to be used as a measure of motivation or victim selection across various jurisdictions, data sets, and agencies.*

13.844. Professor Asquith returned to this failure at a later point of her Report:<sup>3426</sup>

*Equally, it was concerning that despite the BCIF being based on McLaughlin et al’s work, which in turn was based on Levin & McDevitt and McDevitt et al’s typology, the academic team only reference these authors in passing to evidence an argument about the prevalence of reported hate crime. They do not engage at all with their typology, which, as noted above, is widely recognised, and applied across the field of hate crime studies. A more comprehensive review of the literature may have assisted in better assessing those cases that do not fit with the bespoke typology created by Dalton et al.*

*While the efficacy of the Levin & McDevitt typology in capturing all forms of hate crime continues to be questioned, it seems counterintuitive to me for the [Strike Force Parrabell] academic team to create their own typology based on a limited analysis of the existing research and without having conducted their own empirical research on heterosexual and cissexist hate crimes.*

*While the academic team note that there is a lack of consistency in language, concepts, and data, it was surprising that given they were not experts in hate crime that they decided to deploy language and phrases not in use in the field. Amongst other things, this has made comparisons with existing research difficult. They further confuse the field by creating another set of concepts and phrases, based on what they already identified as incomplete and unreliable historical data that “...can only yield something that was captured in the first instance”.*

*In defining bias, the academic team also make the distinction—not present in law, or hate crime scholarship—between animus and hostility, bias, prejudice or hatred. Further, at times, they elide the concepts into one (for example, in the Executive Summary where they identify “two categories of bias or animus”, yet then in the following paragraph, assign “animus” to the “most serious types of bias (Type A and B)”; at other times, Dalton et al make a distinction between anti-paedophile animus and anti-gay bias, as they do in the same Executive Summary.*

<sup>3426</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [178]–[182] (SCOI.82368.00001).

*The academic team also note that they and the NSWPF [Strike Force Parrabell] officers used two definitions of “bias crime”, with the second noted in the Coordinating Instructions requiring “[o]bjective facts, circumstances, or patterns”. This definition varies considerably from that used by the NSWPF, or that contained in the sentencing legislation. It also contradicts the arguments presented by Dalton et al (in citing Hall) that ‘...it is difficult to overcome...’ the subjectivity aligned with hate motivation.*

- 13.845. Professor Asquith also offered this opinion: “Instead of creating a new typology, I believe it was incumbent on the [Strike Force Parrabell] academic team to deploy existing typologies generated from over 30 years of application and research from internationally recognised hate crime scholars.”<sup>3427</sup>
- 13.846. The Dalton/de Lint Response included the following:<sup>3428</sup>

*There are indeed multiple literatures that intersect on the questions of bias crime, sexual and gender identity, lethal violence, etc., some from the location Professor Asquith prefers and, of course, not all of which is cited in the brief review for the report.*

## Submissions of Counsel Assisting and the NSWPF

### Rejection of the BCIF

- 13.847. Counsel Assisting submitted that the weaknesses in the BCIF identified by Dr Dalton were well-founded and consistent with Counsel Assisting’s submissions in relation to the BCIF.<sup>3429</sup>
- 13.848. Counsel Assisting also submitted that the Academic Report nevertheless conveyed the distinct impression that the academic team had sufficient information to perform their review. It was submitted that Dr Dalton’s concerns were not adequately reflected in the Academic Report; in fact, they were almost entirely absent from it.<sup>3430</sup>

<sup>3427</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [205] (SCOI.82368.00001).

<sup>3428</sup> Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint (endorsed by Associate Professor Derek Dalton), Undated, 6 (SCOI.82365).

<sup>3429</sup> Submissions of Counsel Assisting, 7 June 2023, [1212] (SCOI.84380).

<sup>3430</sup> Submissions of Counsel Assisting, 7 June 2023, [1212] (SCOI.84380).

- 13.849. The NSWPF acknowledged that the academic team held concerns, which were “obvious on the face of the Academic Report”<sup>3431</sup> regarding “the lack of authority or academic support for the BCIF” and that “the indicators used were not sufficiently nuanced”.<sup>3432</sup> The NSWPF stressed, however, that these concerns did not mean the academic team regarded the indicators as “wholly deficient and needing to be dropped”.<sup>3433</sup>
- 13.850. The NSWPF contended that the academic team’s concerns regarding the lack of academic support for the BCIF or nuance in the indicators were “clearly reflected in the Academic Report” and were not materially departed from in the academics’ oral evidence.<sup>3434</sup> It was emphasised that Dr Dalton and Dr de Lint did not withdraw the statement in the Academic Report that the indicators were not “wholly deficient”, and Dr Dalton did not accept that the BCIF was “not fit for purpose or sufficient for the task”.<sup>3435</sup>
- 13.851. Further, the NSWPF submitted that the academic team did not communicate that they could not properly complete their review based on the material available, and the NSWPF was reliant on their expertise and assessment as to this matter.<sup>3436</sup>
- 13.852. As to whether the weaknesses in the BCIF acknowledged by Dr Dalton were adequately reflected in the Academic Report itself, the NSWPF submitted that:
- a. The Academic Report referred to the process undertaken by Strike Force Parrabell as “intuitive”, thus “clearly” acknowledging the subjectivity in that process;<sup>3437</sup> and
  - b. The “paucity of data” identified by Dr Dalton arose because of the “age of the cases and lack of contemporaneous information available”, not any omission by Strike Force Parrabell.<sup>3438</sup> This paucity and its limiting effect on the conclusions available was “squarely acknowledged” in the Academic Report.<sup>3439</sup>

<sup>3431</sup> Submissions of NSWPF, 28 June 2023, [707] (SCOI.84211).

<sup>3432</sup> Submissions of NSWPF, 28 June 2023, [706] (SCOI.84211).

<sup>3433</sup> Submissions of NSWPF, 28 June 2023, [706] (SCOI.84211).

<sup>3434</sup> Submissions of NSWPF, 28 June 2023, [711] (SCOI.84211).

<sup>3435</sup> Submissions of NSWPF, 28 June 2023, [708] (SCOI.84211), citing Transcript of the Inquiry, 28 February 2023, T2397.17–20, 2397.22–30, 2397.32–41, 2398.8–19 (TRA.00029.00001).

<sup>3436</sup> Submissions of NSWPF, 28 June 2023, [714] (SCOI.84211), citing Transcript of the Inquiry, 2 March 2023, T2616.5–2617.27 (TRA.00031.00001).

<sup>3437</sup> Submissions of NSWPF, 28 June 2023, [713(a)] (SCOI.84211), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 69 (SCOI.02632).

<sup>3438</sup> Submissions of NSWPF, 28 June 2023, [713(b)] (SCOI.84211), citing Transcript of the Inquiry, 28 February 2023, T2398.43–2399.15 (TRA.00029.00001).

<sup>3439</sup> Submissions of NSWPF, 28 June 2023, [713(b)] (SCOI.84211), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 54 (SCOI.02632).

- 13.853. The NSWPF also emphasised that Dr Dalton had said, with respect to the BCIF, that it was, “certainly a very imperfect instrument”, although “the best that they had and I think they were using it in good faith”,<sup>3440</sup> and that Dr Dalton had gone on to state:<sup>3441</sup>

*... the determination of bias is such a profoundly difficult thing to do, and certainly their instrument wasn't particularly good, but nor was it so wholly terrible that it was, like, embarrassing or anything of that nature. It just, because of the fact it came from America and the nature of the way it had been put together, wasn't a sort of wonderful way to go about it.*

- 13.854. The NSWPF also emphasised that Dr Dalton declined to concede that the academic review was “futile”, although he acknowledged that it involved a flawed process because the instrument used was “fairly flawed”, as was the way it was used.<sup>3442</sup>
- 13.855. The NSWPF also drew my attention to the evidence of Dr de Lint, who stated that he “wouldn't go that far and say [the BCIF] wasn't fit for purpose. I would say that we struggled to overlay our evaluation using the parameters of the form”. It was “fit for purpose” if “the purpose was... to provide us with information... to see what relevant material, organised in some way, there was in order to... begin to make an evaluation”.<sup>3443</sup> His evidence was that it “may be a very difficult task to develop a form [with] the kind of requirements... Lovegrove would prefer”.<sup>3444</sup>
- 13.856. In any event, said the NSWPF, the BCIF was merely used to prompt reviewing officers as to potentially relevant factors and record them for further stages of review. (I interpolate that once again, the submissions of the NSWPF assumed that multiple officers had filled out the BCIFs—which in fact they did not.) It was not used in a mathematical or scientific process, but to assist with intuitive judgments.<sup>3445</sup>

<sup>3440</sup> Submissions of NSWPF, 28 June 2023, [708] (SCOI.84211), citing Transcript of the Inquiry, 28 February 2023, T2397.17–20, 2397.32–41 (TRA.00029.00001).

<sup>3441</sup> Submissions of NSWPF, 28 June 2023, [708] (SCOI.84211), citing Transcript of the Inquiry, 28 February 2023, Transcript, T2398.8–19 (TRA.00029.00001).

<sup>3442</sup> Submissions of NSWPF, 28 June 2023, [709] (SCOI.84211), citing Transcript of the Inquiry, 1 March 2023, T2447.11–40 (TRA.00030.00001).

<sup>3443</sup> Submissions of NSWPF, 28 June 2023, [710] (SCOI.84211), citing Transcript of the Inquiry, 2 March 2023, T2655.26–40. (TRA.00032.00001).

<sup>3444</sup> Submissions of NSWPF, 28 June 2023, [710] (SCOI.84211); Transcript of the Inquiry, 2 March 2023, T2664.17–20 (TRA.00032.00001).

<sup>3445</sup> Submissions of NSWPF, 28 June 2023, [712] (SCOI.84211), citing Transcript of the Inquiry, 7 December 2022, T752.41–754.20, 806.21–33, 807.16–29 (TRA.00012.00001); Transcript of the Inquiry, 12 December 2022, T1034.2 (TRA.00015.00001); Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 67–69 (SCOI.02632); Exhibit 6, Tab 386, Letter from Katherine Garaty to Enzo Camporeale, 19 May 2023 (SCOI.83388).

## “Anti-gay bias” and “anti-paedophile animus”

### ORIGINS AND RATIONALE OF THIS DISTINCTION

- 13.857. Overall, the NSWPF submitted that the academic team’s wish to draw a distinction between anti-gay and anti-paedophile animus was “well-intentioned, though misguided”.<sup>3446</sup>
- 13.858. The NSWPF submitted that Counsel Assisting had erred in suggesting that the academic team characterised a sexual relationship between a man aged 18-25 and a much older man as paedophilia.<sup>3447</sup> According to the NSWPF, the academic team was not referring to the “age of the person the victim was alleged or perceived to have been involved with”. They merely observed that many cases reviewed by Strike Force Parrabell involved a male perpetrator between 15 to 25 years old and male victim aged 45 years or older.<sup>3448</sup>
- 13.859. As to one of the academic team’s stated rationales for the distinction (that is, to avoid over-recording or miscategorising the instances of bias crimes), Counsel Assisting submitted that the concerns expressed by the academic team echoed their own views on “moral panic”.<sup>3449</sup>
- 13.860. The NSWPF accepted that “the process of disentangling, and appropriately recording” the differences in anti-gay and anti-paedophile animus was “in practice, fraught”, noting that Strike Force Parrabell had not drawn the distinction.<sup>3450</sup>

### THE EXPERTS’ VIEWS

- 13.861. The submissions addressing the experts’ evidence as to the academic team’s distinction between “anti-gay bias” and “anti-paedophile animus” were as follows.
- 13.862. Counsel Assisting submitted that the analyses by Professor Asquith and Associate Professor Lovegrove were well-reasoned and should be accepted. It was submitted that neither Dr Dalton nor Dr De Lint sought to adhere to or justify the distinction.<sup>3451</sup>
- 13.863. It was acknowledged that in one particular subset of cases, the victim may actually be a paedophile and the offender’s sole motivation may be knowledge of that fact. In some such cases, a view that that the offence is not an LGBTIQ bias crime may be available.<sup>3452</sup>

<sup>3446</sup> Submissions of NSWPF, 28 June 2023, [721] (SCOI.84211).

<sup>3447</sup> Submissions of NSWPF, 28 June 2023, [716] (SCOI.84211).

<sup>3448</sup> Submissions of NSWPF, 28 June 2023, [716] (SCOI.84211); Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 84 (SCOI.02632).

<sup>3449</sup> Submissions of Counsel Assisting, 7 June 2023, [1240] (SCOI.84380).

<sup>3450</sup> Submissions of NSWPF, 28 June 2023, [721] (SCOI.84211).

<sup>3451</sup> Submissions of Counsel Assisting, 7 June 2023, [1235]–[1236], [1248] (SCOI.84380), citing Transcript of the Inquiry, 28 February 2023, T2412.4–2413.28 (TRA.00029.00001); Transcript of the Inquiry, 3 March 2023, T2706.25–27 (TRA.00032.00001).

<sup>3452</sup> Submissions of Counsel Assisting, 7 June 2023, [1249] (SCOI.84380).

- 13.864. However, it was submitted that in most, if not all, other LGBTIQ hate crime deaths, the distinction will be untenable. Where an offender conflated queerness and paedophilia, or had motivations that included both anti-gay and anti-paedophile components, in whatever proportions or variations, it would be difficult if not impossible to separate them out.<sup>3453</sup>
- 13.865. Further, it would also be irrelevant to do so if one is working with a concept or definition of “bias crime” which incorporates the possibility of an offender’s actions being motivated, “in whole or in part”, by “any form of bias”. The academic team asserted, in the Academic Report, that they “largely agree[d] with” such a definition.<sup>3454</sup>
- 13.866. It was submitted by Counsel Assisting that the effect of the academic team’s approach, perhaps unintended, was to treat an offender’s bigoted notions as reality. Despite their references to “public policy”, the academic team’s approach to this issue reflected, rather than rejected, the “historical slander that gays and paedophiles can be understood under a common moniker”.<sup>3455</sup> If a perpetrator conflates members of the LGBTIQ community with paedophiles, that is itself a form of hate or bias against the LGBTIQ community. It is not a reason to conclude that the crime is not a crime involving LGBTIQ bias.<sup>3456</sup>
- 13.867. It was submitted that this approach by the academic team does little more than obscure the results. By creating a separate category for these cases, the academic team reduced the number of cases which it classified as “anti-gay bias” (only 17 of 85). The academic team then provided a combined category of 29 total cases of “animus”.<sup>3457</sup> However, Counsel Assisting observed: if the categories could be combined so easily, it once again begs the question: why were they separated in the first place?<sup>3458</sup>

<sup>3453</sup> Submissions of Counsel Assisting, 7 June 2023, [1250] (SCOI.84380).

<sup>3454</sup> Submissions of Counsel Assisting, 7 June 2023, [1251] (SCOI.84380), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 81 (SCOI.02632).

<sup>3455</sup> Submissions of Counsel Assisting, 7 June 2023, [1252] (SCOI.84380), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 85 (SCOI.02632).

<sup>3456</sup> Submissions of Counsel Assisting, 7 June 2023, [1252] (SCOI.84380).

<sup>3457</sup> Submissions of Counsel Assisting, 7 June 2023, [1253] (SCOI.84380), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 92 (SCOI.02632).

<sup>3458</sup> Submissions of Counsel Assisting, 7 June 2023, [1253] (SCOI.84380).

- 13.868. Counsel Assisting further submitted that the concept of “anti-paedophile animus” was flawed not just in theory, but also in practice. The Strike Force Parrabell Case Summaries clearly indicate that there were cases categorised by the academics as involving “anti-paedophile animus” in circumstances where there was no evidence either that the victim was a paedophile or that the offender was motivated by such an “anti-paedophile animus”.<sup>3459</sup> Several are cases where the (younger) offender claimed that the (older) victim had made an unwanted advance, but the offenders were themselves adults.<sup>3460</sup> In such circumstances, it is difficult to see how the academic team could positively, or defensibly, characterise the motivation as “anti-paedophile animus”.<sup>3461</sup>
- 13.869. Counsel Assisting drew my attention to the evidence of Dr de Lint, who was taken to several examples of cases which the academic team had classified, in the Case Summaries, as “anti-paedophile animus”. He was unable to explain the basis for that classification in any of those cases.<sup>3462</sup> He ultimately gave evidence that in applying the distinction between “anti-gay bias” and “anti-paedophile animus”, the academic team “went down a track that we shouldn’t have gone down”.<sup>3463</sup>
- 13.870. Counsel Assisting submitted that the confused nature of the attempted distinction, and the absence of any explanation for its apparently misconceived application, neither of which Dr Dalton or Dr De Lint attempted to justify, show that its effect, whether intended or not, was no more than to obfuscate and downplay the number of deaths which were bias crimes.<sup>3464</sup>
- 13.871. The NSWPF submitted that Counsel Assisting and the experts did not seem to take into account that Dr de Lint had “confirmed” in oral evidence that “anti-paedophile animus was treated as a *subset* of anti-gay bias”.<sup>3465</sup>
- 13.872. Consequently, the NSWPF submitted that the following inferences sought by Associate Professor Lovegrove could not be drawn:<sup>3466</sup>
- a. “where both anti-gay and anti-paedophile hatred were at play, there was a prevailing team disposition to preference the classification of paedophile over gay”;<sup>3467</sup> and

<sup>3459</sup> Submissions of Counsel Assisting, 7 June 2023, [1254] (SCOI.84380), citing Exhibit 6, Tab 49, Strike Force Parrabell – Case Summaries, Undated, 20 (SCOI.76961.00014). Counsel Assisting suggested as examples Cases 12, 13, 24, 59, 61, 72 and 78.

<sup>3460</sup> Submissions of Counsel Assisting, 7 June 2023, [1254] (SCOI.84380), citing Transcript of the Inquiry, 2 March 2023, T2713.34–2715.3 (TRA.00031.00001).

<sup>3461</sup> Submissions of Counsel Assisting, 7 June 2023, [1254] (SCOI.84380).

<sup>3462</sup> Submissions of Counsel Assisting, 7 June 2023, [1255] (SCOI.84380), citing Transcript of the Inquiry, 2 March 2023, T2713–2715 (TRA.00031.00001).

<sup>3463</sup> Submissions of Counsel Assisting, 7 June 2023, [1255] (SCOI.84380), citing Transcript of the Inquiry, 2 March 2023, T2715.20–21 (TRA.00031.00001).

<sup>3464</sup> Submissions of Counsel Assisting, 7 June 2023, [1256] (SCOI.84380).

<sup>3465</sup> Submissions of NSWPF, 28 June 2023, [720] (SCOI.84211), citing Transcript of the Inquiry, 2 March 2023, T2705.35–2706.26 (TRA.00032.00001).

<sup>3466</sup> Submissions of NSWPF, 28 June 2023, [720] (SCOI.84211).

<sup>3467</sup> Submissions of NSWPF, 28 June 2023, [720] (SCOI.84211), citing Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, [131] (SCOI.82366.00001).

- b. “it appears that the academics’ approach allows for a case where minor anti-gay bias would be trumped by anti-paedophile bias in the categorisation of cases”.<sup>3468</sup>
- 13.873. Accordingly, the NSWPF submitted that it could not be said, as suggested by Counsel Assisting, that the result was to obfuscate and downplay the number of bias crimes.<sup>3469</sup>

### The ‘Moral Panic’ article

- 13.874. Counsel Assisting submitted, and the NSWPF acknowledged, that several aspects of the ‘Moral Panic’ article were inappropriate, including references to the “so-called” problem of gay homicide and to “fake news”.
- 13.875. Counsel Assisting submitted that the evidence, including notes made by Dr de Lint in February 2017,<sup>3470</sup> made clear that the academic team commenced working on such an article by early 2017, within a few months of starting work on Strike Force Parrabell, and well over a year before the Parrabell Report was published.<sup>3471</sup>
- 13.876. It was submitted that the evidence established that, by at least February 2017, the academic team had formed the view (at least provisionally) that:<sup>3472</sup>
- a. There was a “moral panic” in relation to the deaths the subject of Strike Force Parrabell;
  - b. This moral panic was being fuelled by “moral entrepreneurs” or “crusaders”;<sup>3473</sup> and
  - c. The moral panic was not supported by evidence.
- 13.877. Counsel Assisting observed that this is essentially the same idea that is advanced in the 2013 Issue Paper. It is also readily discernible in the Academic Report itself. Even the term “gross exaggeration” used in the 2013 Issue Paper is woven into the Academic Report.<sup>3474</sup>

<sup>3468</sup> Submissions of NSWPF, 28 June 2023, [720] (SCOI.84211), citing Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, [132] (SCOI.82366.00001).

<sup>3469</sup> Submissions of NSWPF, 28 June 2023, [720] (SCOI.84211).

<sup>3470</sup> Exhibit 6, Tab 92, Document titled ‘Notes Bias3’, Undated (created 28 February 2017) (SCOI.77540).

<sup>3471</sup> Submissions of Counsel Assisting, 7 June 2023, [1259] (SCOI.84380), citing Transcript of the Inquiry, 1 March 2023, T2539.2–9 (TRA.00030.00001); Transcript of the Inquiry, 3 March 2023, T2770.2–11, 2770.36–44, 2773.6, 2773.41–42 (TRA.00032.00001). See also Exhibit 6, Tab 277, Email correspondence between Nicolas Parkhill, Anthony Crandell, Jacqueline Braw, Derek Dalton and Willem de Lint, 23 February–18 April 2018, 1 (SCOI.80025); Exhibit 6, Tab 92, Document titled ‘Notes Bias3’, Undated (created 28 February 2017) (SCOI.77540); Exhibit 6, Tab 129, Email correspondence between Derek Dalton and Craig Middleton, 24 October 2018 (SCOI.74734).

<sup>3472</sup> Submissions of Counsel Assisting, 7 June 2023, [1260] (SCOI.84380).

<sup>3473</sup> Submissions of Counsel Assisting, 7 June 2023, [1260] (SCOI.84380), citing Transcript of the Inquiry, 3 March 2023, T2795.46–2796.9 (TRA.00032.00001).

<sup>3474</sup> Submissions of Counsel Assisting, 7 June 2023, [1261] (SCOI.84380), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 79 (SCOI.02632).



- 13.878. Counsel Assisting submitted that the unambiguously partisan approach found in the ‘Moral Panic’ article is consistent with, and informed, the approach of the academic team to their review of Strike Force Parrabell, from no later than February 2017.<sup>3475</sup>
- 13.879. In his oral evidence, Dr de Lint agreed that he was aware, as at February 2017, that there was a strongly held view within the NSWPF that claims of 80-plus gay bias homicides were a gross exaggeration,<sup>3476</sup> and he accepted that his views as at February 2017 correlated with that police view, but he declined to concede that he was aware of that correlation.<sup>3477</sup> It was submitted by Counsel Assisting that his evidence in that latter respect should be rejected.<sup>3478</sup>
- 13.880. Dr Dalton, as noted earlier, said that he used the phrase “moral crusader” because “it seemed as though, from the second I started doing this work, if you were to find that there was any number less than 88, you were somehow a police apologist, which is an offensive sort of assertion.”<sup>3479</sup> It was submitted that this evidence is illustrative of an adversarial approach on his part, one that supported the police view that the list of 88 deaths was a “gross exaggeration”, and attacked the contrary view. It was submitted that it again suggests (regardless of what view might be taken about the relative merits of the two opposed positions) that the approach of the academic team was not truly “independent”, but was truly “collaborative”.<sup>3480</sup>
- 13.881. Counsel Assisting submitted that there is an inescapable inference that the academic team approached its review of the work of Strike Force Parrabell, first, knowing that the NSWPF viewed the alleged number of “88” in the context of the list of 88 deaths as a gross exaggeration and, secondly, sharing that view.<sup>3481</sup>
- 13.882. That view, it was submitted, infected the academic team’s approach to the Strike Force Parrabell exercise from the outset. According to Counsel Assisting, it is little wonder, then, that various aspects of their methodology had the effect of downplaying the number of cases of bias, and/or of obfuscating the issues. The extended treatment of the concept of “anti-paedophile animus”, discussed above, is an egregious example of such obfuscation.<sup>3482</sup>

<sup>3475</sup> Submissions of Counsel Assisting, 7 June 2023, [1262] (SCOI.84380).

<sup>3476</sup> Submissions of Counsel Assisting, 7 June 2023, [1263] (SCOI.84380), citing Transcript of the Inquiry, 3 March 2023, T2778.35 (TRA.00032.00001).

<sup>3477</sup> Submissions of Counsel Assisting, 7 June 2023, [1263] (SCOI.84380), citing Transcript of the Inquiry, 3 March 2023, T2778.40 (TRA.00032.00001).

<sup>3478</sup> Submissions of Counsel Assisting, 7 June 2023, [1263] (SCOI.84380).

<sup>3479</sup> Submissions of Counsel Assisting, 7 June 2023, [1273] (SCOI.84380), citing Transcript of the Inquiry, 28 February 2023, T2418.27–30. (TRA.00029.00001).

<sup>3480</sup> Submissions of Counsel Assisting, 7 June 2023, [1273] (SCOI.84380).

<sup>3481</sup> Submissions of Counsel Assisting, 7 June 2023, [1282] (SCOI.84380).

<sup>3482</sup> Submissions of Counsel Assisting, 7 June 2023, [1283] (SCOI.84380).

- 13.883. The NSWPF submitted that there was no evidence to support the suggested inference that the academic team had commenced working on the article by February 2017 and/or held the views expressed in the ‘Moral Panic’ article prior to the academic review.<sup>3483</sup> It was submitted that his evidence demonstrated that the notes made on 28 February 2017 were “notes of but one possible outcome... dependent on the facts... yet to be determined”.<sup>3484</sup>
- 13.884. It was submitted that the notes “[fall] far short” of demonstrating that the academic review was not approached objectively, or that the academic team “set about to downplay the number of gay-hate murders in support of the view that they had been exaggerated”. The NSWPF submitted that this was an “extraordinary allegation” based on “wholly speculative inference”.<sup>3485</sup> The NSWPF noted that Dr Tyson had not been called to give evidence,<sup>3486</sup> subsequently submitted that it was “incumbent upon Counsel Assisting” to afford Dr Tyson the opportunity to respond to “extraordinarily serious allegations” advanced in Counsel Assisting’s submissions.<sup>3487</sup> I outlined the outcome of the Inquiry’s contact with Dr Tyson earlier in this Chapter.
- 13.885. The NSWPF submitted that the “far more likely scenario” was that the article’s substance was prepared following the academic review.<sup>3488</sup> The NSWPF relied on “positive evidence”, being an email from Dr de Lint to Dr Dalton on 18 April 2018 in which Dr de Lint states, “Also, am beginning the paper on moral panics”.<sup>3489</sup>

### Expert evidence

- 13.886. As to the experience and specialised knowledge of the Inquiry’s experts, Ms Coakley, Associate Professor Lovegrove and Professor Asquith, I have recorded the submissions of Counsel Assisting and the NSWPF, and my conclusions, earlier in this Chapter in relation to the ‘Police Methodology’.

<sup>3483</sup> Submissions of NSWPF, 28 June 2023, [725]–[728] (SCOI.84211).

<sup>3484</sup> Submissions of NSWPF, 28 June 2023, [728] (SCOI.84211).

<sup>3485</sup> Submissions of NSWPF, 28 June 2023, [730] (SCOI.84211). The NSWPF drew my attention to evidence of Dr Dalton and Dr de Lint as to this issue, including the following: Transcript of the Inquiry, 28 February 2023, T2428.8–19 (TRA.00029.00001); Transcript of the Inquiry, 3 March 2023, T2773.17–29, 2776.30–2779.12 (TRA.00032.00001).

<sup>3486</sup> Submissions of NSWPF, 28 June 2023, [730] (SCOI.84211).

<sup>3487</sup> Supplementary Submissions of NSWPF, 23 October 2023, [37(b)] (SCOI.86378).

<sup>3488</sup> Submissions of NSWPF, 28 June 2023, [731] (SCOI.84211).

<sup>3489</sup> Submissions of NSWPF, 28 June 2023, [731] (SCOI.84211), citing Exhibit 6, Tab 277, Email correspondence between Nicolas Parkhill, Anthony Crandell, Jacqueline Braw, Derek Dalton and Willem de Lint, 23 February to 18 April 2018 (SCOI.80025).

## COMMON ISSUES ADDRESSED BY ALL EXPERTS

13.887. The relevant evidence is addressed above.

### Reliance on BCIFs

- 13.888. As outlined above, the academic team disavowed the BCIF as an instrument. Dr Dalton went as far as to call it a “pretty appalling instrument”.<sup>3490</sup>
- 13.889. However, the academic team do not appear to have reflected on the extent to which their own views were dependent on the BCIFs. Their methodology was overlaid on the summarised and filleted information that they had: namely the BCIFs, on which they were entirely reliant.
- 13.890. The views expressed in the Asquith Report, Coakley Report and Lovegrove Report, as to the academic team’s reliance on the BCIFs.
- 13.891. Counsel Assisting submitted that there was obvious force in those views, and pointed out that if, as was the case, the academic team was entirely reliant on the BCIF, then any shortcomings in the BCIF would necessarily infect their own work.
- 13.892. It was submitted that this was a fundamental flaw in the academic team’s methodology: as Professor Asquith said, “dirty data in, dirty data out”.<sup>3491</sup> Counsel Assisting submitted that this was a sufficient basis, by itself, to reject the academic team’s conclusions.<sup>3492</sup>
- 13.893. It will be recalled that Professor Asquith’s evidence was that, if she had been awarded the tender but had not been given access to the documents on which the BCIFs were based, she would have returned the money and declined to continue the project.<sup>3493</sup> Counsel Assisting submitted that the academic team should have pursued access to the original documents. Unless they reviewed those documents themselves, their views on the adequacy or appropriateness of the contents of the BCIFs could have little if any weight.
- 13.894. Counsel Assisting acknowledged that it was true, as counsel for the NSWPF several times noted, that such an approach would have involved far more time and would have amounted to a very different exercise. But it was submitted that the logic is nevertheless inexorable: the “academic review”, at its conceptual core, was flawed.<sup>3494</sup>

<sup>3490</sup> Transcript of the Inquiry, 1 March 2023, T2446.12–40 (TRA.00030.00001).

<sup>3491</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [150] (SCOI.82368.00001).

<sup>3492</sup> Submissions of Counsel Assisting, 7 June 2023, [1294] (SCOI.84380).

<sup>3493</sup> Submissions of Counsel Assisting, 7 June 2023, [1295] (SCOI.84380), citing Transcript of the Inquiry, 3 March 2023, T2825.28–2826.19 (TRA.00032.00001).

<sup>3494</sup> Submissions of Counsel Assisting, 7 June 2023, [1296] (SCOI.84380).

- 13.895. The NSWPF accepted that the academic team’s reliance on the completed BCIFs, instead of accessing underlying source material, was a “relevant limitation” of their work and did not match the NSWPF’s initial intention set out in the RFQ.<sup>3495</sup>
- 13.896. However, the NSWPF submitted that:
- a. It “quickly became apparent” to Dr Dalton and Assistant Commissioner Crandell that access to the underlying source material was not feasible from “a timing or resourcing perspective” because of its volume.<sup>3496</sup>
  - b. Reliance on the BCIFs was “not accepted [as] a basis on which to entirely reject the... conclusions” of the academic team. Professor Asquith had referred to the academic team’s approach as “of limited – and not no – utility” to evaluate Strike Force Parrabell’s methodology.<sup>3497</sup>
  - c. Access to the underlying source material would not have solved the “further issue” identified by Professor Asquith, concerning “the competency of, and absence of bias, in the original police investigations”.<sup>3498</sup>
  - d. The NSWPF relied on the academic team’s expertise to communicate if their task could be rendered “impossible or futile” because they could not access the case files, and were entitled to so rely upon them.<sup>3499</sup>
- 13.897. Counsel Assistance referred to another consequence that flowed from the academic team’s reliance on the BCIFs. Because they had far less information than the Strike Force Parrabell team—a summary document but none of the source documents—it is not surprising that they categorised more deaths as “insufficient information” (33 deaths) than Strike Force Parrabell had done (25 deaths).<sup>3500</sup>
- 13.898. The NSWPF submitted that the increased number of “insufficient information” cases under the academic review could have arisen for “any number of reasons”; Counsel Assisting’s submission on this point was “not based on any evidence, was not put to any of the experts, and [was] entirely speculative”.<sup>3501</sup>

<sup>3495</sup> Submissions of NSWPF, 28 June 2023, [749] (SCOI.84211), citing Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project – RFQ Number: 001286, 22 July 2016, cl. 4.1 (SCOI.76961.00007).

<sup>3496</sup> Submissions of NSWPF, 28 June 2023, [749] (SCOI.84211), citing Transcript of the Inquiry, 2 March 2023, T2616.5–2617.27 (TRA.00032.00001).

<sup>3497</sup> Submissions of NSWPF, 28 June 2023, [750] (SCOI.84211), citing Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [199] (SCOI.82368.00001).

<sup>3498</sup> Submissions of NSWPF, 28 June 2023, [750] (SCOI.84211), citing Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [158], [198(a)], [198(c)] (SCOI.82368.00001); Transcript of the Inquiry, 3 March 2023, T2820.27–2821.18 (TRA.00032.00001).

<sup>3499</sup> Submissions of NSWPF, 28 June 2023, [751] (SCOI.84211).

<sup>3500</sup> Submissions of Counsel Assisting, 7 June 2023, [1297] (SCOI.84380), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 24, 92 (SCOI.02632).

<sup>3501</sup> Submissions of NSWPF, 28 June 2023, [752] (SCOI.84211).

## Terminology

- 13.899. The relevant evidence is summarised above.
- 13.900. Counsel Assisting submitted that the language used in the Academic Report is, at best, imprecise.<sup>3502</sup> Counsel Assisting referred, for example, to the passages of the Lovegrove Report and Asquith Report extracted above.
- 13.901. Counsel Assisting submitted that the failure of the academic team to use appropriately inclusive terminology was significant in two respects. First, it was (no doubt unintentionally) disrespectful to the LGBTIQ community and to the diversity of that community. For example, the all-encompassing use of the word “gay” erases bisexual men, transgender women, people with intersex characteristics, and other queer people whose deaths were the subject of Strike Force Parrabell.<sup>3503</sup> This was particularly unfortunate, given the goals of Strike Force Parrabell to “bring the NSWPF and the LGBTIQ community closer together”, and to address “significant angst ... within the LGBTIQ community”.<sup>3504</sup>
- 13.902. Secondly, Counsel Assisting submitted that the failure to use inclusive terminology created a risk of analytical error. As explained in the Asquith Report, particularly at [169], hate crime against transgender women has unique characteristics—it is not necessarily the same as hate crime against gay men. Transphobia and homophobia are overlapping but distinct concepts. It was submitted that failing to recognise those distinctions created a risk of error.<sup>3505</sup>
- 13.903. The NSWPF submitted that the Police Report and Academic Report both “reference, and clearly intend to extend to, the LGBTIQ community and not simply gay men”.<sup>3506</sup> Any focus on gay men reflected that the majority of the list of 88 deaths were men.<sup>3507</sup>
- 13.904. The NSWPF did not accept that transgender women in the list of 88 deaths had “disappeared” or were “deadnamed”, as described in the Asquith Report.<sup>3508</sup> Rather, “very few references to the victims in any individual cases”, no matter their identity, were included on grounds such as “privacy, protection of family members and preventing prejudice to future investigations”.<sup>3509</sup>

<sup>3502</sup> Submissions of Counsel Assisting, 7 June 2023, [1298] (SCOI.84380).

<sup>3503</sup> Submissions of Counsel Assisting, 7 June 2023, [1300] (SCOI.84380).

<sup>3504</sup> Submissions of Counsel Assisting, 7 June 2023, [1300] (SCOI.84380), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 14, 18 (SCOI.02632).

<sup>3505</sup> Submissions of Counsel Assisting, 7 June 2023, [1301] (SCOI.84380).

<sup>3506</sup> Submissions of NSWPF, 28 June 2023, [753] (SCOI.84211), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 12, 18, 54, 71, 108 (SCOI.02632).

<sup>3507</sup> Submissions of NSWPF, 28 June 2023, [753] (SCOI.84211).

<sup>3508</sup> Submissions of NSWPF, 28 June 2023, [754] (SCOI.84211); cf Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [169] (SCOI.82368.00001).

<sup>3509</sup> Submissions of NSWPF, 28 June 2023, [754] (SCOI.84211).

- 13.905. I note Counsel Assisting’s concerns in relation to the terminology used by the academics in preparing the Academic Review. I agree that it would have been preferable for the academics to use more inclusive language (particularly language that recognises that violence against trans women has specific characteristics, and language that minimises the risk of analytical error). The use of inappropriate terminology is particularly regrettable in an exercise that appears to have been directed to conveying to the community that the NSWPF took hate crimes against the LGBTIQ community seriously.
- 13.906. However, I do not consider (and Counsel Assisting did not submit that the academic team intended any disrespect through the use this language).

### Definition of bias crime, and the issue of partial motivation

- 13.907. The relevant evidence is summarised above.
- 13.908. Counsel Assisting submitted that if members of the LGBTIQ community are targeted for robbery because of their identity as members of the LGBTIQ community, then that can and should be characterised as a bias crime.<sup>3510</sup>
- 13.909. It was submitted that the concern raised by Associate Professor Lovegrove in the passage extracted above at [13.815] is a valid one, and a serious one. The Academic Report, it was submitted, is quite unclear as to whether a crime which had or may have had a partial “gay hate” motivation (such as where a robbery is also involved) was included or excluded.<sup>3511</sup> The academics say they found such questions “profoundly challenging”, and that robbery was “a vexatious factor in hate crime theory”, but it was submitted that is not clear how, or if, they resolved such questions.<sup>3512</sup> It was further submitted that Professor Asquith was not challenged on her evidence as to this issue extracted above, which should thus be accepted.<sup>3513</sup>
- 13.910. The NSWPF submitted that Counsel Assisting’s submissions as to this issue were “misconceived” because the academic team did characterise conduct as bias crime where victims “were targeted for robbery because of their identity as members of the LGBTIQ community”.<sup>3514</sup>
- 13.911. The NSWPF accepted that the academic team’s “ultimate treatment of such cases was somewhat opaque on the fact of the [Academic Report]”.<sup>3515</sup> However, it was submitted that the approach was “clarified in oral evidence”, particularly by the evidence of Dr de Lint, who gave the following evidence:<sup>3516</sup>

<sup>3510</sup> Submissions of Counsel Assisting, 7 June 2023, [1307] (SCOI.84380).

<sup>3511</sup> Submissions of Counsel Assisting, 7 June 2023, [1304] (SCOI.84380), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 102–105 (SCOI.02632).

<sup>3512</sup> Submissions of Counsel Assisting, 7 June 2023, [1304] (SCOI.84380); Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 102–103 (SCOI.02632).

<sup>3513</sup> Submissions of Counsel Assisting, 7 June 2023, [1306] (SCOI.84380).

<sup>3514</sup> Submissions of NSWPF, 28 June 2023, [759] (SCOI.84211).

<sup>3515</sup> Submissions of NSWPF, 28 June 2023, [757] (SCOI.84211).

<sup>3516</sup> Transcript of the Inquiry, 3 March 2023, T2861.24–2862.4 (TRA.00032.00001).

*Q. So even if the primary motivation is robbery and a secondary motivation is a gay person is an easy target, would that still be categorised as a hate crime?*

*A. Yes.*

### Victim perceptions

- 13.912. The relevant evidence is summarised above.
- 13.913. Counsel Assisting submitted that the evidence of Professor Asquith and Associate Professor Lovegrove should be accepted.<sup>3517</sup>
- 13.914. Professor Asquith gave evidence that victims are “experts in being hated”, such that their perceptions have utility to identify hate crime patterns prior before they to homicide. Professor Asquith was not challenged on this point, and Counsel Assisting submitted her evidence should be accepted. Counsel Assisting noted that the point may be of limited assistance in relation to the identification of hate crime deaths, except where there have been hate crimes prior to the death, which form a pattern into which the death fits.<sup>3518</sup>
- 13.915. The NSWPF submitted that because Counsel Assisting had conceded that this approach may be of limited assistance in relation to hate crime deaths, the NSWPF and/or academic team “cannot be criticised for not adopting it in the context of Strike Force Parrabell”.<sup>3519</sup>
- 13.916. Counsel Assisting submitted that, in the written response to the experts’ evidence prepared by Dr de Lint (and endorsed by Dr Dalton) on this issue (set out above), Dr de Lint did not appear to have appreciated the point being made by Professor Asquith and by Associate Professor Lovegrove.
- 13.917. Counsel Assisting submitted that the point is not that members of the LGBTIQ community necessarily have knowledge about a particular case (although they may). The point is that members of the LGBTIQ community may have knowledge about the nature of hate crimes more generally, which should be taken into account in a review exercise of this nature (one that is seeking to form a view as to the presence or absence of an anti-LGBTIQ bias). It is knowledge and perspective of this kind which the academic team failed to seek.<sup>3520</sup>
- 13.918. The NSWPF submitted that Counsel Assisting had not put this failure to Dr Dalton or Dr de Lint.<sup>3521</sup>

<sup>3517</sup> Submissions of Counsel Assisting, 7 June 2023, [1316] (SCOI.84380).

<sup>3518</sup> Submissions of Counsel Assisting, 7 June 2023, [1313] (SCOI.84380).

<sup>3519</sup> Submissions of NSWPF, 28 June 2023, [761] (SCOI.84211).

<sup>3520</sup> Submissions of Counsel Assisting, 7 June 2023, [1318] (SCOI.84380).

<sup>3521</sup> Submissions of NSWPF, 28 June 2023, [762(a)] (SCOI.84211).

- 13.919. Counsel Assisting observed that, indeed, it would seem that the academic team did not consider such knowledge to be of any particular relevance.<sup>3522</sup> For example, Dr de Lint wrote in his response to the expert reports, which was endorsed by Dr Dalton:<sup>3523</sup>

*This is not the only constituency interested in the factual record, nor is it presumed by us that any and all individuals in this constituency may be presumed to prefer a particular outcome regarding findings.*

- 13.920. The NSWPF submitted that this passage should not be read literally, and was not supportive of the conclusion drawn by Counsel Assisting that the academic team did not consider this knowledge to be of any particular relevance.<sup>3524</sup> Further, it was submitted that a recommendation made in the Academic Report “expressly referenced” the importance and value of engagement with and assistance from the LGBTIQ community. Moreover, in recommending that the NSWPF develop a protocol for evidence-based bias discovery, the academic team stated that “it would be prudent to consult widely for diverse expertise on the development of such an instrument. The development will also benefit from community engagement”.<sup>3525</sup>
- 13.921. Counsel Assisting noted that this Inquiry has proceeded on the basis that members of the LGBTIQ community do have knowledge that is relevant to understanding hate crimes. One example (among others) of that approach was Public Hearing 1 in November 2022, when the Inquiry received a wide range of evidence, from numerous members of the LGBTIQ community, relating to issues relevant to anti-LGBTIQ bias and the nature and extent of hate crime in NSW in the relevant time period.<sup>3526</sup>
- 13.922. Counsel Assisting submitted that Strike Force Parrabell did not seek any such information or perspectives. The academic team for its part expressly disavowed the utility of such perspectives as “no better” than those of perpetrators and bystanders. It was submitted that the failure, or refusal, to seek such assistance was a flaw in the methodology of both Strike Force Parrabell and the academic team, and that their conclusions were all the poorer for it.<sup>3527</sup>

<sup>3522</sup> Submissions of Counsel Assisting, 7 June 2023, [1318] (SCOI.84380).

<sup>3523</sup> Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint (endorsed by Associate Professor Derek Dalton), Undated, 7 (SCOI.82365) quoted in Submissions of Counsel Assisting, 7 June 2023, [1318] (SCOI.84380).

<sup>3524</sup> Submissions of NSWPF, 28 June 2023, [762(b)] (SCOI.84211).

<sup>3525</sup> Submissions of NSWPF, 28 June 2023, [762(c)] (SCOI.84211) quoting Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 108 (SCOI.02632).

<sup>3526</sup> Submissions of Counsel Assisting, 7 June 2023, [1319] (SCOI.84380).

<sup>3527</sup> Submissions of Counsel Assisting, 7 June 2023, [1320] (SCOI.84380).



## Intuition vs. objectivity

- 13.923. The relevant evidence is summarised above.
- 13.924. Counsel Assisting submitted that, having rejected the UK approach as too subjective, the academic team sought to emphasise the objectivity of its own process, but that they had failed to convince the Inquiry’s experts of their objectivity.<sup>3528</sup>
- 13.925. Counsel Assisting submitted that based on the analyses in the Lovegrove Report and Asquith Report extracted above, not only was the academic team dependent solely on the BCIF, but the “intuitive” way in which the BCIF was compiled and filled in meant that the claims of the academic team to have delivered an “objective” review are untenable.<sup>3529</sup>
- 13.926. Counsel Assisting submitted that the following passage of the Coakley Report rejected the claims of objectivity on the part of the academic team as mere projection:<sup>3530</sup>

*Thus, the Parrabell Report projects a conclusion that a transparent and robustly verifiable review did not uncover evidence of either a large number of gay hate/bias crimes, or a failure by the Police to identify those crimes. The [Strike Force Parrabell] officers reached that conclusion by using the bias crime indicators for a purpose for which they were not intended. The academic team used even less relevant categories to assess the [Strike Force Parrabell] summary files. Neither conclusion is based on a sound methodology. Both are open to doubt.*

- 13.927. Counsel Assisting submitted that the academic team’s claim to objectivity should be rejected for the reasons given by the experts. Whatever the outward appearance of the Academic Report, the academic team’s methodology was itself more intuitive than it was objective.<sup>3531</sup>
- 13.928. The NSWPF submitted that Counsel Assisting had failed to identify specific instances where the academic team sought to emphasise the objectivity of its processes or made claims about delivering an objective review. It was therefore “impossible to confirm” whether objectivity was referred to as “offering an independent review” or “an objective approach... to the identification and classification of bias crimes”.<sup>3532</sup> As to the latter, the academic team had “squarely acknowledged”<sup>3533</sup> that their approach involved applying subjective opinions.

<sup>3528</sup> Submissions of Counsel Assisting, 7 June 2023, [1321] (SCOI.84380).

<sup>3529</sup> Submissions of Counsel Assisting, 7 June 2023, [1322]–[1324] (SCOI.84380).

<sup>3530</sup> Submissions of Counsel Assisting, 7 June 2023, [1325] (SCOI.84380) quoting Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [46] (SCOI.82367.00001).

<sup>3531</sup> Submissions of Counsel Assisting, 7 June 2023, [1326] (SCOI.84380).

<sup>3532</sup> Submissions of NSWPF, 28 June 2023, [763] (SCOI.84211).

<sup>3533</sup> Submissions of NSWPF, 28 June 2023, [764] (SCOI.84211), citing, e.g., Transcript of the Inquiry, 1 March 2023, T2523.13–18 (TRA.00030.00001).

- 13.929. The NSWPF submitted that Counsel Assisting’s submission that claims of objectivity were “untenable” should be rejected.<sup>3534</sup> Counsel Assisting had omitted to refer to “two important points”. First, that “*any* exercise of this nature involves an element of subjectivity”,<sup>3535</sup> which was also evident in the assessment of cases considered by Counsel Assisting. Second, that “almost any social science exercise” depends on a “significant element of subjectivity”,<sup>3536</sup> which can be mitigated by a “concordance process” which can “enhance the accuracy of a finding”, such as the process engaged in by the academic team.<sup>3537</sup>
- 13.930. As to the evidence of Ms Coakley relied on by Counsel Assisting, the NSWPF submitted that her assessment of the “selection of categories and methodologies used... is beyond her area of expertise” and should thus be given “little weight”.<sup>3538</sup>

## OTHER ASPECTS OF THE EXPERTS’ REPORTS

### Lovegrove Report

#### *Development of typology*

- 13.931. The relevant evidence is referred to above.
- 13.932. Counsel Assisting submitted that, just as the Strike Force Parrabell process, including as it did the centrality of the BCIF, has been shown to lack both validity and reliability, the typology created by the academic team also fails those tests.<sup>3539</sup>
- 13.933. As to the Dalton/de Lint Response on this issue (as outlined above), Counsel Assisting acknowledged the limitations of time and resources relied upon by the academic team. However, it was submitted that if the academic team accepts (as it does) that its “tool” did not undergo those “reliability and validity exercises”, and that those were actually “necessary in the development of such a device”, then it must follow that the conclusions reached by deploying such a “tool” are, at best, subject to doubt.<sup>3540</sup>

<sup>3534</sup> Submissions of NSWPF, 28 June 2023, [766] (SCOI.84211).

<sup>3535</sup> Submissions of NSWPF, 28 June 2023, [765] (SCOI.84211), citing Transcript of the Inquiry, 1 March 2023, T2523.21–24 (TRA.00030.00001).

<sup>3536</sup> Submissions of NSWPF, 28 June 2023, [765] (SCOI.84211), citing Transcript of the Inquiry, 3 March 2023, T2860.22–25 (TRA.00032.00001).

<sup>3537</sup> Submissions of NSWPF, 28 June 2023, [765] (SCOI.84211), citing Transcript of the Inquiry, 3 March 2023, T2859.13–44 (TRA.00032.00001).

<sup>3538</sup> Submissions of NSWPF, 28 June 2023, [767] (SCOI.84211).

<sup>3539</sup> Submissions of Counsel Assisting, 7 June 2023, [1328] (SCOI.84380), citing Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [51], [126], [134], [135], [144(4)], [144(5)] (SCOI.82366.00001).

<sup>3540</sup> Submissions of Counsel Assisting, 7 June 2023, [1330] (SCOI.84380).

- 13.934. And yet, as Counsel Assisting observed, no such doubt is reflected in the Academic Report, which presents its findings as authoritative. Nor is any such doubt reflected in the ‘Moral Panic’ article. Instead, the academic team there argues that the release of the Parrabell Report ought to have been “a fatal setback” to concerns about the scale or extent of the violence against the LGBTIQ community.<sup>3541</sup>
- 13.935. Counsel Assisting submitted that, having been engaged to conduct an academic review, it was incumbent on the academic team to follow an academically sound process in designing its methodology. They did not do so. Their approach was flawed from the outset. If the academic team were unable to do so because of time and resource constraints, then they ought to have acknowledged clearly that their views were necessarily attended by doubts.<sup>3542</sup>
- 13.936. The NSWPF’s submissions in response are summarised below in my discussion of the submissions as to the development of a typology.

#### *Associate Professor Lovegrove’s Conclusions*

- 13.937. The relevant evidence is referred to above.
- 13.938. Counsel Assisting submitted that the conclusions of Associate Professor Lovegrove concerning the academic team’s methodology flow from the reasoning in the Lovegrove Report, that Associate Professor Lovegrove did not depart from them in his oral evidence, and that they should be accepted.<sup>3543</sup>
- 13.939. The NSWPF submissions regarding the experts’ conclusions, including those of Associate Professor Lovegrove, are discussed below.

#### **Coakley Report**

- 13.940. Counsel Assisting submitted that Ms Coakley’s views as to the academics’ methodology were soundly based, not challenged by other evidence or during questioning by counsel for the NSWPF, clearly reasoned and should be accepted.<sup>3544</sup>
- 13.941. The NSWPF again submitted that these conclusions should be given little weight, because assessment of “selection of categories and methodologies used” is beyond Ms Coakley’s expertise.<sup>3545</sup>

<sup>3541</sup> Submissions of Counsel Assisting, 7 June 2023, [1330]–[1331] (SCOI.84380), citing Exhibit 6, Tab 205, Willem de Lint and Derek Dalton, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (2021) (29)4 *Critical Criminology* 723, 724 (SCOI.82022).

<sup>3542</sup> Submissions of Counsel Assisting, 7 June 2023, [1332] (SCOI.84380).

<sup>3543</sup> Submissions of Counsel Assisting, 7 June 2023, [1334] (SCOI.84380).

<sup>3544</sup> Submissions of Counsel Assisting, 7 June 2023, [1336] (SCOI.84380).

<sup>3545</sup> Submissions of NSWPF, 28 June 2023, [767] (SCOI.84211).

## Asquith Report

### *Typology*

- 13.942. Counsel Assisting submitted that Professor Asquith’s evidence as to the academic team’s typology was also not challenged and should be accepted.<sup>3546</sup>
- 13.943. It was submitted that, given that Strike Force Parrabell was concerned only with suspected hate crime deaths, the choice by the academic team to treat some cases as “most serious” and others as “least serious”,<sup>3547</sup> was unfortunate and indeed misguided. Plainly, all homicides, and all hate crime deaths, are serious.<sup>3548</sup>
- 13.944. Counsel Assisting also submitted that, as Professor Asquith argues, the characterisation of one “type” of homicide typology as less serious than other “types” downplays the seriousness of homicides committed in response to a “homosexual advance” and other domestic or intra-familial crimes.<sup>3549</sup> The academic team, it was submitted, was not engaged to rank the seriousness or lethality of different motivations. The fundamental task which they were engaged to perform was to assess the conclusions of Strike Force Parrabell as to whether each case involved a hate crime. At best, Counsel Assisting submitted, the academic team’s focus on such matters distracted them from the issue at the heart of their task. At worst, the academic team’s approach obfuscated the true issues.<sup>3550</sup>
- 13.945. The NSWPF’s submissions regarding the experts’ conclusions, including those of Professor Asquith, are discussed below. The NSWPF submissions as to typology are also addressed below.

### *Engagement with hate crimes literature*

- 13.946. The relevant evidence is referred to above.
- 13.947. Counsel Assisting observed that, in the academic team’s own words, they took “selectively” from the academic literature on hate crimes.<sup>3551</sup>
- 13.948. It was submitted that the academic team’s limited engagement with the existing academic literature was a serious failure in their approach. As outlined earlier in this Chapter, the Dalton/de Lint/Tyson tender emphasised that:<sup>3552</sup>

*Whilst [Dr] Dalton does not profess to be expert per se in ‘hate crime’, he nevertheless has an excellent grasp of this academic literature, particularly*

<sup>3546</sup> Submissions of Counsel Assisting, 7 June 2023, [1338] (SCOI.84380).

<sup>3547</sup> Submissions of Counsel Assisting, 7 June 2023, [1339] (SCOI.84380), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 49, 88, 92, 93, 94 (SCOI.02632).

<sup>3548</sup> Submissions of Counsel Assisting, 7 June 2023, [1339] (SCOI.84380).

<sup>3549</sup> Submissions of Counsel Assisting, 7 June 2023, [1341] (SCOI.84380).

<sup>3550</sup> Submissions of Counsel Assisting, 7 June 2023, [1342] (SCOI.84380).

<sup>3551</sup> Submissions of Counsel Assisting, 7 June 2023, [1345] (SCOI.84380).

<sup>3552</sup> Submissions of Counsel Assisting, 7 June 2023, [1346] (SCOI.84380), citing Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016, 25 (SCOI.75775).

*as it relates to the commission and indicators of homophobic violence [bias crime].*

- 13.949. It was submitted that no such familiarity is discernible in the Academic Report, as the evidence of Professor Asquith demonstrated. The academic team was engaged as academics. A core part of undertaking new academic work is to engage deeply with existing academic work. They did not do so.<sup>3553</sup>
- 13.950. Counsel Assisting noted that the existing academic work on hate crimes no doubt has its limitations, as the Asquith Report acknowledges. However, it was submitted that the existing academic work is based on years of research and analysis, and that the academic team’s methodology would surely have been improved by engaging more deeply with it.<sup>3554</sup> In particular:<sup>3555</sup>
- a. The existing academic work has grappled with the question of partial motivation in a far more compelling fashion than that adopted by the academic team;
  - b. According to Professor Asquith, the existing academic work does not support the concept of anti-paedophile animus, at least as devised and applied by the academic team;<sup>3556</sup> and
  - c. The established typologies may or may not have been subjected to validity and reliability testing, but they have been applied across various jurisdictions, data sets and agencies.<sup>3557</sup> They are likely to have offered more useful guidance than the ad hoc typology created by the (admittedly non-expert) academic team on the basis of a single, limited data set.
- 13.951. As to the Dalton/de Lint response on this point, Counsel Assisting made two observations:<sup>3558</sup>
- a. A reader can only know if relevant literature has been reviewed if it is cited in the Academic Report; and
  - b. The literature which the academic team omitted to review, or to cite, was fundamentally important to the exercise which they were undertaking, given the history of the bias crime indicators, and their origins in the work of Levin & McDevitt.<sup>3559</sup>

<sup>3553</sup> Submissions of Counsel Assisting, 7 June 2023, [1347] (SCOI.84380).

<sup>3554</sup> Submissions of Counsel Assisting, 7 June 2023, [1349] (SCOI.84380).

<sup>3555</sup> Submissions of Counsel Assisting, 7 June 2023, [1349](a)–(c) (SCOI.84380).

<sup>3556</sup> See Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [194] (SCOI.82368.00001).

<sup>3557</sup> See Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [83]–[87] (SCOI.82368.00001).

<sup>3558</sup> Submissions of Counsel Assisting, 7 June 2023, [1350]–[1351] (SCOI.84380).

<sup>3559</sup> See Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [178] (SCOI.82368.00001).

- 13.952. The NSWPF took issue with the following submissions of Counsel Assisting:<sup>3560</sup>
- a. That the academic team failed to note in the Academic Report that “it would have been preferable for reliability and validity exercises” as set out by Associate Professor Lovegrove above to have been conducted to justify their approach; and
  - b. That the academic team failed to reference “the full literature considered by the [academic team] in the course of their review.”<sup>3561</sup>
- 13.953. The NSWPF submitted that there was a “fundamental misunderstanding” of the Academic Report’s purpose, which was “to provide an overview of the process conducted by the [academic team] which was accessible to and could be understood by the general public”. It would have been inappropriate for the academic team to “set out a detailed analysis of every limitation of their findings or an exhaustive literature review”; it would be “the opposite of what was asked” in the RFQ, as a separate research paper was to be prepared.<sup>3562</sup>

#### WAS THERE A NEED FOR A NOVEL TYPOLOGY?

- 13.954. Counsel Assisting raised in their submissions a more fundamental question. Could any typology of hate crimes serve any of the purposes for which the academics were engaged? As noted earlier in this Chapter, those purposes were as follows:<sup>3563</sup>

*The purpose of academic review was to provide an independent account of Strike Force Parrabell’s systemic validity; where possible, identify evidence of poor or biased police investigations; guide future policing strategies of community engagement; and develop a more suitable bias crime identification process.*

- 13.955. It was submitted that, if the purpose of Strike Force Parrabell was to form a view as to whether certain deaths were or may have been hate crimes, and the purpose of the academic review was to “provide an independent account” of the Strike Force’s “systemic validity”, then it is unclear what utility there was in a typology which sought to classify different types of hate crimes.<sup>3564</sup>

<sup>3560</sup> Submissions of NSWPF, 28 June 2023, [774]–[775] (SCOI.84211).

<sup>3561</sup> The NSWPF drew my attention to evidence of Dr Dalton and Dr De Lint said to indicate that they had considered literature not included in the “brief literature review” in the Academic Report: see Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint (endorsed by Associate Professor Derek Dalton), Undated, 6 (SCOI.82365).

<sup>3562</sup> Submissions of NSWPF, 28 June 2023, [775] (SCOI.84211).

<sup>3563</sup> Submissions of Counsel Assisting, 7 June 2023, [1352] (SCOI.84380).

<sup>3564</sup> Submissions of Counsel Assisting, 7 June 2023, [1353] (SCOI.84380). Counsel Assisting drew my attention to the distinction between indicators and typologies set out at Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [67]–[68] (SCOI.82368.00001).

13.956. It was noted that Ms Coakley concluded that there was no such utility.<sup>3565</sup>

*In my opinion, therefore, these categories of the academic team do not assist police in the [Strike Force Parrabell] exercise, or in the future for recognizing, investigating, and identifying hate/bias crimes. These categories provide possible parameters as to how and/or why a (known) perpetrator might have committed any homicide, but are not particularly helpful for investigators seeking to rule in or rule out a gay bias/hate crime.*

13.957. It was submitted by Counsel Assisting that there is considerable force in these observations. Classifying a crime as a particular type of hate crime does not address the primary question of whether it is a hate crime at all. That primary question must be answered before turning to the secondary question of what type of hate crime it is.<sup>3566</sup>

13.958. Counsel Assisting submitted that to resort to typological theory, when engaged in a task of assessing whether “findings” about the presence or absence of an LGBTIQ bias in relation to particular deaths (which did not use or consider any such typology) have been soundly made, may be to ask the wrong question. One danger in doing so would be that a typology might be thought or assumed to include, exhaustively, any and all discrete categories of bias crimes. This was said to be dangerous for at least two reasons:<sup>3567</sup>

- a. A bias crime might defy such easy categorisation. In both the Academic Report and in oral evidence, the academic team conceded that they struggled to categorise certain cases. A bias crime might fall into multiple categories.
- b. Equally, a crime (although clearly a bias crime) might fall into none of the categories outlined in a typology.

13.959. It was recognised that this difficulty may not be confined to the typology created by the academic team. While Professor Asquith was very familiar with the Levin & McDevitt typology, she acknowledged that it has limitations, including that:<sup>3568</sup>

- a. Little is known of the fourth category of “reactive” or “retaliatory” hate crimes;
- b. Very little research has been conducted on it;
- c. The categories are not mutually exclusive and can overlap;
- d. Alternative academic approaches have been proposed, such as Gruenewald & Kelley’s typology based on the “offender mode of victim selection”; and

<sup>3565</sup> Submissions of Counsel Assisting, 7 June 2023, [1354] (SCOI.84380), citing Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [42] (SCOI.82367.00001).

<sup>3566</sup> Submissions of Counsel Assisting, 7 June 2023, [1355] (SCOI.84380).

<sup>3567</sup> Submissions of Counsel Assisting, 7 June 2023, [1356] (SCOI.84380).

<sup>3568</sup> Submissions of Counsel Assisting, 7 June 2023, [1357] (SCOI.84380), citing Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [73]–[86] (SCOI.82368.00001).

- e. No consistent and reliable results have been reported on testing.
- 13.960. Counsel Assisting submitted that an additional limitation of the Levin & McDevitt typology, for the present context, is that it was originally created to analyse racist hate crimes in the United States. That is plainly a very different context to analysing LGBTIQ bias crimes in NSW. A similar limitation applies to the use by Strike Force Parrabell of the bias crime indicators, as outlined above.<sup>3569</sup>
- 13.961. However, even if the specific limitations of a given typology could be overcome, it was submitted by Counsel Assisting that it would not address the fundamental point that a typology is used to categorise or classify hate crimes, not to identify them. That was the stated objective of Strike Force Parrabell. It was submitted that the typology created by the academic team was not only flawed in its development and in its substance, but in its very purpose.<sup>3570</sup>
- 13.962. Counsel Assisting acknowledged that there may of course be purposes for which it is useful to categorise or classify bias crimes, or hate crimes. The Levin & McDevitt typology continues to be used for various purposes. Ms Coakley suggested one possible purpose for the academic team’s typology:<sup>3571</sup>
- The academic team categories might or might not be useful in sentencing a convicted offender, as they go to intent, or dangerousness, although the academic team was not engaged in an exercise relating to sentencing. The finding of whether any crime is proactive or reactive might go to the state of mind of the perpetrator, the amount of planning involved, and the risk to the public in the future without appropriate general and specific deterrents employed in sentencing.*
- 13.963. It was observed by Counsel Assisting that understanding the motivations for hate crimes would no doubt also serve other important purposes, such as to inform approaches to policing and preventing them, and to rehabilitating the offenders who commit them. Interventions to address “thrill” hate crimes would, for example, presumably be different to those required to address “mission” hate crimes.<sup>3572</sup>
- 13.964. However, Counsel Assisting submitted that these were not the purposes for which the academic team was engaged. The primary purpose of Strike Force Parrabell was to form a view as to whether certain deaths involved LGBTIQ bias. The typology created by the academic team was not necessary for, or relevant to, the task of assessing the “systemic validity” of the work of the Strike Force Parrabell officers in that regard. It was the wrong answer to the wrong question.<sup>3573</sup>

<sup>3569</sup> Submissions of Counsel Assisting, 7 June 2023, [1358] (SCOI.84380).

<sup>3570</sup> Submissions of Counsel Assisting, 7 June 2023, [1359] (SCOI.84380).

<sup>3571</sup> Submissions of Counsel Assisting, 7 June 2023, [1360] (SCOI.84380); Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [43] (SCOI.82367.00001).

<sup>3572</sup> Submissions of Counsel Assisting, 7 June 2023, [1361] (SCOI.84380).

<sup>3573</sup> Submissions of Counsel Assisting, 7 June 2023, [1362] (SCOI.84380).



- 13.965. The NSWPF submitted, first, that Counsel Assisting’s criticism of the use of a typology by the academic team “does not sit comfortably” with submissions as to a failure to “engage sufficiently and apply the approaches adopted in” earlier academic literature, particularly the research of Levin and McDevitt (who also used a typology).<sup>3574</sup>
- 13.966. Second, it was submitted that Counsel Assisting failed to recognise that providing an “independent account” of the “systemic validity” of Strike Force Parrabell and “develop a more suitable bias crime identification process” was not the function, nor was it purported to be the function, of the academic team in classifying matters into different categories of bias.<sup>3575</sup> The use of typologies was a second stage of categorisation based on the “particular characteristics of the motivation” following the classification of matters as involving bias or not.<sup>3576</sup> It was submitted that, as the academic team recommended in the Academic Report that the NSWPF “develop a protocol for bias discovery that is prudent and grounded on evidence-based research”, they clearly considered that a bias identification tool had not yet been undertaken and their approach did not constitute such a tool.<sup>3577</sup>

### WHY NOT REINVESTIGATE?

- 13.967. The NSWPF addressed the views of Professor Asquith and Ms Coakley, as to the decision not to reinvestigate of at least some of the list of 88 deaths.<sup>3578</sup> It was submitted that, in the absence of resources being available for reinvestigation (noting that Assistant Commissioner Crandell had tried and failed to obtain resources for a reinvestigation),<sup>3579</sup> “none of the Inquiry’s experts identified a better approach than that adopted” by Strike Force Parrabell or the academic team. It was submitted that it was “simply not possible to conduct the process now advocated for by the Inquiry’s experts”.<sup>3580</sup>
- 13.968. The NSWPF also submitted that:
- a. Professor Asquith’s opinion, that Strike Force Parrabell failed by not seeking to investigate potential bias in the original investigations, was “not accurate” because “the [academic team] did seek to do so, but considered it was not possible on the basis of the documents and time available”;<sup>3581</sup> and

<sup>3574</sup> Submissions of NSWPF, 28 June 2023, [769] (SCOI.84211).

<sup>3575</sup> Submissions of NSWPF, 28 June 2023, [770] (SCOI.84211).

<sup>3576</sup> Submissions of NSWPF, 28 June 2023, [771] (SCOI.84211).

<sup>3577</sup> Submissions of NSWPF, 28 June 2023, [772]–[773] (SCOI.84211), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 107 (SCOI.02632).

<sup>3578</sup> Submissions of NSWPF, 28 June 2023, [777]–[778] (SCOI.84211).

<sup>3579</sup> Submissions of NSWPF, 28 June 2023, [780] (SCOI.84211); Transcript of the Inquiry, 6 December 2022, T658.27–44 (TRA.00011.00001).

<sup>3580</sup> Submissions of NSWPF, 28 June 2023, [780]–[781] (SCOI.84211).

<sup>3581</sup> Submissions of NSWPF, 28 June 2023, [777] (SCOI.84211).

- b. Ms Coakley agreed in oral evidence that the triaging of cases on the basis of possible bias rather than potential productive avenues for reinvestigation “could result in the inefficient application of scarce police resources”.<sup>3582</sup>
- 13.969. It was submitted that the NSWPF “simply did as much as they could with the resources... available”. Any suggestion by Counsel Assisting that the “endeavour should never have been embarked upon” was “not realistic” or “appropriate” as this would comprise ignoring concerns of the LGBTIQ community as to a “large number of [unsolved] homicides said to have been motivated by anti-LGBTIQ bias”.<sup>3583</sup>

## Conclusions of the Inquiry

### Rejection of the BCIF

- 13.970. Although Dr Dalton and Dr de Lint did not agree in oral evidence that Strike Force Parrabell was a “futile” exercise,<sup>3584</sup> it is evident that they held serious concerns about the suitability of the BCIF as an instrument to assess anti-LGBTIQ bias, including its reliability and validity. Dr Dalton labelled the BCIF a “pretty appalling instrument”.<sup>3585</sup> The strong reservations of the academics with respect to the BCIF, and the indicators more particularly, were expressed directly in footnote 20 of the Academic Report, extracted above.
- 13.971. By 28 February 2017, when Dr Dalton wrote to Sergeant Steer to ask for more information about the BCIF,<sup>3586</sup> the NSWPF was on notice that the academics sought data or research findings relevant to the reliability and accuracy of the BCIF. Moreover, Dr Dalton’s evidence was that he explicitly told the NSWPF that the BCIF was “a pretty appalling instrument”. However, it appears that no serious consideration was given to amending the methodology of Strike Force Parrabell or indicating to the public the limitations on the methodology employed.
- 13.972. By the time the academic team expressed their disapproval of the use of the BCIF, it appears that the exercise was so far advanced that the NSWPF had resolved to proceed on the basis of the review that had already been undertaken. Indeed, by the time that the NSWPF and Flinders University entered into a contract for the academic review on or around 30 September 2016, all investigators apart from Detective Acting Sergeant Bignell had left Strike Force Parrabell,<sup>3587</sup> and the bulk of its work had been completed by November/December 2016.<sup>3588</sup>

<sup>3582</sup> Submissions of NSWPF, 28 June 2023, [778] (SCOI.84211), citing Transcript of the Inquiry, 3 March 2023, T2740.2–10 (TRA.00032.00001).

<sup>3583</sup> Submissions of NSWPF, 28 June 2023, [780]–[781] (SCOI.84211).

<sup>3584</sup> Transcript of the Inquiry, 1 March 2023, T2447.11–40 (TRA.00030.00001).

<sup>3585</sup> Transcript of the Inquiry, 1 March 2023, T2446.38–40 (TRA.00030.00001).

<sup>3586</sup> Exhibit 6, Tab 248, Email chain between Geoffrey Steer, Derek Dalton and Danielle Tyson, 2 (SCOI.79391).

<sup>3587</sup> Exhibit 6, Tab 68, Email from Craig Middleton to Anthony Crandell, 7 September 2016 (SCOI.74312); Transcript of the Inquiry, 21 September 2023, T5786.14–5787.21 (TRA.00089.00001).

<sup>3588</sup> Transcript of the Inquiry, 21 September 2023, T5781.7–11 (TRA.00089.00001).

- 13.973. Given the deficiencies in the BCIF itself, it is not surprising that the Inquiry’s experts unanimously considered that it was questionable for the integrity of the academic review that the academics were entirely reliant on the BCIFs and unable to refer to the underlying source material. I agree with Counsel Assisting that this represented a fundamental flaw in the academic team’s methodology. Professor Asquith’s quip, “dirty data in, dirty data out”,<sup>3589</sup> was apt in this case.
- 13.974. The academic team had no means to verify the quality of the raw data underlying the BCIFs, which may have been affected by issues including the following:
- a. The exclusion or distortion of information in the summaries based on “limitations of understanding of what constitutes gay hate”,<sup>3590</sup> as noted by Associate Professor Lovegrove;
  - b. The “shortcomings of the original investigations”,<sup>3591</sup> as identified by Ms Coakley;
  - c. The requirement for the academic team to place trust in not only Strike Force Parrabell, but the NSWPF “as it existed at the time of the original creation of these holdings”, as identified by Professor Asquith;<sup>3592</sup> and
  - d. Difficulty in assessing perpetrators’ motivation, having regard to the “inadequacy of record keeping”, whether through bias, incompetence, or otherwise, at the time of the deaths and any subsequent deficiencies in archiving.<sup>3593</sup>
  - e. The difficulties which arise from relying on the various textual summaries and extracts contained in the BCIFs have become evident during the course of this Inquiry. For example, the BCIF prepared by Strike Force Parrabell in relation to the death of William Dutfeld failed to include a reference to the key conclusion of Strike Force Hamish, some years earlier, which reinvestigated his death, identifying that the likely assailant was a known person not connected with a robbery that had taken place five weeks prior to his death, as the original officer in charge had considered was likely.<sup>3594</sup> Dr Dalton candidly acknowledged that the BCIFs were “not always” completed in detail and some were affected by a “paucity of data”.<sup>3595</sup>
  - f. I have taken into account the submissions of the NSWPF, including that Dr Dalton and Assistant Commissioner Crandell regarded access to the source material as not feasible due to time constraints and resources. However, I consider that it was incumbent upon the academic team to either

<sup>3589</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [150] (SCOI.82368.00001).

<sup>3590</sup> Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023, [152] (SCOI.82366.00001). See also Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [45] (SCOI.82367.00001).

<sup>3591</sup> Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [39] (SCOI.82367.00001).

<sup>3592</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [198] (SCOI.82368.00001).

<sup>3593</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [198] (SCOI.82368.00001).

<sup>3594</sup> See **Chapter 5**.

<sup>3595</sup> Transcript of the Inquiry, 28 February 2023, T2385.13–21, 2399.1–15 (TRA.00029.00001).

pursue access to these documents in order to ensure that they could complete a proper review, or adopt a course such as that suggested by Professor Asquith, of handing back the money and explaining that they could not fulfill the requirements of the brief. I consider that Dr Dalton formed this view (that access to the source material was not feasible) without giving serious consideration to steps he could take to pursue access to that material. I acknowledge nevertheless that even if the academics had insisted on seeing the primary materials, this would not have corrected any deficiencies in the original investigation.

- g. It follows that the conclusions of the academic team must be treated with caution.
- h. I further consider that it would have been appropriate for the academic team to indicate more directly in the Academic Report that they had not had access to the underlying materials, and to note that this placed important limits on the conclusions that might be drawn from the academic review. The academics referred to the need to “get behind” the BCIF and “re-interpret the summary evidence” (i.e., the BCIFs) they were given,<sup>3596</sup> but they did not in fact do so, BCIF in the sense of seeking or obtaining access to the original documents on which the BCIFs were based.

### **Intuition vs. objectivity**

- 13.975. I accept the opinion of Associate Professor Lovegrove, that the Academic Report would have benefited from a more rigorous conceptual analysis and more detailed definitional guidance. Associate Professor Lovegrove’s comments highlight, among other things, that the absence of operational definitions with respect to the Strike Force Parrabell classifications meant that the degree of intuition inherent in the strike force’s methodology was effectively obscured.
- 13.976. Professor Asquith also observed that the academics failed to comprehensively interrogate the level of intuition inherent in the process while at the same time declaring that they themselves had used “objective” techniques to evaluate the cases.<sup>3597</sup>

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<sup>3596</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 71 (SCOI.02632).

<sup>3597</sup> See Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [174] (SCOI.82368.00001).

- 13.977. A similar concern in relation to objectivity was raised by Ms Coakley in her report. In particular, Ms Coakley stated that:<sup>3598</sup>

*Thus, the Parrabell Report projects a conclusion that a transparent and robustly verifiable review did not uncover evidence of either a large number of gay hate/bias crimes, or a failure by the Police to identify those crimes. The [Strike Force Parrabell] officers reached that conclusion by using the bias crime indicators for a purpose for which they were not intended. The academic team used even less relevant categories to assess the [Strike Force Parrabell] summary files. Neither conclusion is based on a sound methodology. Both are open to doubt.*

- 13.978. I agree with the remarks of the experts in this regard.

### **Engagement with hate crimes literature**

- 13.979. I agree with Counsel Assisting that it is not apparent on the face of the Academic Report that the academic team engaged deeply with the existing academic literature on hate crimes. This is regrettable.
- 13.980. I do not accept the submission of the NSWPF that this can be explained away by the fact that it was not a purpose of the Academic Report for the academics to set out “an exhaustive literature review”. When reading an academic article or report, an understanding of academic literature is evident not just through the provision of a comprehensive summary of that literature; it should be clear from the outline of the argument and the methodological choices made by the authors.
- 13.981. The following comments of Professor Asquith show that greater engagement with the existing academic literature would have assisted the academic team:
- a. Dr Dalton and Dr de Lint appear to have dismissed cases as not being hate crimes at all;<sup>3599</sup>
  - b. A more comprehensive review of the literature may have assisted in better assessing those cases that do not fit with the bespoke typology created by the academic team;<sup>3600</sup>
  - c. It seems counterintuitive for the academic team to have created their own typology, which was based on limited analysis from existing research and without having conducted their own empirical research on heterosexual and cissexist hate crime;<sup>3601</sup>
  - d. The existing academic work does not support the concept of anti-paedophile animus, at least as devised and applied by the academic team;<sup>3602</sup> and

<sup>3598</sup> Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022, [46] (SCOI.82367.00001).

<sup>3599</sup> See Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [93]–[97] (SCOI.82368.00001).

<sup>3600</sup> See Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [178] (SCOI.82368.00001).

<sup>3601</sup> See Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [179] (SCOI.82368.00001).

<sup>3602</sup> See Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [193]–[195] (SCOI.82368.00001).

- e. The established typologies may or may not have been subjected to validity and reliability testing, but they have been applied across various jurisdictions, data sets and agencies.<sup>3603</sup>
- 13.982. I agree with the submission of Counsel Assisting that the literature was likely to have offered more useful guidance than the *ad hoc* typology created by the academic team on the basis of a single, limited data set.

### Definition of bias crime and the issue of partial motivation

- 13.983. The concern raised by Associate Professor Lovegrove in relation to the definition of bias crime (that the academics in their definition excluded the qualification inserted by the NSWPF i.e., “motivated, in whole or in part”) is in my opinion a valid one.
- 13.984. The Academic Report is quite unclear as to whether a crime which had or may have had a partial “gay hate” motivation (such as where a robbery is also involved) was included or excluded.<sup>3604</sup> The academic team stated that they found such questions “profoundly challenging”, and that robbery was “a vexatious factor in hate crime theory”, but it is not clear how, or if, they resolved such questions.<sup>3605</sup> It would have been preferable for the academic team to explain in the Academic Report how they approached cases where there appeared to be a partial or mixed motivation.
- 13.985. I note Dr de Lint’s oral evidence that the academic team would have categorised a crime as an anti-gay bias crime if a person was targeted for robbery because they have a vulnerability attached to their LGBTIQ status.<sup>3606</sup>

### “Anti-gay bias” and “anti-paedophile animus”

- 13.986. There is no doubt that the distinction drawn by the academics between “anti-gay bias” and “anti-paedophile animus” was highly problematic. This was openly acknowledged by the NSWPF, which accepted that “the process of disentangling, and appropriately recording” the differences in anti-gay and anti-paedophile animus was “in practice, fraught”.<sup>3607</sup>
- 13.987. The theoretical and practical difficulties presented by the proposed distinction are set out in detail in the summary of Counsel Assisting’s submissions above. I accept those submissions.
- 13.988. I further consider that the analyses by Professor Asquith and Associate Professor Lovegrove (as outlined above) as to this issue were well-reasoned and should be accepted.

<sup>3603</sup> See Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [87] (SCOI.82368.00001).

<sup>3604</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 102–105 (SCOI.02632).

<sup>3605</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 102–103 (SCOI.02632).

<sup>3606</sup> Transcript of the Inquiry, 3 March 2023, T2861.24–2862.4 (TRA.00032.00001).

<sup>3607</sup> Submissions of NSWPF, 28 June 2023, [721] (SCOI.84211).

- 13.989. Counsel Assisting considered that the effect of the distinction, whether intended or not, was to obfuscate and downplay the number of cases which were bias crimes. By contrast, the NSWPF submitted that Counsel Assisting and the experts had not taken into account that Dr de Lint had “confirmed” in oral evidence that “anti-paedophile animus was treated as a *subset* of anti-gay bias”.<sup>3608</sup>
- 13.990. The problem with the submission of the NSWPF is that, as demonstrated by the graphic on page 92 of the Academic Report, the findings of the academic team were presented so that the categories of “anti-gay bias” and “anti-paedophile animus” are mutually exclusive. “Anti-paedophile animus” is not a subset of “anti-gay bias”; rather the cases are divided so that each “animus” crime is allocated to one group or another.
- 13.991. It follows that I must accept the submission of Counsel Assisting, that is, that the effect of the distinction, whether or not intended, was to obfuscate and downplay the number of cases which were bias crimes.

### The ‘Moral Panic’ article

- 13.992. There is no question, as was submitted by Counsel Assisting and openly acknowledged by the NSWPF, that several aspects of the ‘Moral Panic’ article were inappropriate, including references to the “so-called” problem of gay homicide and “fake news”.
- 13.993. The authors of the ‘Moral Panic’ article plainly considered that claims of 88 “gay hate” deaths were to be regarded as constituting, themselves, a “moral panic”, because such claims, although likely to be unjustified, took on a life of their own, and that this moral panic was being incited, or at least sustained, by “crusaders”<sup>3609</sup> in the absence of real evidence.
- 13.994. To my mind, the view of the academics as exhibited in this article completely align with the opinion, held by several senior officers in the NSWPF, that claims of 80-plus gay bias homicides were a gross exaggeration. This is of obvious concern when the academic team was appointed for the purpose of providing an independent review of the findings of Strike Force Parrabell.
- 13.995. Referring to the notes prepared by Dr de Lint in early 2017 and discussed earlier in this Chapter, Counsel Assisting submitted that the view of the academics, as there outlined, infected their approach to the Strike Force Parrabell exercise from the outset. This is certainly possible, regardless of whether the ideas for the article were formulated at the outset or following the academic review.

<sup>3608</sup> Submissions of NSWPF, 28 June 2023, [720] (SCOI.84211); Transcript of the Inquiry, 2 March 2023, T2705.36–2706.27 (TRA.00032.00001).

<sup>3609</sup> Transcript of the Inquiry, 3 March 2023, T2795.42–2796.9 (TRA.00032.00001).



13.996. As to the question of when Dr de Lint initially formulated the ideas underlying the ‘Moral Panic’ article, I have taken into account the evidence of Dr de Lint as to whether his view was already formed at the time he prepared the 2017 notes. Dr de Lint gave a series of not wholly consistent answers when he was questioned about this.<sup>3610</sup> I am satisfied, having carefully considered that evidence, that Dr de Lint’s February 2017 notes did represent at least his provisional views at that time, and that those provisional views were also substantially to be found—no longer provisional—in the eventual published article.

13.997. The 2017 notes included the following:<sup>3611</sup>

*Anatomy of a moral panic: the wave of gay homicides in Sydney*

- *a crime wave depends on reliable data*
- *a moral panic depends on trumped up facts*
- *like an urban legend a moral panic joins up a plausible explanation with plausible data*
- *a moral panic is fed by moral entrepreneurs (on this case Tomsen, Thompson and Acom [sic] as well as a pliant mass media*
- *needs to be distinguished from a social problem as well as a crime wave*
- *and the underlying phenomenon that may well be backed up by crime reports or records, in this case violent assaults on gays in beat locations.*

[...]

*More notes*

1. *The list of cases developed by Sue Thompson and Tomsen does not have a known relationship with the number of gay bias homicides during the period that the cases were collected. Even where the AIC report attempted to place the list against a total of relevant homicides, the selection criteria for the list makes it impossible to draw a conclusion between the investigation of gay bias homicides and non-gay bias homicides.* 2. *The list is currently being relied upon in the Scott Johnston case before the court. Police and academics believe that the use of this list for evidentiary purposes in front of the court is unfortunate, for the above reason.[...]*

<sup>3610</sup> Transcript of the Inquiry, 3 March 2023, T2770.13–2779.19 (TRA.00032.00001).

<sup>3611</sup> Exhibit 6, Tab 92, Document titled ‘Notes Bias3’, Undated (created 28 February 2017), 1 (SCOI.77540).



- 13.998. Dr de Lint accepted that those views “would appear to correlate with the police view”, of which he was aware, that claims of 80-plus “gay hate” homicides were a gross exaggeration (although he stopped short of conceding that this occurred to him at the time).<sup>3612</sup>
- 13.999. The evidence suggests the possibility that these matters were the subject of conversation with officers responsible for Strike Force Parrabell during the iterative process of preparing the academic article (but I emphasise that I do not mean to suggest that the NSWPF aided in the actual preparation of the article). For instance, the 2017 notes indicate that (emphasis added):<sup>3613</sup>

*The list [of 88 deaths] is currently being relied upon in the Scott Johnston [sic] case before the court. **Police and academics believe** that the use of this list for evidentiary purposes... is unfortunate, for the above reason.*

...

*The **police found my definition [of bias crime] to match up with the necessary requisites** and are keen to see the development of a more useful instrument...*

- 13.1000. The contents of the 2017 notes suggest that, at least in the view of Dr de Lint, there was a degree of scepticism within the NSWPF as to the level of violence that could properly be attributed to anti-LGBTIQ bias and/or hate motivation.
- 13.1001. I consider that it is likely that the academic team foreshadowed to one or more of the officers responsible for Strike Force Parrabell that their article would be supportive of the NSWPF, and that this likely came about as a result of collaboration and consensus between the two teams (a notion which I discuss further later in this Chapter).

### Victim perceptions

- 13.1002. It was common ground between Counsel Assisting and the NSWPF that victim perceptions can play a legitimate and important role in the identification and investigation of any crime.<sup>3614</sup>
- 13.1003. I agree with Counsel Assisting that the evidence of Professor Asquith and Associate Professor Lovegrove on the relevance of victim perceptions of LGBTIQ bias and/or hate, and the approach of the academic team to this issue, should be accepted.<sup>3615</sup>

<sup>3612</sup> Transcript of the Inquiry, 3 March 2023, T2778.28–2779.19 (TRA.00032.00001).

<sup>3613</sup> Exhibit 6, Tab 92, Document titled ‘Notes Bias3’, Undated (created 28 February 2017), 2 (SCOI.77540).

<sup>3614</sup> Submissions of NSWPF, 28 June 2023, [760] (SCOI.84211).

<sup>3615</sup> Submissions of Counsel Assisting, 7 June 2023, [1316] (SCOI.84380).

- 13.1004. I consider that from the inception of Strike Force Parrabell, the LGBTIQ community should have been engaged as a key stakeholder in the exercise. I have elaborated on the reasons for earlier in this Chapter.
- 13.1005. I further agree with the proposition as put by Counsel Assisting that the LGBTIQ community may have knowledge about the nature of hate crimes more generally, which should have been taken into account in developing the review exercise of this type (i.e., one that is seeking to form a view as to the presence or absence of an anti-LGBTIQ bias). In their role as independent reviewers, it would have been desirable for the academics to highlight that engagement with the LGBTIQ community had been minimal and this fact may limit the utility of the findings of the exercise.

### Was there a need for a novel typology?

- 13.1006. Given the conceptual and practical difficulties with the BCIF, the academic team decided that it was necessary to develop their own approach for reviewing the completed BCIFs.
- 13.1007. As set out above, the academic team conceived of three “types” of bias crimes, including Type A Bias Crimes (Associative and proactive), Type B Bias Crimes (Proactive, non-associative), and Type C Bias Crimes (Reactive).
- 13.1008. A “concept matrix”, or “checklist”<sup>3616</sup> was then developed by Dr de Lint, which was apparently used by the academic team to analyse and classify the cases. The academic team volunteered the view that “for the purpose of public policy, the most serious kind of bias is proactive and associative”, or “Type A” motivated crime,<sup>3617</sup> although Professor Asquith had a different view (as noted above).<sup>3618</sup>
- 13.1009. If the purpose of Strike Force Parrabell was to form a view as to whether certain deaths were or may have been hate crimes, and the purpose of the academic review was to “provide an independent account” of the Strike Force’s “systemic validity”, in my view there was little utility in developing a typology which sought to classify different types of hate crimes.<sup>3619</sup> The purpose of the strike force exercise was to identify hate crimes, not to classify them. This conclusion was supported by the expert evidence of Ms Coakley.<sup>3620</sup>

<sup>3616</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 89 (SCOI.02632).

<sup>3617</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 88 (SCOI.02632).

<sup>3618</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [80] (SCOI.82368.00001).

<sup>3619</sup> Submissions of Counsel Assisting, 7 June 2023, [1353] (SCOI.84380). Counsel Assisting drew my attention to the distinction between indicators and typologies set out at Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [67]–[68] (SCOI.82368.00001).

<sup>3620</sup> Submissions of Counsel Assisting, 7 June 2023, [1354] (SCOI.84380).

- 13.1010. Further, despite their clear concerns as to the conceptual and practical difficulties with the BCIF, the academic team proceeded to develop their own methodology that overlaid the Strike Force Parrabell process. In this way, they conveyed an impression of applying the intellectual rigour of academia to an underlying dataset that was fundamentally flawed. Whether conveying this impression was intentional or not, in my view it had the unfortunate result of communicating to the LGBTIQ community and general public that the academic team had conducted an objective review of the methodology of Strike Force Parrabell when this is not what had actually occurred.
- 13.1011. I discuss my conclusions concerning the Academic Report further below.

## E. Collaboration, consensus and independence

- 13.1012. One striking feature of the methodology of Strike Force Parrabell, in practice, was the close collaboration between the NSWPF team and the academic team on the categorisation of deaths.
- 13.1013. This issue of “collaboration” was one which was highly contested. Before I turn to the submissions of Counsel Assisting and the relevant interested parties, it is helpful to set out some of the documentary and oral evidence received by the Inquiry on this topic.

### A “collaborative” process

- 13.1014. Initially, Assistant Commissioner Crandell intended that the academic review would commence *after* the Strike Force Parrabell officers had completed their reviews of the papers relating to the deaths. However, by July 2016, it had been decided that the academic team should be involved *before* that process was completed.<sup>3621</sup>
- 13.1015. According to Assistant Commissioner Crandell, this change in approach was inspired by a desire to learn from the academic team.<sup>3622</sup>
- 13.1016. The change is referenced in an email from Ms Braw to Shannon Wright of ACON on 18 July 2016 (four days before the RFQ was sent to the three tendering teams). Ms Braw wrote:<sup>3623</sup>

*We have changed our thinking a little and now want the researcher/s to be involved prior to completing the Parrabell review and conduct the last stage as a collaborative process if that makes sense. Not sure exactly how it will work but we thought we should have them start looking at cases and determinations, provide comments which may influence our final conclusions.*

- 13.1017. Assistant Commissioner Crandell was taken to this email in oral evidence. He said he did not necessarily know what Ms Braw meant by “collaborative”.<sup>3624</sup>
- 13.1018. Assistant Commissioner Crandell accepted that the word “collaborative” suggested something different from “independent”, but responded that “collaborative” was “not my word”.<sup>3625</sup> Asked whether he distanced himself from the word, or said the word was wrong in any way, his response was, “No, not necessarily”.<sup>3626</sup>

<sup>3621</sup> Exhibit 6, Tab 67, Email correspondence between Anthony Crandell, Jacqueline Braw and Shannon Wright, 19 July 2016, 2 (SCOI.74279).

<sup>3622</sup> Transcript of the Inquiry, 9 December 2022, T922.7–12 (TRA.00014.00001).

<sup>3623</sup> Exhibit 6, Tab 142, Email correspondence between Shannon Wright and Jacqueline Braw, 18–19 July 2016 (SCOI.78619).

<sup>3624</sup> Transcript of the Inquiry, 9 December 2022, T922.16–17 (TRA.00014.00001).

<sup>3625</sup> Transcript of the Inquiry, 9 December 2022, T922.25–27 (TRA.00014.00001).

<sup>3626</sup> Transcript of the Inquiry, 9 December 2022, T924.3–41 (TRA.00014.00001).

- 13.1019. As I have outlined above, the importance of “collaboration” was emphasised in the RFQ for the academic review. It was also emphasised in the tender from the Dalton/de Lint/Tyson team.
- 13.1020. Dr Dalton gave evidence that, for his part, he certainly understood the RFQ as emphasising collaboration, and responded accordingly.<sup>3627</sup>
- 13.1021. As outlined above, Dr Dalton stated, however, that during a conversation with Ms Braw regarding the tender process:<sup>3628</sup>

*It was conveyed to me that this was not a ‘rubber stamping’ process, but one where full and frank scrutiny was encouraged. I was given to understand that regardless of the police findings, if we found significant differences, we were free to state these differences without fear or favour.*

- 13.1022. Throughout the academic review process, “collaboration” and “consensus” continued to be emphasised. Several examples are identified and discussed below.

## Email correspondence

### Email of 31 October 2016 from Superintendent Middleton

- 13.1023. In an email to Dr Dalton on 31 October 2016, Superintendent Middleton said:<sup>3629</sup>

*I am very keen to see/read your review and your conclusions. As I said to you in our meeting I would expect a few questions and differences of opinion ...*

- 13.1024. Superintendent Middleton addressed this email in his statement to the Inquiry. He stated:<sup>3630</sup>

*... I was interested to see the output from the academic review. I was conscious that, to my knowledge, NSWPF had not undertaken a review like [Strike Force] Parrabell before and I was keen to see what processes the academic review would employ that we could perhaps learn from.*

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<sup>3627</sup> Transcript of the Inquiry, 1 March 2023, T2453.47, 2454.11–39 (TRA.00030.00001).

<sup>3628</sup> Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 3 (SCOI.76959).

<sup>3629</sup> Exhibit 6, Tab 78, Email correspondence Craig Middleton and Derek Dalton, 31 October–13 December 2016, 2 (SCOI.74391).

<sup>3630</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [79] (NPL.9000.0029.0001).

### Email of 12 December 2016 from Dr Dalton

13.1025. In an email to Superintendent Middleton and Detective Inspector Grace on 12 December 2016 (that is, about two months into the academic review and less than a month after the academic team had received the majority of the BCIFs),<sup>3631</sup> Dr Dalton explained that he had read all 70 cases sent to him and had “approximately 13 cases that I might classify differently. As Craig [Superintendent Middleton] alluded to, this was always likely to be the case”.<sup>3632</sup>

13.1026. Superintendent Middleton replied:<sup>3633</sup>

*I really look forward to seeing the 13 you have selected and comparing it to see if they are the same as the ones that we had some difficulty/discussions with. At some point in the future it would be great to sit down with you again (if possible) and discuss those matter as Im [sic] sure that it would make for some interesting discussions from differing perspectives. I really dont [sic] think we would be too far apart.*

13.1027. In his statement, Superintendent Middleton said that he was not concerned by the prospect of Dr Dalton coming to a different conclusion to the Strike Force Parrabell conclusions, “if those conclusions were at least similar”. He said that is what he meant by “I really don’t think we would be too far apart”.<sup>3634</sup> Superintendent Middleton said that, if, however, Dr Dalton had identified, for example, that there was no evidence of bias while Strike Force Parrabell had concluded that there was evidence, he was interested to understand the reason for that difference, as it might tend to suggest one team had overlooked (or perhaps overemphasised) one aspect in comparison to the other team.<sup>3635</sup>

13.1028. Later that same day, Dr Dalton responded (underline emphasis added; italic emphasis in original):<sup>3636</sup>

*Superintendent Crandell mooted that in the future we will no doubt engage in a sharing process – one where we all get to argue [deliberate might be nicer term] about the final or ultimate classification and reach a consensus [if indeed that is possible in terms of the true meaning of that word].*

*I look forward to hearing your views when that day comes.*

<sup>3631</sup> See Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [75] (NPL.9000.0026.0007).

<sup>3632</sup> Exhibit 6, Tab 247, Email chain between Derek Dalton and Craig Middleton, 31 October–12 December 2016, 1 (SCOI.79694).

<sup>3633</sup> Exhibit 6, Tab 247, Email chain between Derek Dalton and Craig Middleton, 31 October–12 December 2016, 1 (SCOI.79694).

<sup>3634</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [81] (NPL.9000.0029.0001).

<sup>3635</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [81] (NPL.9000.0029.0001).

<sup>3636</sup> Exhibit 6, Tab 247, Email chain between Derek Dalton and Craig Middleton, 31 October–12 December 2016, 1 (SCOI.79694).

13.1029. In oral evidence, Dr Dalton said that he was “quite comfortable to say we were seeking consensus”.<sup>3637</sup> He gave evidence that the objective of the academic and NSWPF teams was, if at all possible, “to reach a consensus” in the sense of arriving at “almost the same” views about the deaths.<sup>3638</sup>

### **Emails of 12 and 13 December 2016 from Assistant Commissioner Crandell**

13.1030. On 12 December 2016, Assistant Commissioner Crandell emailed Superintendent Middleton with a proposed set of guidelines for reviewing the deaths (emphasis added):<sup>3639</sup>

- 1. The position of Operation [sic] Parrabell investigators regarding all cases reviewed has been indicated*
- 2. The Bias Crimes Coordinator has also conducted a review of specific cases which require further discussion with Operation [sic] Parrabell investigators to determine a NSW Police Force position*
- 3. Any position taken on any case by the NSWPF will be subject to further discussions with the research team*
- 4. The Bias Crimes Coordinator will review specific cases where agreement cannot be reached between Operation [sic] Parrabell investigators and the Research Team to enhance further discussion around appropriate classifications*
- 5. The Research Team will bring their position on all cases to a meeting between Operation [sic] Parrabell investigators and the Bias Crimes Coordinator for further discussion prior to final positions being taken*
- 6. Prior to final reports being submitted it is important that each entity (NSWPF and Flinder’s [sic] University) are aware of positions on each case together with reasons for the positions taken so that if divergent findings are made, they can be reported upon with complete understanding.*

13.1031. These guidelines were circulated by Assistant Commissioner Crandell to Dr Dalton and others the next day.<sup>3640</sup>

<sup>3637</sup> Transcript of the Inquiry, 1 March 2023, T2472.6–9 (TRA.00030.00001).

<sup>3638</sup> Transcript of the Inquiry, 1 March 2023, T2472.16 (TRA.00030.00001).

<sup>3639</sup> Exhibit 6, Tab 79, Email correspondence between Anthony Crandell and Craig Middleton, 12–13 December 2016, 1–2 (SCOI.74394).

<sup>3640</sup> Exhibit 6, Tab 80, Email correspondence between Anthony Crandell and Derek Dalton, 13 December 2016, 2 (SCOI.74401).

- 13.1032. Points 3 and 4 of the proposed guidelines stated that the position taken by the NSWPF on any death would be “subject to” discussions with the academic team, with the academic team saying whether they agreed with police. Then, if agreement could not be reached, the death would be reviewed by the Bias Crimes Coordinator (which did not, in fact, occur). These points indicated that the objective of the guidelines was to ensure that agreement as between the NSWPF and the academic team would, in fact, be reached. Point 6, consistent with this, appeared to envisage (by the use of the word “if”) that “divergent findings” were expected to be the exception to the rule.
- 13.1033. In his oral evidence, Assistant Commissioner Crandell disagreed with this interpretation of his proposed guidelines.<sup>3641</sup> He stated that it was not in his mind to have complete agreement between the NSWPF and the academic team, or to minimise disagreement. What was in his mind was to learn as much as he could about classifications of bias crimes so that he could then improve the way that they did that in the NSWPF moving forward.<sup>3642</sup>
- 13.1034. However, Dr Dalton’s understanding of the guidelines was very different. Dr Dalton agreed that Assistant Commissioner Crandell’s expectation seemed to be that, in point 3, any classifications that the NSWPF arrived at would be discussed with the academic team with a view towards consensus if possible (as Dr Dalton himself had written in his email to Superintendent Middleton on 12 December 2016).<sup>3643</sup> Dr Dalton also agreed that point 5 indicated that the objective was consensus if possible, although clarified “not consensus as in an identical match, so to speak”.<sup>3644</sup>
- 13.1035. On 13 December 2016, Assistant Commissioner Crandell replied to an email from Dr Dalton regarding the guidelines as follows:<sup>3645</sup>

*Thank you for your words of encouragement.*

*As long as we can maintain focus on our desired outcome I think we will do well. Having said that I expect some robust discussion which will require a referee between Bias Crimes and Parrabell investigators beforehand.*

<sup>3641</sup> Transcript of the Inquiry, 9 December 2022, T969.2–19 (TRA.00014.00001).

<sup>3642</sup> Transcript of the Inquiry, 9 December 2022, T969.25–35 (TRA.00014.00001).

<sup>3643</sup> Transcript of the Inquiry, 1 March 2023, T2472.46–2473.4, 2473.21–27 (TRA.00030.00001).

<sup>3644</sup> Transcript of the Inquiry, 1 March 2023, T2474.3–5 (TRA.00030.00001).

<sup>3645</sup> Exhibit 6, Tab 80, Email correspondence between Anthony Crandell and Derek Dalton, 13 December 2016, 2 (SCOI.74401).



- 13.1036. Dr Dalton agreed that the conflict that Assistant Commissioner Crandell seemed to be expecting, if any, was between Strike Force Parrabell and Sergeant Steer, rather than between Strike Force Parrabell and the academic team.<sup>3646</sup> Assistant Commissioner Crandell also agreed that he was not expecting robust discussion between Strike Force Parrabell and Dr Dalton but, rather, between Strike Force Parrabell and Sergeant Steer.<sup>3647</sup>
- 13.1037. Dr Dalton further agreed that it was a fair inference from what Assistant Commissioner Crandell wrote that the “desired outcome” was a consensus view.<sup>3648</sup> Assistant Commissioner Crandell again disagreed.<sup>3649</sup>

### Email of 13 December 2016 from Superintendent Middleton

- 13.1038. The next day, 13 December 2016, Superintendent Middleton replied to Assistant Commissioner Crandell’s email containing the proposed six-point guidelines. In that response, after saying that he was “happy with” the proposal, Superintendent Middleton stated (emphasis added):<sup>3650</sup>

*I dont think that we will be that far apart from the academic review. I am sure that once we sit down and discuss with Derek [Dr Dalton] those matters can be resolved through discussion. I gather from below if for some reason we cant reach agreement then the disputed matters will be reviewed by the Bias Crimes Coordinator to adjudicate/ resolve? [sic]*

...

*In reality I dont think that we will be all that far apart between the 3 teams (Parrabell, Bias Crimes, Academic) and the majority if not all of those discrepancies can be resolved easily. After all, now matter how hard we try and be impartial when it comes to placing matters in categories alot of it comes down to opinions. Thats just the way it works. I expected that differences of opinion would cause different results. But I have faith that a round table discussion can resolve all if not most of those opinions to provide one consistent set of results. [sic]*

- 13.1039. Assistant Commissioner Crandell responded that same day, saying, “I agree on all matters”.<sup>3651</sup>

<sup>3646</sup> Transcript of the Inquiry, 1 March 2023, T2475.41–44 (TRA.00030.00001).

<sup>3647</sup> Transcript of the Inquiry, 9 December 2022, T982.16–19 (TRA.00014.00001).

<sup>3648</sup> Transcript of the Inquiry, 1 March 2023, T2475.46–2476.3 (TRA.00030.00001).

<sup>3649</sup> Transcript of the Inquiry, 9 December 2022, T982.3 (TRA.00014.00001).

<sup>3650</sup> Exhibit 6, Tab 79, Email correspondence between Anthony Crandell and Craig Middleton, 12–13 December 2016, 1 (SCOI.74394).

<sup>3651</sup> Exhibit 6, Tab 79, Email correspondence between Anthony Crandell and Craig Middleton, 12–13 December 2016, 1 (SCOI.74394).

- 13.1040. When taken to these emails, Assistant Commissioner Crandell did not accept that it appeared that Superintendent Middleton was aiming to achieve agreement and consensus with Dr Dalton.<sup>3652</sup> He said, “[w]e never wanted agreement on all the cases”.<sup>3653</sup> He said that the expression “those matters can be resolved” meant:<sup>3654</sup>

*the process that was taken as to how they’ve come to that finding. Because if you’ve got completely different findings, you want to know how they arrived at that one as opposed to the way we arrived at ours.*

- 13.1041. In relation to the final paragraph of Superintendent Middleton’s email above, Assistant Commissioner Crandell again emphatically disagreed that Superintendent Middleton had in mind that the Strike Force Parrabell officers, the Bias Crimes Coordinator and the academic team would arrive at a consensus view.<sup>3655</sup>

- 13.1042. As to the last sentence of the email, Assistant Commissioner Crandell agreed that Superintendent Middleton’s stated position “look[ed] like” the aim was “consensus” but insisted that in fact “it wasn’t”. He maintained this stance even though he had responded to the email by saying, “I agree on all matters”.<sup>3656</sup>

- 13.1043. In his statement, Superintendent Middleton explained his email as follows:<sup>3657</sup>

*Again, I was not concerned about differences between the parties: so long as those differences were not completely opposite, for the reasons I have set out ... above. If opposing results were reached in cases (for example, where one team identified a case as a bias crime where the other identified it as showing no evidence of bias) I would be concerned that, for example, one of the teams had overlooked a key piece of information. This would lead to a dialogue to try to understand the reason for the difference, but it would not lead to one team trying to convince the other team that they were wrong and should change their result.*

### **Email of 13 February 2017 from Superintendent Middleton**

- 13.1044. On 10 February 2017, Dr Dalton emailed Superintendent Middleton with a spreadsheet of the academic team’s preliminary coding and wrote, “I think we agree on 57 and disagree on 21”.<sup>3658</sup>

- 13.1045. In response, by email of 13 February 2017, Superintendent Middleton wrote:<sup>3659</sup>

<sup>3652</sup> Transcript of the Inquiry, 9 December 2022, T973.21–975.10 (TRA.00014.00001).

<sup>3653</sup> Transcript of the Inquiry, 9 December 2022, T973.23–24 (TRA.00014.00001).

<sup>3654</sup> Transcript of the Inquiry, 9 December 2022, T973.27–31 (TRA.00014.00001).

<sup>3655</sup> Transcript of the Inquiry, 9 December 2022, T978.18–32 (TRA.00014.00001).

<sup>3656</sup> Transcript of the Inquiry, 9 December 2022, T979.4–980.10 (TRA.00014.00001).

<sup>3657</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [83] (NPL.9000.0029.0001).

<sup>3658</sup> Exhibit 6, Tab 88, Email correspondence between Derek Dalton and Craig Middleton, 10–13 February 2016, 3 (SCOI.74447).

<sup>3659</sup> Exhibit 6, Tab 88, Email correspondence between Derek Dalton and Craig Middleton, 10–13 February 2016, 2 (SCOI.74447).

*I am not surprised by the quandary that you guys find yourself in with the disagreements amongst yourselves as we also had those issues. The matters that you have disagreed on with us also dont [sic] really surprise me. The SBC [Suspected Bias Crime] and II [Insufficient Information] are fluid categories that we found matters could move between and quite easily sit in either or both.*

- 13.1046. Superintendent Middleton then set out, in the same email, some of the Strike Force Parrabell team’s reasons for their approach, and wrote (emphasis added):<sup>3660</sup>

*I hope this assists. I am really looking forward to meeting with you and your team in a couple weeks to discuss. I really dont think we are two far apart in alot of our views and I am still hopeful that they can be easily resolved. [sic]*

- 13.1047. Dr Dalton agreed that Superintendent Middleton appeared to be saying that he hoped that there would be a convergence of views,<sup>3661</sup> and that any differences in the results would be “ultimately resolvable”.<sup>3662</sup>
- 13.1048. Assistant Commissioner Crandell was also taken to this correspondence. Again, his evidence was that he did not believe that Superintendent Middleton was aiming at consensus in this email. He stated, “it was never my view that we would get – we would even get consensus. The processes were so difficult to arrive at conclusions in any event”.<sup>3663</sup> He also stated that he did not think it was ever an expectation of Dr Dalton that the NSWPF and the academic team would aim for consensus.<sup>3664</sup>
- 13.1049. Superintendent Middleton did not address this email correspondence in his statement.

## The Academic Report

### Feedback on draft report

- 13.1050. On 22 March 2017, Dr Dalton emailed Assistant Commissioner Crandell and Ms Braw to advise that the academic team were working on a draft of their report.<sup>3665</sup> He stated (underline emphasis added; italics emphasis in original):<sup>3666</sup>

*Revising the draft report will be [sic] take a lot of time but hopefully in a few months we will be ready to share the draft and start negotiating the*

<sup>3660</sup> Exhibit 6, Tab 88, Email correspondence between Derek Dalton and Craig Middleton, 10–13 February 2016, 3 (SCOI.74447).

<sup>3661</sup> Transcript of the Inquiry, 1 March 2023, T2477.38–45 (TRA.00030.00001).

<sup>3662</sup> Transcript of the Inquiry, 1 March 2023, T2479.21–37 (TRA.00030.00001).

<sup>3663</sup> Transcript of the Inquiry, 9 December 2022, T984.40–43 (TRA.00014.00001).

<sup>3664</sup> Transcript of the Inquiry, 9 December 2022, T985.30–33 (TRA.00014.00001).

<sup>3665</sup> Exhibit 6, Tab 97, Email from Derek Dalton to Anthony Crandell, 22 March 2017, 1 (SCOI.74471).

<sup>3666</sup> Exhibit 6, Tab 97, Email from Derek Dalton to Anthony Crandell, 22 March 2017, 1–2 (SCOI.74471).

*final version with your team (a somewhat delicate dance of inclusion and exclusion I imagine, but one that is necessary as part of this process).*

- 13.1051. In his oral evidence, Dr Dalton confirmed that he expected a process of negotiation for the final report.<sup>3667</sup> And, ultimately, this is what occurred. As I set out below, the academic team sent drafts to the NSWPF, the NSWPF gave feedback, and the academic team made some changes as a result of this feedback.
- 13.1052. On 19 July 2017, Ms Braw provided the academic team with a document containing feedback collated from Assistant Commissioner Crandell, Superintendent Middleton, Ms Sharma and herself.<sup>3668</sup> The attached document was nine pages.<sup>3669</sup>
- 13.1053. On 30 August 2017, Dr Dalton presented the NSWPF with the final version of the Academic Report. In that email he said:<sup>3670</sup>

*We imagine you will read this final report with a view to spot [sic] anything that you aren't entirely happy with. ...*

*It was ... a delicate balance, but if you are aggrieved by any content (we hope you aren't) you must feel free to say so and we can discuss the possibility of modifying the text.*

- 13.1054. In his oral evidence, Assistant Commissioner Crandell was asked about Dr Dalton's language in this email:<sup>3671</sup>

*Q. Now, does that strike you as the approach of someone whose intention was to be entirely independent?*

*A. Look, I think it was a - for my perspective he wanted to get particularly the language right, and I know that there had been email correspondence between himself and Jackie Braw for that purpose, given Jackie Braw's connection to the LGBTIQ community. So when I read that, I have that in my mind. I think it would be - he was encouraging us to speak up if we thought that there was some inconsistency or something that needed to be changed that we were deeply unhappy about, rather than just saying, "Oh, well", and just accepting whatever, so - that's my interpretation of that.*

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<sup>3667</sup> Transcript of the Inquiry, 1 March 2023, T2483.24–26 (TRA.00030.00001).

<sup>3668</sup> Exhibit 6, Tab 109, Email from Jacqueline Braw to Derek Dalton, 19 July 2017, 1 (SCOI.74542).

<sup>3669</sup> Exhibit 6, Tab 109A, Feedback Document attached to Email from Jacqueline Braw to Derek Dalton, 19 July 2017 (SCOI.74543).

<sup>3670</sup> Exhibit 6, Tab 115, Email from Derek Dalton to Anthony Crandell, 30 August 2017, 1 (SCOI.74570).

<sup>3671</sup> Transcript of the Inquiry, 9 December 2022, T988.47–989.12 (TRA.00014.00001).

### Email of 14 February 2018 from Superintendent Middleton

13.1055. In an email to Assistant Commissioner Walton on 14 February 2018, attaching drafts of the Strike Force Parrabell “Executive Summary” and the Academic Report, Superintendent Middleton wrote:<sup>3672</sup>

*The academic review was conducted alongside the NSWPF ([Strike Force] Parrabell) review and essentially supports our codings (findings) and importantly vindicates the methodology we used.*

13.1056. Superintendent Middleton did not address this email in his statement. It is difficult to understand what he could have meant by this email, given that it is, in my opinion, demonstrably false. As has been outlined above in the “Academics’ Methodology” section of this Chapter, the academic team used quite different “codings/findings”, and expressly did not “vindicate the methodology” used by Strike Force Parrabell.

### References to “collaboration” in the Parrabell Report

13.1057. The Academic Report included the following paragraph:<sup>3673</sup>

*The academic team worked collaboratively with the NSWPF as findings were being finalised and experienced a strong spirit of cooperation in its interactions. This might strike some observers as irregular (in terms of the logic that a review must be conducted from a perspective of pure objectivity), but the academic team believed it was prudent to engage in open and productive discussions as the work of [Strike Force Parrabell] drew to a close, rather than face the possibility of working on misapprehensions or misinterpretations of processes and methods.*

13.1058. Dr Dalton agreed that the object of “collaborative meetings and discussions” between the academic team and the Strike Force Parrabell officers was for the NSWPF to know what the academic team thought about their findings, whether the academic team thought that the NSWPF’s findings needed some alteration, and vice versa.<sup>3674</sup>

13.1059. Dr Dalton frankly acknowledged that while there were legitimate reasons for pursuing a “collaborative” approach (for example, collaboration may assist in avoiding misunderstandings),<sup>3675</sup> the close involvement with the NSWPF potentially compromised the objectivity of the academic team’s work.<sup>3676</sup>

<sup>3672</sup> Exhibit 6, Tab 118, Email correspondence between Mark Walton and Craig Middleton, 14 February 2018, 1 (SCOI.74610).

<sup>3673</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 56–57 (SCOI.02632).

<sup>3674</sup> Transcript of the Inquiry, 1 March 2023, T2460.30–36 (TRA.00030.00001).

<sup>3675</sup> Transcript of the Inquiry, 1 March 2023, T2461.14–17 (TRA.00030.00001).

<sup>3676</sup> Transcript of the Inquiry, 1 March 2023, T2461.4–32 (TRA.00030.00001).

- 13.1060. The fact that the NSWPF was funding the academic review was also present in Dr Dalton’s mind, as a factor that may have encouraged the academic team to engage more with the NSWPF than would otherwise be the case. Dr Dalton described a “huge tension”, with which he “struggled ... all the time”, arising from the fact that the NSWPF was paying the academic team.<sup>3677</sup> He acknowledged that the academic team’s work therefore fell short of “pure objectivity” and “a gold standard of a process”.<sup>3678</sup>

### Evidence of Assistant Commissioner Crandell

- 13.1061. Overall, Assistant Commissioner Crandell did not agree with the proposition that rather than being an independent review of the work of Strike Force Parrabell, the academic team’s review was in fact “a collaborative exercise”,<sup>3679</sup> or the proposition that the exercise was “a search for consensus if at all possible.”<sup>3680</sup> Instead, his view was that “there was collaboration to determine differences in findings and reasoning for those”.<sup>3681</sup>
- 13.1062. Assistant Commissioner Crandell’s position seemed to be that it was possible for the academic team to be both collaborative and objective when conducting their review. For example, his oral evidence included the following exchange with Senior Counsel Assisting the Inquiry:<sup>3682</sup>

*Q. I’m not focusing so much on bringing them in earlier; I’m focusing on the change to a collaborative approach?*

*A. Yes. So - well, I don’t - I don’t necessarily know what Jackie means by “collaborative”, but my view is that we can collaborate and discuss different cases and different outcomes, but I still wanted them to provide objectivity in relation to their findings. So I didn’t want to come up with exactly the same findings unless that was the case. So I wanted to be transparent from that perspective.*

*Q. Doesn’t “collaborative” suggest something a bit different from independent?*

*A. Well, yes, it does, but it’s not - that’s not my word, but - but I wanted discussions with - I didn’t want them to simply go about their business and not have anything to do with the investigation team along the way, because we could probably learn from them in terms of what they found and any systematic processes that they may have come up with. In fact, they did come up with.*

<sup>3677</sup> Transcript of the Inquiry, 1 March 2023, T2461.9–12, 2461.24–26 (TRA.00030.00001).

<sup>3678</sup> Transcript of the Inquiry, 1 March 2023, T2461.19–25 (TRA.00030.00001).

<sup>3679</sup> Transcript of the Inquiry, 9 December 2022, T989.14–20 (TRA.00014.00001).

<sup>3680</sup> Transcript of the Inquiry, 9 December 2022, T989.22–24 (TRA.00014.00001).

<sup>3681</sup> Transcript of the Inquiry, 9 December 2022, T989.31–34 (TRA.00014.00001).

<sup>3682</sup> Transcript of the Inquiry, 9 December 2022, T922.14–47 (TRA.00014.00001).

*Q. If your overriding concern, though, was that the whole point of having the academic review was to be independent and thus give comfort, if that's the word, to the community that the police weren't just investigating themselves --*

*A. Yes.*

*Q. -- then you would want them to be literally independent, wouldn't you? You would want them to be hands-off, arm's-length?*

*A. I want them to be objective, but I don't see that that bars them from speaking to any member of the Parrabell team. In fact, I encouraged that.*

## Evidence of Superintendent Middleton

13.1063. Superintendent Middleton also addressed the relationship between the academic team and Strike Force Parrabell in his statement, stating:<sup>3683</sup>

*At all relevant times, I considered one of the objectives of the Flinders Academic Team was to independently assess [Strike Force] Parrabell's review methodology. In doing so, the Flinders Academic Team also considered [Strike Force] Parrabell's findings. It was a possibility that the Flinders Academic Team might reach different conclusions to [Strike Force] Parrabell's conclusions. I also considered that having the Flinders Academic Team review [Strike Force] Parrabell's work was an opportunity to improve both the NSWPF's current and future methodology and/or processes in the identification of bias crimes.*

13.1064. Superintendent Middleton said that one purpose of the meetings between the academic team and members of Strike Force Parrabell was to:<sup>3684</sup>

*discuss the findings that each respective team had arrived at, and the processes used. I also considered that these meetings provided an opportunity for the NSWPF to learn from the Flinders Academic Team and improve the police methodology used in the identification and investigating bias crimes.*

13.1065. He observed that, at the meetings, “each team could and did speak freely and openly regarding the review methodology and the findings made”.<sup>3685</sup>

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<sup>3683</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [71] (NPL.9000.0029.0001).

<sup>3684</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [74] (NPL.9000.0029.0001).

<sup>3685</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [75] (NPL.9000.0029.0001).



13.1066. Superintendent Middleton stated that there were “differences in views” between Strike Force Parrabell and the academic team in relation to some deaths and that the meetings were used to better understand the reasons and rationale for those different findings. He said that the meetings were not used to try to change the position adopted by the academic team (to the extent the positions were different).<sup>3686</sup>

### Submissions of Counsel Assisting and the NSWPF

13.1067. As both Counsel Assisting and the NSWPF appreciated, there was no suggestion in the evidence that the academic team was ever required to make the same classifications as Strike Force Parrabell.<sup>3687</sup>

13.1068. Indeed, Dr Dalton gave evidence that Assistant Commissioner Crandell said to him, at some point, words to the effect of: “[y]ou are to - don’t fear - don’t fear any - any sort of pressure or inducement or whatever. You are to find as many cases in whatever category as you see fit”.<sup>3688</sup> Dr Dalton said that there was “a genuine effort, on each side, to reach a genuine opinion about the cases”.<sup>3689</sup> It was not suggested by either Counsel Assisting or the NSWPF that Dr Dalton’s evidence in this regard was anything other than reliable.

13.1069. However, Counsel Assisting submitted that, even assuming that the participants in Strike Force Parrabell genuinely believed *in theory* that there would be some differences between the NSWPF’s and the academic team’s classifications, the preponderance of evidence clearly showed that the overall expectation was that there would *in practice* be little difference in the classifications.<sup>3690</sup>

13.1070. Further, in Counsel Assisting’s submission, the participants anticipated that any disagreements were likely to be ironed out and consensus reached in relation to such cases, through the process of discussion and collaboration that was undertaken between the two teams.<sup>3691</sup> The evidence established, it was submitted, that the academic team and the NSWPF sought to minimise any differences of opinion, as part of an overall effort to reach consensus on as many cases as possible.<sup>3692</sup>

<sup>3686</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [76] (NPL.9000.0029.0001).

<sup>3687</sup> Submissions of Counsel Assisting, 7 June 2023, [980] (SCOI.84380); Submissions of NSWPF, 28 June 2023, [565] (SCOI.84211).

<sup>3688</sup> Transcript of the Inquiry, 2 March 2023, T2619.22–31 (TRA.00031.00001).

<sup>3689</sup> Transcript of the Inquiry, 2 March 2023, T2620.25–27 (TRA.00031.00001).

<sup>3690</sup> Submissions of Counsel Assisting, 7 June 2023, [981] (SCOI.84380).

<sup>3691</sup> Submissions of Counsel Assisting, 7 June 2023, [981] (SCOI.84380).

<sup>3692</sup> Submissions of Counsel Assisting, 7 June 2023, [941] (SCOI.84380).



- 13.1071. Counsel Assisting set out, in extensive detail, the contemporaneous documents which referred to, and supported, this notion of collaboration. This material, they submitted, made clear that “overall consensus”, if it was possible, was indeed the objective.<sup>3693</sup> In their view, the evidence of that collaboration, and consensus-seeking, was extensive and compelling.<sup>3694</sup>
- 13.1072. The NSWPF seemingly accepted this submission to a certain extent. It agreed that “there was undeniably a degree of collaborative exchange” between the Strike Force Parrabell officers and the academic team, and that some evidence suggested there was a “hope” that through discussions, there might have been a convergence of views.<sup>3695</sup>
- 13.1073. However, overall the NSWPF disagreed with the submissions made by Counsel Assisting. In particular, the NSWPF was critical of Counsel Assisting’s reliance on email correspondence between Dr Dalton, Assistant Commissioner Crandell and Superintendent Middleton.<sup>3696</sup> The NSWPF submitted that, in the absence of evidence from Superintendent Middleton, Counsel Assisting’s assertions as to the meaning of particular words or phrases in his correspondence must be “approached with very great caution”.<sup>3697</sup>
- 13.1074. Nevertheless, despite advising caution in relation to the interpretation of Superintendent Middleton’s email correspondence, the NSWPF similarly referred to email correspondence in the June NSWPF Submissions. For example, it was submitted, in relation to Superintendent Middleton’s email of 13 February 2017 (set out above), that:<sup>3698</sup>

*Had the aim of police been matching outcomes rather than reaching an understanding of process, one would have expected [Superintendent] Middleton to undertake a systematic consideration of those 21 cases, and an explanation as to why the police’s view was correct and should be adopted by the Academic Review Team. That is not what happened. Instead, [Superintendent] Middleton sent an email that outlined the general approach police took to cases, the limitations they confronted, and the way they approached different categories. There was no attempt to suggest to [Dr] Dalton that the Academic Review Team were wrong in relation to any of the particular cases or to persuade them to change their views.*

<sup>3693</sup> Submissions of Counsel Assisting, 7 June 2023, [942]–[964] (SCOI.84380).

<sup>3694</sup> Submissions of Counsel Assisting, 7 June 2023, [941] (SCOI.84380).

<sup>3695</sup> Submissions of NSWPF, 28 June 2023, [570] (SCOI.84211).

<sup>3696</sup> Submissions of NSWPF, 28 June 2023, [570] (SCOI.84211).

<sup>3697</sup> Submissions of NSWPF, 28 June 2023, [571] (SCOI.84211).

<sup>3698</sup> Submissions of NSWPF, 28 June 2023, [574] (SCOI.84211).

- 13.1075. In fact, Superintendent Middleton did subsequently give evidence, by providing a statement to the Inquiry which set out his evidence regarding a number of his emails (as I have outlined above). In the NSWPF October Submissions, the NSWPF asserted that Superintendent Middleton’s evidence emphasised that he was interested in seeing the academic team’s output with a view to learning from the team, and that he was not concerned by cases where the academic team reached different conclusions to Strike Force Parrabell, providing those conclusions were not diametrically opposed.<sup>3699</sup>
- 13.1076. The NSWPF also referred to evidence of other interactions between the NSWPF and the academic team, including:
- a. The Academic Report’s descriptions of meetings “held in Sydney, where clarifications were sought by both parties as the process unfolded” and “carefully measured debates” engaged in by the academic team about “each individual case in the interests of being thorough, consistent and precise”;<sup>3700</sup>
  - b. Dr Dalton’s observations of the tone of the meetings between the NSWPF and the academic team as “polite, deferential, very kind, very respectful”;<sup>3701</sup> and
  - c. Dr Dalton’s account of the final meeting between the NSWPF and the academic team, in which the discussions were directed to an understanding of the logic of the respective teams “rather than any sort of discussion of crude agreement”.<sup>3702</sup>
- 13.1077. In the view of the NSWPF, there was nothing to indicate that any “convergence” was (or was intended to be) “unidirectional” (in terms of the academic team adopting Strike Force Parrabell classifications only). It was submitted that while the meetings between Strike Force Parrabell and the academic team resulted in some changes in categorisations, those changes went both ways.<sup>3703</sup>

<sup>3699</sup> Supplementary Submissions of NSWPF, 23 October 2023, [350] (SCOI.86378).

<sup>3700</sup> Submissions of NSWPF, 28 June 2023, [564] (SCOI.84211), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 56–57 (SCOI.02632).

<sup>3701</sup> Submissions of NSWPF, 28 June 2023, [567] (SCOI.84211), citing Transcript of the Inquiry, 2 March 2023, T2618.9–2619.13 (TRA.00031.00001).

<sup>3702</sup> Submissions of NSWPF, 28 June 2023, [566] (SCOI.84211), citing Transcript of the Inquiry, 2 March 2023, T2615.16–17 (TRA.00031.00001).

<sup>3703</sup> Submissions of NSWPF, 28 June 2023, [577] (SCOI.84211), citing Transcript of the Inquiry, 3 March 2023, T2858.18–35 (TRA.00032.00001).

- 13.1078. The NSWPF submitted that had consensus been the aim, the academic team would not have developed a different set of categories from that developed by police.<sup>3704</sup> The NSWPF also noted that there were ultimately a number of cases in relation to which Strike Force Parrabell and the academic team did not agree.<sup>3705</sup> The NSWPF referred to Dr Dalton’s evidence that the NSWPF “didn’t seem to care one iota”,<sup>3706</sup> and Dr de Lint’s evidence that “[i]t wasn’t a concern that the teams had the same result”.<sup>3707</sup>
- 13.1079. Counsel Assisting submitted that, in critical respects, I should prefer the evidence of Dr Dalton on these issues to that of Assistant Commissioner Crandell. For example, Dr Dalton’s evidence was that the objective was to “reach a consensus” and arrive at “almost the same views”, whereas Assistant Commissioner Crandell gave evidence that he did not consider it was ever an expectation that the two teams would aim for consensus.<sup>3708</sup>
- 13.1080. In response, the NSWPF drew my attention to the “unequivocal” evidence of Assistant Commissioner Crandell, when taken to the relevant email correspondence, namely that:<sup>3709</sup>
- a. “We never wanted agreement on all the cases”;<sup>3710</sup>
  - b. It was “never my intention to have a joint set of outcomes”;<sup>3711</sup>
  - c. “It was in my mind to learn as much as I could about classifications of bias crimes so that I could then improve the way that we do that in the NSW Police Force moving forward”;<sup>3712</sup>
  - d. “I thought I might learn a different methodology for identifying bias crime” from the academic team;<sup>3713</sup>
  - e. If the academic team had “completely different findings”, then the NSWPF would “want to know how they arrived at that one as opposed to the way” the NSWPF team arrived at its findings;<sup>3714</sup> and
  - f. “[I]t was never my view that we would get - we would even get consensus. The processes were so difficult to arrive at conclusions in any event.”<sup>3715</sup>

<sup>3704</sup> Submissions of NSWPF, 28 June 2023, [579] (SCOI.84211).

<sup>3705</sup> Submissions of NSWPF, 28 June 2023, [569] (SCOI.84211).

<sup>3706</sup> Transcript of the Inquiry, 2 March 2023, T2620.4 (TRA.00031.00001).

<sup>3707</sup> Transcript of the Inquiry, 3 March 2023, T2858.21–22 (TRA.00032.00001).

<sup>3708</sup> Submissions of Counsel Assisting, 7 June 2023, [947], [965] (SCOI.84380).

<sup>3709</sup> Submissions of NSWPF, 28 June 2023, [575] (SCOI.84211).

<sup>3710</sup> Transcript of the Inquiry, 9 December 2022, T973.23–24 (TRA.00014.00001).

<sup>3711</sup> Transcript of the Inquiry, 9 December 2022, T980.2 (TRA.00014.00001).

<sup>3712</sup> Transcript of the Inquiry, 9 December 2022, T969.32–35 (TRA.00014.00001).

<sup>3713</sup> Transcript of the Inquiry, 9 December 2022, T969.46–970.2 (TRA.00014.00001).

<sup>3714</sup> Transcript of the Inquiry, 9 December 2022, T973.26–31 (TRA.00014.00001).

<sup>3715</sup> Transcript of the Inquiry, 9 December 2022, T984.40–43 (TRA.00014.00001).

- 13.1081. The NSWPF submitted that, in summary, Assistant Commissioner Crandell observed, “in essence there was collaboration to determine differences in findings and reasoning for those”, but that the collaboration was not “a joint effort at a production of both reports”.<sup>3716</sup>
- 13.1082. Counsel Assisting pointed out that Dr Dalton frankly acknowledged that while there were legitimate reasons for pursuing a “collaborative” approach (for example, collaboration may assist in avoiding misunderstandings), the close involvement with the NSWPF potentially compromised the objectivity of the academic team’s work.
- 13.1083. In particular, as Counsel Assisting noted, the fact that the NSWPF was funding the academic review was also present in Dr Dalton’s mind, as a factor that may have encouraged the academic team to engage more with the NSWPF than would otherwise be the case.
- 13.1084. Counsel Assisting accordingly submitted that the Strike Force Parrabell team led the search for consensus, and they were the dominant party in the relationship. This was said to follow from the following facts:<sup>3717</sup>
- a. The NSWPF was paying the academic team;
  - b. The NSWPF had access to more information than the academic team in the form of the access to historical material for each death; and
  - c. The NSWPF reviewed and sought changes to the Academic Report, but the academic team did not review the Police Report (discussed further below).
- 13.1085. The NSWPF characterised the first aspect of this submission as “astounding”, of “extraordinary gravity” and “entirely baseless”, and “tantamount to a suggestion that the will of the [academic team] could, and indeed, had been, overborne by the fact that they were being paid”.<sup>3718</sup> (I note that in making these accusations, the NSWPF chose to overlook entirely Dr Dalton’s evidence referred to above.) It argued that such a submission ignored the reality that the payment of the academic team was in no way contingent upon the answers they arrived at.<sup>3719</sup>

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<sup>3716</sup> Submissions of NSWPF, 28 June 2023, [576] (SCOI.84211), citing Transcript of the Inquiry, 9 December 2022, T989.31–34 (TRA.00014.00001).

<sup>3717</sup> Submissions of Counsel Assisting, 7 June 2023, [972] (SCOI.84380).

<sup>3718</sup> Submissions of NSWPF, 28 June 2023, [580]–[581] (SCOI.84211).

<sup>3719</sup> Submissions of NSWPF, 28 June 2023, [581] (SCOI.84211).

- 13.1086. In relation to Counsel Assisting’s submission the NSWPF submitted that it had not provided feedback to the academic team for the purpose of attempting to have the academic team change their approach to the categorisation of the cases.<sup>3720</sup> It was further submitted that police did not seek to mark-up changes to the Academic Report itself and provided their comments by way of suggestion only, with the academic team retaining control over the final form of the Academic Report.<sup>3721</sup>
- 13.1087. Counsel Assisting submitted that the efforts to reach consensus necessarily undermined the independence of the academic team. It was submitted that it may be one thing for each side to explain its reasoning to the other, so as to achieve a greater understanding of each other’s conclusions. It may also be legitimate for each side to alter their views as a result of that greater understanding. However, if this was going to occur, it ought to have occurred *after* both sides had reached their conclusions, not while that process was underway.<sup>3722</sup>
- 13.1088. The NSWPF asserted that Counsel Assisting’s observations “proceeded on the basis of a misconception of the nature of the task being undertaken” by the academic team and failed to appreciate that the academic team was “conducting a *review* of the work” of Strike Force Parrabell (emphasis in original).<sup>3723</sup> The NSWPF submitted that by the time the academic team conducted their examination of the deaths, police had already formed their conclusions in relation to each death (as recorded in the BCIFs), with those views subject to refinement, subsequent to discussions with members of the academic team and among the officers themselves.<sup>3724</sup> The NSWPF also referred to a description in the Academic Report of the “the second Sydney meeting” between the academic team and the NSWPF where:<sup>3725</sup>

*a large police delegation discussed differences in opinion with regard to the cases under review. The police finalised their position on the cases and declared a cessation to their deliberations. At this point the academic team members were able to clarify various assumptions and move forward on the basis of these deliberations. From this point on the academic team could formally evaluate the operations and findings of [Strike Force Parrabell].*

<sup>3720</sup> Submissions of NSWPF, 28 June 2023, [584] (SCOI.84211), citing Exhibit 6, Tab 109A, Feedback Document attached to Email from Jacqueline Braw to Derek Dalton, 19 July 2017 (SCOI.74543). See also Submissions of Counsel Assisting, 7 June 2023, [972] (SCOI.84380).

<sup>3721</sup> Submissions of NSWPF, 28 June 2023, [586] (SCOI.84211).

<sup>3722</sup> Submissions of Counsel Assisting, 7 June 2023, [982] (SCOI.84380).

<sup>3723</sup> Submissions of NSWPF, 28 June 2023, [589] (SCOI.84211).

<sup>3724</sup> Submissions of NSWPF, 28 June 2023, [589] (SCOI.84211).

<sup>3725</sup> Submissions of NSWPF, 28 June 2023, [578] (SCOI.84211), quoting Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 57 (SCOI.02632).

- 13.1089. In Counsel Assisting’s submission, the search for consensus, plainly engaged in from the outset of the academic review process or soon afterwards, meant that:<sup>3726</sup>
- a. The already subjective opinions of the Strike Force Parrabell officers were then “subject to”, and evidently in some cases changed as a result of, the opinions of the academic team; and
  - b. The work of the academic team, in reviewing the work of the Strike Force Parrabell officers, was not truly independent or “arm’s length”. Rather, it was, in reality, part of an ongoing collaborative process which included the aim of minimising any disagreement along the way.

### Conclusions of the Inquiry

- 13.1090. First, I agree that there was no suggestion that the academic team was ever explicitly required to classify deaths in the same way as Strike Force Parrabell, and I accept the evidence of Assistant Commissioner Crandell and Dr Dalton in this regard.
- 13.1091. Secondly, however, I accept Counsel Assisting’s submission that there existed, in practice, an expectation that there would be little difference between the two teams as to their classifications and an attitude that any disagreement would be likely to be resolved prior to the publication of the final statistics in the Parrabell Report. This submission was accepted, in part, by the NSWPF who stated that “there was undeniably a degree of collaborative exchange” and evidence to suggest there was a “hope” that there might have been a convergence of views through discussions.<sup>3727</sup>
- 13.1092. Of course, such a desire is easy to understand. For the NSWPF, no doubt the best-case scenario was that the academic team, in conducting a review of their work, agreed with the approach and findings of the NSWPF. However, in acknowledging that, it also must be said that there was extensive documentary evidence before me demonstrating that there was a desire for, and a practice of, collaboration and consensus-seeking between the two teams. The documents and emails referred to in this section above make this clear.
- 13.1093. For example, the contents of the email dated 13 December 2016 from Superintendent Middleton to Assistant Commissioner Crandell referred to above speaks for itself. Superintendent Middleton stated that a “round table discussion” could “resolve all if not most” of the points of difference between the teams to “provide one consistent set of results”.<sup>3728</sup> Such an approach is not consistent with the academic team operating with an appropriate degree of independence.

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<sup>3726</sup> Submissions of Counsel Assisting, 7 June 2023, [983] (SCOI.84380).

<sup>3727</sup> Submissions of NSWPF, 28 June 2023, [570] (SCOI.84211).

<sup>3728</sup> Exhibit 6, Tab 79, Email correspondence between Anthony Crandell and Craig Middleton, 12–13 December 2016, 1 (SCOI.74394).

- 13.1094. The reference to “results” also sits uncomfortably with Assistant Commissioner Crandell’s evidence that the NSWPF and the academic team were reconciling their logic or “process”, not their outcomes.<sup>3729</sup> Superintendent Middleton did not say that they would “discuss approaches” or “talk through methods/reasoning/logic”. He said, “resolve all if not most of those opinions to provide one consistent set of results”. The word “resolve” suggests that they were looking for unanimity. It was clearly the expectation that, assuming both teams had considered all pieces of information (and Superintendent Middleton’s evidence was that he considered that a different classification could be caused by a “key piece of information” being missed by one of the parties),<sup>3730</sup> the classifications of the majority of cases would be similar—namely, “one consistent set of results”.<sup>3731</sup>
- 13.1095. Of course, there were some cases with different classifications in the end, as the NSWPF has pointed out. But that result in no way diminishes the extensive evidence of the process by which such disagreements were intended to be ironed out.
- 13.1096. In their statements and oral evidence, the authors of these emails, Assistant Commissioner Crandell and Superintendent Middleton, sought to explain or justify why this was not the case. However, I do not consider such explanatory, *ex post facto* evidence of what they now say they meant in their email correspondence to be very helpful, in circumstances where I have before me not only the text of those emails but also the evidence of Dr Dalton (who was often the recipient) as to his understanding of the meaning of the emails.
- 13.1097. Dr Dalton’s evidence was that the RFQ and email correspondence emphasised collaboration, and that this emphasis framed the academic team’s approach. To the extent that there are discrepancies between, on the one hand, the text of the email correspondence and Dr Dalton’s understanding of that text, and, on the other hand, the “intended meaning” as explained by Assistant Commissioner Crandell and Superintendent Middleton, then I prefer the evidence of the former—consistent as it is with the contemporaneous records at the time.
- 13.1098. In relation to the use of the phrase “a collaborative process” in Ms Braw’s email of 18 July 2016 and Assistant Commissioner Crandell’s evidence on this topic, I consider that while perhaps the word was “Jackie’s word”,<sup>3732</sup> in the sense that Ms Braw wrote the email, the word “collaborative” was also used in the RFQ. Assistant Commissioner Crandell reviewed and approved the RFQ, suggesting that, in fact, it was the “word” that Assistant Commissioner Crandell endorsed as being reflective of the approach that was to be taken by the NSWPF and academic teams.

<sup>3729</sup> Transcript of the Inquiry, 9 December 2022, T973.23–31 (TRA.00014.00001).

<sup>3730</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [83] (NPL.9000.0029.0001).

<sup>3731</sup> Exhibit 6, Tab 79, Email correspondence between Anthony Crandell and Craig Middleton, 12–13 December 2016, 1 (SCOI.74394).

<sup>3732</sup> Transcript of the Inquiry, 9 December 2022, T924.3–41 (TRA.00014.00001).

- 13.1099. In my view, what Ms Braw meant by “collaborative” is clearly set out in the text of her email, namely:<sup>3733</sup>

*we thought we should have them start looking at cases and determinations, provide comments which may influence our final conclusions.*

- 13.1100. This conclusion is very much in keeping with the ordinary meaning of the word “collaborative”.

- 13.1101. Thirdly, I consider that the fact that a supposedly independent academic team provided a draft of its report to the NSWPF (i.e., the entity whose work it was to be reviewing) to be surprising, and difficult to reconcile with “independence”. The fact that—as was submitted by the NSWPF—no ‘mark-up’ changes were made by the NSWPF to this document and no attempt was made to convince the academics to change their approach to the categorisation of the deaths, does not change this fact. The nine pages of feedback prepared by the NSWPF team included several examples of where the NSWPF queried what had been written or suggested that a change to the report’s text might be made—beyond typographical or factual errors—including:<sup>3734</sup>

- a. From Assistant Commissioner Crandell:<sup>3735</sup>

*I know you have been kind to Sue Thompson, however some of the findings are completely contrary to her authored publication eg: a significantly lower number of cases involving more than one perpetrator (Page 31). I wonder whether Payne (31) was included in Sue’s list or the matter from Tasmania [Travers]. If so perhaps the nature of those inclusions should more directly reference the inappropriateness of the original 88 – I understand the message is there implicitly, I am suggesting that perhaps an explicit statement should be considered.*

- b. From Superintendent Middleton:<sup>3736</sup>

*As discussed I have already supplied some feedback to Derek directly. However I do have a couple of points that support Mr Crandells [sic] feedback ...*

*In my opinion the statement highlighted by Mr Crandell as to the clearance of the first 5 matters as being low, is too simplistic and somewhat misleading.*

<sup>3733</sup> Exhibit 6, Tab 142, Email correspondence between Shannon Wright and Jacqueline Braw, 19 July 2016 (SCOI.78619).

<sup>3734</sup> Exhibit 6, Tab 109A, Feedback Document attached to email from Jacqueline Braw to Derek Dalton, 19 July 2017, 2, 5–7 (SCOI.74543).

<sup>3735</sup> Exhibit 6, Tab 109A, Feedback Document attached to email from Jacqueline Braw to Derek Dalton, 19 July 2017, 2 (SCOI.74543).

<sup>3736</sup> Exhibit 6, Tab 109A, Feedback Document attached to email from Jacqueline Braw to Derek Dalton, 19 July 2017, 2, 5 (SCOI.74543).



c. From Ms Sharma (emphasis in original):<sup>3737</sup>

*Page 8 – second paragraph, happy with paragraph, suggest changing word in bold to ‘review’: ‘Whatever the number, this **re-investigation** supports the view that...*

...

*Page 10-11 ... In addition to correcting the definition of bias crimes adopted by NSWPF, it should be noted that our definition is based on the International Association of Chiefs of Police definition and reflects international best practice.*

d. From Ms Braw:<sup>3738</sup>

*Is it worth adding a paragraph in the Preface explaining the complexity of bias, that is it [sic] not black and white, the many factors involved, without sounding defensive?*

- 13.1102. At least some of this feedback was taken onboard and incorporated into the Academic Report. For example, in relation to Assistant Commissioner Crandell’s comment at [13.1101 (a)] above, page 100 of the Academic Report included the following “explicit statement”:<sup>3739</sup>

*The inclusion of cases like Payne (31) and Travers (53) in the original list of suspected gay hate homicides in circulation in NSW is something of an enigma. Their embracement goes some way to speak to the inappropriateness of this list (given that one case was not a homicide and the other occurred in a different State jurisdiction).*

- 13.1103. In relation to Ms Sharma’s feedback referred to above, page 64 of the Academic Report, incorporated Ms Sharma’s suggested word change, namely: “Whatever the number, this review supports the view that anti-gay bias is no longer forgotten, neglected and sequestered to a remote corner of public and police concern” (emphasis added).<sup>3740</sup>

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<sup>3737</sup> Exhibit 6, Tab 109A, Feedback Document attached to email from Jacqueline Braw to Derek Dalton, 19 July 2017, 6 (SCOI.74543).

<sup>3738</sup> Exhibit 6, Tab 109A, Feedback Document attached to email from Jacqueline Braw to Derek Dalton, 19 July 2017, 7 (SCOI.74543).

<sup>3739</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 100 (SCOI.02632).

<sup>3740</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 64 (SCOI.02632).

- 13.1104. In addition, the email from Dr Dalton accompanying the final draft of the Academic Report establishes that the academic team, even at that end point, did not feel that they had complete, independent control over its contents. I accept that the NSWPF did not direct the academic team to reach a particular conclusion in any particular death; however, there is a chilling effect which is evident from Dr Dalton’s deferential language in that email: “anything that you aren’t entirely happy with”, “if you are aggrieved by any content (we hope you aren’t) you must feel free to say so and we can discuss the possibility of modifying the text”.<sup>3741</sup> An earlier email from Dr Dalton to Assistant Commissioner Crandell also referred to “negotiating the final version” of the Academic Report with the Strike Force Parrabell team.<sup>3742</sup>
- 13.1105. The submissions of the NSWPF did not engage with such evidence.
- 13.1106. I consider that Dr Dalton’s emails suggest that the academic team were attempting at each turn, including in the preparation of their final report, to agree with the NSWPF and to minimise the amount of disagreement. More generally, Dr Dalton made no secret of the fact that he and his colleagues were going to “collaborate” with NSWPF, a concept he referred to liberally in the Dalton/de Lint/Tyson tender proposal: twice in his covering letter of July 2016; and nine times in his more detailed description of the work that principally he, with others, would perform.<sup>3743</sup>
- 13.1107. Fourthly, I consider that there was a clear tension between the values of “independence” and “collaboration” as reflected in the way that the academic review was carried out. As the email correspondence demonstrates, the independence and impartiality of the academic team was eroded by the collaborative process that was implemented.
- 13.1108. In relation to Assistant Commissioner Crandell’s evidence that the decision to involve the academic team before the NSWPF review was completed was inspired by a desire to learn from the academic team, I note again that the purported duality of purposes for the academic team (i.e., that it be *both* an independent and impartial assessment, and be a process for collaboration and learning) led to a blurring of appropriate boundaries in delineating the role of the academic team. It ultimately meant that their ability to provide an independent assessment of Strike Force Parrabell’s findings was infected by the level of collaboration and “learning” that occurred. This resulted in a “review” that was neither independent nor at arm’s-length.

<sup>3741</sup> Exhibit 6, Tab 1115, Email from Derek Dalton to Anthony Crandell, 30 August 2017, 1 (SCOI.74570).

<sup>3742</sup> Exhibit 6, Tab 97, Email from Derek Dalton to Anthony Crandell, 22 March 2017, 1 (SCOI.74471).

<sup>3743</sup> Exhibit 6, Tab 25, Tender Proposal of Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson, 28 July 2016, 1 (“collaborative review” and “collaborative assessment”, 25 (“collaborate”), 25, 27 (“collaborating”), 26 (“collaboration”), 27 (“collaboration”, “collaborative spirit”, “collaboratively”), 28 (“close collaboration”), 30 (“collaborative review”) (SCOI.75775).

- 13.1109. Finally, in relation to the submission of the NSWPF that Counsel Assisting failed to appreciate that the academic team was conducting a “review” of the work of Strike Force Parrabell, and that by the time the academic team conducted their examinations of the deaths, police had already formed their conclusions in relation to each death and those views were subject to refinement, I note two points:
- a. The first is a qualifier that the NSWPF itself noted – that the views of police “were subject to refinement, subsequent to discussions with the academics, and between the officers among themselves”.<sup>3744</sup> That is, they were not quarantined from the views of the academic team. The collaborative review process implemented by Strike Force Parrabell meant that opportunities were created for each team to influence the findings of the other.
  - b. The second is that it is my impression that it was more likely that the NSWPF’s findings would influence the academic team’s findings (or the academic team would be encouraged, consciously or unconsciously, to agree with the NSWPF’s findings) than the other way around. The different position of the academic team as compared to that of the NSWPF is evident in the fact that the NSWPF provided feedback on the Academic Report, but no opportunity to reciprocate was provided to the academic team.
- 13.1110. In this regard, I agree with Counsel Assisting that the NSWPF did lead the search for consensus and was the “dominant party” in the relationship. The NSWPF submitted that changes to classifications “went both ways” and cited the oral evidence of Dr de Lint in support of that submission. Dr de Lint’s evidence on this point is worth setting out in full:<sup>3745</sup>

*Q. In those cases where ultimately there was a difference of opinion about which category they should go in, how did the police react by way of that difference? How did they react to that difference in - towards yourself and Dr Dalton?*

*A. Oh, well, I mean, they took on board what we would have said and - I don’t recall that - that they moved in our direction in individual cases. They – I’m not certain that they did. It wasn’t a concern that the teams had the same result. So we - they would take on board what we’d say, “Yes, noted, okay, let’s think. No. Continue with” - you know, don’t change. The same with us, we would take on board what they said and in some cases, they would be significant enough, so we’d say, “Okay, we had better reevaluate.”*

<sup>3744</sup> Submissions of NSWPF, 28 June 2023, [589] (SCOI.84211).

<sup>3745</sup> Transcript of the Inquiry, 3 March 2023, T2858.13–35 (TRA.00032.00001).

- 13.1111. In my view, the evidence of Dr de Lint is more equivocal than it has been characterised by the NSWPF in their submissions. While Dr de Lint recalled a discussion process, at no point does he say that the Strike Force Parrabell officers changed their classifications as a result. Rather, he characterised the NSWPF as saying “let’s think”. In relation to the NSWPF “mov[ing] in our direction in individual cases”, he said, “I don’t recall that” and “I’m not certain that they did”.
- 13.1112. In their submissions, the NSWPF did not draw my attention to any documentary evidence of the Strike Force Parrabell officers changing their classification as a result of the academic team. This *may* have occurred during a meeting between the teams—but no record appears to have been made of any such change.
- 13.1113. It is also relevant that the NSWPF had access to the source material underlying the BCIFs, whereas the academics did not.
- 13.1114. It is true that the payment of the academic team by the NSWPF was not contingent upon the answers they arrived at. I also accept that the fact of payment in and of itself does not mean that the will of the academic team could be or had been overborne. No such suggestion was made by Counsel Assisting. The submissions by the NSWPF elide, indeed essentially ignore, the evidence of Dr Dalton referred to above, where he described a “huge tension” arising from the fact that the NSWPF was paying the academic team as part of the tender process. In his own view, the academic team’s work therefore fell short of “pure objectivity” and “a gold standard of a process”.<sup>3746</sup>
- 13.1115. In any event, outside the underlying power imbalance between the NSWPF and the academic team, I consider that the correspondence and documents before me constitute sufficient evidence in themselves of the NSWPF’s position on collaboration and consensus.

<sup>3746</sup> Transcript of the Inquiry, 1 March 2023, T2461.8–32 (TRA.00030.00001).

## G. The Parrabell Report

13.1116. As I have outlined above, the Parrabell Report was published in late June 2018 in two parts: the Police Report and the Academic Report.

13.1117. I examine each of these parts below.

### The Police Report

#### Introduction

13.1118. The introductory pages of the Police Report refer to the historical, social and legal contexts which shaped the era under review, in particular from the perspective of the LGBTIQ community.<sup>3747</sup> These pages are replete with admirably frank acknowledgements, by Assistant Commissioner Crandell and Strike Force Parrabell, both of the discrimination and hostility faced by that community over many years, and of the part played by the NSWPF in that state of affairs.

13.1119. For example, after referring to the first Mardi Gras parade on 27 June 1978 (which led to what is now Sydney’s annual Gay and Lesbian Mardi Gras), the report acknowledges that the police response involved excessive force and arrests. The following statements appear:<sup>3748</sup>

*The degree of animosity towards gay men especially was not isolated to any particular section of society which reflected well entrenched social, political, legal, cultural and institutional bias. Within this context the NSW Police Force was no different with the backing of legislation that identified criminality by natural behaviour.*

13.1120. A section headed ‘Social Progress’ emphasises the impact of the HIV/AIDS crisis, and the 1987 “Grim Reaper” campaign, on the LGBTIQ community.<sup>3749</sup> The Police Report accepts that “[t]he link between anti-gay violence and moral panic associated with the spread of AIDS in Australian states is well documented”.<sup>3750</sup>

13.1121. Assistant Commissioner Crandell explained in his oral evidence that he had deliberately used the term “moral panic” in the Police Report to describe the “alarm” that was felt in the LGBTIQ community at the time in relation to the violence to which they were being exposed. In his view, the “moral panic” was both genuine and justified at that time.<sup>3751</sup> The use of the term “moral panic” by Assistant Commissioner Crandell in the Police Report is thus very different from its use by the academic team in both the Academic Report and the ‘Moral Panic’ article (further detail in this regard is included above).

<sup>3747</sup> See Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 11–17 (SCOI.02632).

<sup>3748</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 11 (SCOI.02632).

<sup>3749</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 12–13 (SCOI.02632).

<sup>3750</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 13 (SCOI.02632).

<sup>3751</sup> Transcript of the Inquiry, 9 December 2022, T908.6–18 (TRA.00014.00001).

- 13.1122. Assistant Commissioner Crandell readily accepted, in his oral evidence, that there was a view at the time of the “Grim Reaper” campaign that the HIV/AIDS crisis was the fault of gay men, and that therefore gay men were, in effect, “fair game”.<sup>3752</sup> This was particularly so at beats, where “men were identified as legitimate targets of violence, [and] unlikely to seek police involvement or assistance”.<sup>3753</sup>
- 13.1123. Under the heading ‘Responsibility of Police’, the Police Report states candidly that, although the passing of legislation in 1984 meant that “homosexual activity” was no longer contrary to law, “police culture and societal values took far longer to change”,<sup>3754</sup> and that “there is no doubt that police culture inhibited the kind of impartial support now becoming a feature within LGBTIQ community relationships”.<sup>3755</sup> Assistant Commissioner Crandell agreed in his oral evidence that “police culture” had this inhibiting effect during the 1970s, 1980s and 1990s.<sup>3756</sup>
- 13.1124. The Police Report then goes on to make a number of candidly unambiguous statements regarding the “shocking violence”<sup>3757</sup> inflicted on members of the LGBTIQ community, including the following:<sup>3758</sup>

*The NSW Police Force is acutely aware of and acknowledges without qualification both its and society’s acceptance of gay bashings and shocking violence directed at gay men, and the LGBTIQ community between 1976 and 2000. ... It is clear and beyond question that levels of violence inflicted upon gay men in particular were elevated, extreme and often brutal. ...*

*The Gay and Lesbian Rights Lobby and later, the AIDS Council of NSW (now ACON) kept records, usually comprising self-reported incidents of gay-hate violence, that on several occasions amounted to more than 20 entries per day. Unfortunately, fear associated with anti-gay attitudes of officers within the NSW Police Force at the time prevented these reports being formally recorded, which in turn meant that crimes were not investigated. This inherent lack of consequences or accountability meant that perpetrators were given a kind of ‘social license’ to continue inflicting violence upon members of the gay community. ...*

*Importantly, fear, moral panic and moral judgements towards beats usage were very real. It would be naïve to assume that these attitudes did not colour the perceptions of police officers as members of the same society so publically against gay men and the LGBTIQ community generally.*

<sup>3752</sup> Transcript of the Inquiry, 6 December 2022, T597.1–16 (TRA.00011.00001).

<sup>3753</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 13 (SCOI.02632); Transcript of the Inquiry, 6 December 2022, T597.24–37 (TRA.00011.00001).

<sup>3754</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 13 (SCOI.02632).

<sup>3755</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 14 (SCOI.02632).

<sup>3756</sup> Transcript of the Inquiry, 6 December 2022, T597.24–33 (TRA.00011.00001).

<sup>3757</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 14 (SCOI.02632).

<sup>3758</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 14–16 (SCOI.02632).

...

*The NSW Police Force must acknowledge and has, to some extent, acknowledged its part in marginalisation of the LGBTIQ community during the 1970's, 80's and 90's especially.*

13.1125. In his oral evidence, Assistant Commissioner Crandell stood by those statements.<sup>3759</sup>

### Impetus for, and objectives of, the Parrabell Report

13.1126. According to the Police Report, Strike Force Parrabell “was developed to show proactivity, from this point in history at least, in the investigation of anti-gay bias crime”.<sup>3760</sup>

13.1127. As to why the particular 88 deaths were chosen to be the subject of the Strike Force Parrabell review, the Police Report first states that “a scholarly article” had been published in 2013 by the AIC, relating to a list of 88 suspicious deaths which had been “developed and published by the AIC”.<sup>3761</sup> Then it is stated that the list of 88 deaths had been compiled by Sue Thompson in 2002 and “originally listed in a submission to the [AIC]”.<sup>3762</sup>

13.1128. In fact, as Assistant Commissioner Crandell acknowledged,<sup>3763</sup> neither of those statements is accurate. The true position in relation to the genesis of the “list of 88” is dealt with in **Chapter 2**. As outlined there, the list was developed over many years by Ms Thompson and others, including Professor Stephen Tomsen, and was provided to Mr Lehmann by Ms Thompson in about August 2013.<sup>3764</sup> Two “scholarly articles” by Ms Thompson and Dr Mouzos had appeared in 2000 and 2001, but they related to a different and smaller subset of possible “gay hate”-related deaths.<sup>3765</sup>

13.1129. However, the Police Report is accurate in stating that in 2013 “a number of articles were published in mainstream Sydney media” relating to 88 deaths “with potential gay-hate motivations”.<sup>3766</sup> As outlined earlier, it is plain that those articles were indeed a significant, if not the main, catalyst for Strike Force Parrabell.

<sup>3759</sup> Transcript of the Inquiry, 6 December 2022, T598.9–599.46 (TRA.00011.00001).

<sup>3760</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 14 (SCOI.02632).

<sup>3761</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 17–18 (SCOI.02632).

<sup>3762</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 19–20, fn 7 (SCOI.02632).

<sup>3763</sup> Transcript of the Inquiry, 6 December 2022, T600.1–45 (TRA.00011.00001).

<sup>3764</sup> Exhibit 6, Tab 56, Email correspondence between Craig Middleton and John Lehman, 16–17 June 2015 (SCOI.74113); Exhibit 6, Tab 56A, Document from Sue Thompson titled ‘Brief: Likely NSW Gay Hate Murders from Late 70s to Late 90s’, Undated (SCOI.77314); Exhibit 6, Tab 56B, Excel spreadsheet titled ‘Possible Gay Hate Murders List to Mick Willing fr Sue Thompson’, Undated (SCOI.77315).

<sup>3765</sup> Exhibit 2, Tab 35, Jenny Mouzos and Sue Thompson, ‘Comparison between Gay Hate–Related Homicides of Men and Other Male Homicides in New South Wales 1989–1999’ (2001) 12(3) *Current Issues in Criminal Justice* 306–329, 306 (SCOI.02629); Exhibit 2, Tab 36, Jenny Mouzos and Sue Thompson, ‘Gay–Hate Related Homicides: An Overview of Major Findings in New South Wales’ (2000) 155 *Australian Institute of Criminology Trends & Issues in Crime and Criminal Justice*, 1 (SCOI.02625).

<sup>3766</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 17 (SCOI.02632).

- 13.1130. At page 18 of the Police Report the “overriding objective” of Strike Force Parrabell is said to be (emphasis in original):<sup>3767</sup>

***To bring the NSW Police Force and the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer community closer together by doing all that is possible from this point in history.***

- 13.1131. This objective was to be achieved, “in part”, the Police Report said, by reviewing the 88 deaths.<sup>3768</sup>

- 13.1132. Thus, the Police Report states (emphasis added):<sup>3769</sup>

*On 30 August 2015 Strike Force Parrabell commenced a thorough investigative review to determine whether 88 deaths ... commonly referred to by media representatives, could be classified as motivated by bias including gay-hate.*

*The identification of bias motivation was of primary importance, however, where appropriate, investigators were to also make recommendations about conducting further enquiries if fresh evidence might be uncovered, or bias of the original investigator was shown or suspected.*

- 13.1133. As I have referred to above, I interpolate that Strike Force Parrabell was not to, and did not, involve any “investigation” of any of the 88 cases. It was a review of historical paper holdings. Assistant Commissioner Crandell contended that the word “investigative” was an appropriate description of what was involved in such a paper “review”.<sup>3770</sup>

- 13.1134. As to the purpose of the academic review, the Police Report states:<sup>3771</sup>

*The purpose of academic review was to provide an independent account of Strike Force Parrabell’s systemic validity; where possible, identify evidence of poor or biased police investigations; guide future policing strategies of community engagement; and develop a more suitable bias crime identification process.*

- 13.1135. I have outlined my views on these four purposes above. As there noted, the second, third and fourth of those purposes were ultimately not pursued.

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<sup>3767</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 18 (SCOI.02632).

<sup>3768</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 18 (SCOI.02632).

<sup>3769</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 19–20 (SCOI.02632).

<sup>3770</sup> Transcript of the Inquiry, 7 December 2022, T725.5–726.38 (IRA.00012.00001).

<sup>3771</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 14 (SCOI.02632).



## Terms of Reference

- 13.1136. Under the heading ‘Strike Force Parrabell Terms of Reference’, the following six paragraphs appear:<sup>3772</sup>

*Assess each of the 88 deaths identified as involving potential gay-hate bias between 1976 and 2000*

*The timeframe for review is 18 months from 30 August 2015*

*If during the assessment suspects are identified, that information will be forwarded to the Unsolved Homicide Team for information and further inquiries/investigation*

*After each assessment, a detailed report outlining the bias classification of each incident and justifying material will be prepared and presented to prominent representatives of the GLBTIQ [sic] community*

*Each incident will be filtered through the NSW Police Force 10 bias crime indicators as a general guide to identify direct or circumstantial evidence of bias motivation*

*Examine and report upon evidence capable of identifying suspected bias of the original police investigator.*

- 13.1137. As noted earlier in this Chapter, none of Assistant Commissioner Crandell, Superintendent Middleton, Detective Inspector Grace or Detective Acting Sergeant Bignell was able to locate a copy of any document recording the strike force’s Terms of Reference, but they “knew” or “recalled” that one did exist.<sup>3773</sup>
- 13.1138. As to the second paragraph, the “timeframe” ultimately extended from about 30 August 2015 to late June 2018 (when the Parrabell Report was published), nearly three years.
- 13.1139. As to the fourth paragraph, Assistant Commissioner Crandell gave evidence that this process was never completed. He said that the intention had been that the presentations would take place quarterly, and that the first such presentation took place on 1 December 2015. However, it then proved “very awkward to discuss matters, particularly when we were always thinking of confidentiality”.<sup>3774</sup> As a consequence, Strike Force Parrabell did not persevere with this objective.<sup>3775</sup>

<sup>3772</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 20–21 (SCOI.02632).

<sup>3773</sup> Transcript of the Inquiry, 6 December 2022, T602.18–36, 682.40–43 (TRA.00011.00001); Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [35] (NPL.9000.0029.0001); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [46] (NPL.9000.0024.0012); Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [36] (NPL.9000.0026.0007).

<sup>3774</sup> Transcript of the Inquiry, 6 December 2022, T684.6–38 (TRA.00011.00001).

<sup>3775</sup> Transcript of the Inquiry, 6 December 2022, T684.42–44 (TRA.00011.00001).

- 13.1140. As to the sixth paragraph, Assistant Commissioner Crandell agreed that in the end this topic was also not able to be pursued to any significant extent. The task proved “effectively impossible”.<sup>3776</sup>
- 13.1141. As to the first and fifth paragraphs, which concern methodology and the use of the bias crime indicators, these have been addressed above.

### “A Simple Question”

- 13.1142. The Police Report asserts that the Strike Force Parrabell officers answered “a simple question”. That assertion is expressed as follows (emphasis added):<sup>3777</sup>

*Neither Strike Force Parrabell nor the Academic Review Team could confidently classify every death as either involving, or being devoid of, gay-hate or other bias, leaving a number of cases classified as ‘Insufficient Information.’ To be clear, NSW Police Force investigators assigned to Strike Force Parrabell applied a general tenet to case classification by answering a simple question:*

*“Is there evidence of a bias crime?”*

*Consistent with police methodology, this was the foundational question that allowed greater classification certainty from a policing perspective.*

- 13.1143. As discussed below, the true position was much more complex.

### “Each team endorsed the systemic approach of the other”

- 13.1144. At pages 21–22, the Police Report contains the following passage (emphasis added):<sup>3778</sup>

*[T]he academic research team did not necessarily adopt the same classification interpretation, which is one reason for differences between findings of both teams. Whilst different findings and classifications were made, each team understood and endorsed the systemic approach of the other. The fact that findings remain different, and that they subsist after rigorous review, highlights the difficulty of bias crime classification.*

- 13.1145. When first asked about this passage, Assistant Commissioner Crandell initially did not agree that the statement underlined above was even an exaggeration.<sup>3779</sup> However, he later agreed that it was “not really right”,<sup>3780</sup> and eventually that it was “quite inaccurate”.<sup>3781</sup>

<sup>3776</sup> Transcript of the Inquiry, 6 December 2022, T603.24–45, 685.29–686.4 (TRA.00011.00001); see also Recommendation 6 at NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 40 (SCOI.02632).

<sup>3777</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 21 (SCOI.02632).

<sup>3778</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 21–22 (SCOI.02632).

<sup>3779</sup> Transcript of the Inquiry, 6 December 2022, T606.42–607.27 (TRA.00011.00001).

<sup>3780</sup> Transcript of the Inquiry, 6 December 2022, T607.29–41 (TRA.00011.00001).

<sup>3781</sup> Transcript of the Inquiry, 8 December 2022, T876.35–877.26 (TRA.00013.00001).

- 13.1146. Dr Dalton for his part immediately said, when taken to the assertion in question, that it was “not true”.<sup>3782</sup>

### Findings of Strike Force Parrabell team

- 13.1147. At page 23 of the Police Report, a heading ‘Findings’ is followed by some fifteen pages of statistics, graphs and pie charts relating to the work of Strike Force Parrabell on the 88 cases (two of which were not actually reviewed).
- 13.1148. None of these “findings” identifies any of the cases by reference to any of the names of the 88 deceased persons listed in the ‘List of Cases Reviewed’ on pages 7–9, or otherwise indicates which cases fit into which categories.
- 13.1149. Of the 88 cases, Strike Force Parrabell’s position is that:<sup>3783</sup>
- 63 cases were solved (72%);
  - 23 cases were unsolved (26%); and
  - Two cases were not reviewed (2%).
- 13.1150. Of the 86 cases which it reviewed, Strike Force Parrabell’s position is that:<sup>3784</sup>
- There was evidence of bias crime in eight cases (9%);
  - There was suspected bias crime in 19 cases (22%);
  - There was insufficient information in 25 cases (29%); and
  - There was no evidence of bias crime in 34 cases (40%).
- 13.1151. Of the 63 cases that were solved, Strike Force Parrabell’s position is that:<sup>3785</sup>
- There was evidence of bias crime in eight cases (13%);
  - There was suspected bias crime in 14 cases (22%);
  - There was insufficient information in 11 cases (17%); and
  - There was no evidence of bias crime in 30 cases (48%).
- 13.1152. Of the 23 cases that remained unsolved, Strike Force Parrabell’s position is that:<sup>3786</sup>
- There was evidence of bias crime in zero cases (0%);
  - There was suspected bias crime in five cases (22%);
  - There was insufficient information in 14 cases (61%); and

<sup>3782</sup> Transcript of the Inquiry, 28 February 2023, T2407.1–37 (TRA.00029.00001).

<sup>3783</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 23 (SCOI.02632).

<sup>3784</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 24 (SCOI.02632).

<sup>3785</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 25 (SCOI.02632).

<sup>3786</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 26 (SCOI.02632).

d. There was no evidence of bias crime in four cases (17%).

## The Academic Report

13.1153. Dr Dalton and Dr de Lint authored the Academic Report. As I outlined in **Chapter 9**, in September 2023, Dr Tyson advised the Inquiry that while she had provided some “limited” editorial advice on early drafts of the report and took part in discussions about how to classify cases, she was “not one of the co-authors and [was] therefore unable to cast any further light on its content”.<sup>3787</sup> Dr Tyson’s evidence in this regard is consistent with the contemporaneous documents, including the Academic Report itself which lists Dr Dalton and Dr de Lint as the authors and notes that “Dr Danielle Tyson contributed to the evaluation of the cases and the revision of this Report”.<sup>3788</sup>

13.1154. The Academic Report begins, on page 49 of the Parrabell Report, with an ‘Executive Summary’, which includes the following statements (emphasis added):<sup>3789</sup>

- “The list [of 88] has increased popular interest and has been used as a proxy for the view of anti-gay police bias in the New South Wales Police Force (hereafter NSWPF).”
- “For this analysis, we categorised the 85 cases into five groups: insufficient information to make a determination (II), no evidence of bias (NB), or three types and two categories of bias or animus.”
- The “most serious types of bias” are those formulated by the Flinders team, in the bespoke methodology which they created, as “Type A” and “Type B”.
- “Anti-gay bias homicide is not typically a case of serial homicide offending where offenders or associates are linked to more than one case.” (In his oral evidence, Dr Dalton could not recall the basis for making this statement.)<sup>3790</sup>
- “Our view is that the over-reporting and recording of bias can produce unfortunate consequences.”
- “As reviewers, we found the need to distinguish anti-paedophile animosity from anti-gay bias in the more generic form. This finding may cause controversy.”
- “A significant number of cases involved large age differences between offenders and victims. Anti-paedophile animosity underwrote a substantial amount of lethal violence in the homicide cases under review.”
- “We sought not to conflate homosexuality with paedophilia (the two are not synonymous). If an offender is targeting a specific victim on the basis of a belief that that particular person is a paedophile, it would be wrong to categorise that animus generically as anti-gay.”

<sup>3787</sup> Exhibit 6, Tab 504B, Email from Danielle Tyson to Enzo Camporeale, 5 September 2023 (SCOI.85563).

<sup>3788</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 49 fn 8 (SCOI.02632).

<sup>3789</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 49–51 (SCOI.02632).

<sup>3790</sup> Transcript of the Inquiry, 28 February 2023, T2408.9–2409.24 (TRA.00029.00001).

- 13.1155. The final paragraph of the Executive Summary, on page 53, begins (emphasis added):<sup>3791</sup>

*Altogether, the policy question on combatting anti-gay bias is not as simple as some moral crusaders make it out to be.*

- 13.1156. According to Dr Dalton, a “moral crusader” was:<sup>3792</sup>

*Anyone who was promulgating the idea that there was a major and serious problem with too many homicides, proportionate to other places or cities in the world – that there was an epidemic, if you like, or whatever the phrases were that were being touted at the time.*

- 13.1157. As to who these “moral crusaders” were, Dr Dalton identified “anyone who would support [the] proposition” that “there were as many as up to 88 deaths which were or might have been gay hate”, including Ms Thompson and Professor Tomsen.<sup>3793</sup>

- 13.1158. From page 61, various topics are referred to under the overall heading ‘Dimensions of the Issue’.<sup>3794</sup> At pages 64–65, under a sub-heading “Taking on a life of its own: the problem of the media, mythology and folklore in relation to the ‘lists’ of murders” (emphasis added), the authors deprecate the list of 88 deaths, and lament the impact they believe that list to have had in the general community.<sup>3795</sup>

### **Methodology of Strike Force Parrabell**

- 13.1159. At pages 65–70 of the Academic Report, the methodology employed by the Strike Force Parrabell officers is discussed.
- 13.1160. As explained above, the academic team expressed significant reservations about the BCIF, and expressly did not endorse it.<sup>3796</sup>
- 13.1161. In his oral evidence, Dr Dalton confirmed that this was the view of the entire team,<sup>3797</sup> and that not only was the academic team “reluctant” to endorse the indicators, but in fact did not endorse them and instead pointed out the shortcomings of the instrument, as summarised at pages 70 and 71 of the Academic Report.<sup>3798</sup>

<sup>3791</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 53 (SCOI.02632).

<sup>3792</sup> Transcript of the Inquiry, 28 February 2023, T2417.19–23 (TRA.00029.00001).

<sup>3793</sup> Transcript of the Inquiry, 28 February 2023, T2417.27, 2417.33, 2417.37, 2418.3–20 (TRA.00029.00001).

<sup>3794</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 61ff (SCOI.02632).

<sup>3795</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 64–65 (SCOI.02632).

<sup>3796</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 68–71 n 20 (SCOI.02632).

<sup>3797</sup> Transcript of the Inquiry, 28 February 2023, T2395.41–44 (TRA.00029.00001).

<sup>3798</sup> Transcript of the Inquiry, 28 February 2023, T2397.43–2398.33 (TRA.00029.00001).

- 13.1162. At page 67 there is a heading, ‘Scoring the cases’. Under that heading it is asserted more than once that the Strike Force Parrabell officers “scored” each case. However, in his oral evidence, Dr Dalton clarified that his understanding was not that the Strike Force Parrabell officers had engaged in a “scoring” process in the sense of attributing numbers or scores in the way that word is usually understood.<sup>3799</sup> Rather, having read the case material that they had, the officers would “arrive at a view”,<sup>3800</sup> and would do so “intuitive[ly]”, as referred to on page 69 of the Academic Report.<sup>3801</sup>
- 13.1163. He later accepted, as well, that the “elaborate apparatus” of the BCIF was apt to conceal the near impossibility of the task being attempted, because there was “such a paucity of data in particular with the older cases”.<sup>3802</sup>

### Methodology of the academic team

- 13.1164. The methodology adopted by the academic team is outlined above in greater detail.
- 13.1165. The academic team developed their own methodology because they were dissatisfied with the methodology of the Strike Force Parrabell officers, including the BCIF. Their methodology is set out at some length and in some detail in the Academic Report, especially at pages 70–91.
- 13.1166. First, the academic team formulated and applied their own definition of “bias crime”.<sup>3803</sup> That definition was as follows (emphasis in original):<sup>3804</sup>

*Bias crime: a. expresses a categorical animus (directed at a person or group on the basis of his/ her perceived identification with a vulnerable group). b. produces an act that intentionally, by way of criminal predation on the basis of that categorical animus, causes harm to that person or group. c. is mitigated or aggravated by an offender’s contemporaneous associations that are linked by a commitment of denunciatory non-identification with the vulnerable person or group.*

- 13.1167. Next, the academic team devoted considerable attention to a distinction between an anti-gay “bias” and an anti-paedophile “animus”.<sup>3805</sup>

<sup>3799</sup> Transcript of the Inquiry, 28 February 2023, T2383.1–36 (TRA.00029.00001).

<sup>3800</sup> Transcript of the Inquiry, 28 February 2023, T2384.11–2385.41 (TRA.00029.00001).

<sup>3801</sup> Transcript of the Inquiry, 28 February 2023, T2384.21–2386.17 (TRA.00029.00001) citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 69 (SCOI.02632).

<sup>3802</sup> Transcript of the Inquiry, 28 February 2023, T2399.17–24 (TRA.00029.00001).

<sup>3803</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 82–83 (SCOI.02632).

<sup>3804</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 82–83 (SCOI.02632).

<sup>3805</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 84–86 (SCOI.02632).

- 13.1168. Finally, the academic team conceived of three “types” of bias crimes:<sup>3806</sup>
- a. “Type A” bias crimes were those where “offenders proactively seek out opportunities in which to brutally express their animus” and where “they communicate and associate with others to effect this animus”.
  - b. “Type B” bias crimes were those where “offenders proactively seek out opportunities to brutally express their animus, but do so furtively or in isolation from others, and act individually against victims”.
  - c. “Type C” bias crimes were those where “an offender is reacting with criminal violence on the basis of the victim’s perceived identity in an included category, usually as an over-reaction to a perceived slight against his identity”.
- 13.1169. This produced the “checklist” which is extracted above in tabular form.

### Findings of academic team

- 13.1170. Starting at page 91 of the Academic Report, the academic team sets out ‘Bias Review Findings’, by way of a series of graphs and pie charts.<sup>3807</sup>
- 13.1171. First, at page 91, the academic team purport to summarise the findings of Strike Force Parrabell. However, the figures there cited are different from Strike Force Parrabell’s own summary of its conclusions, in the Police Report (as set out above). The academic team claimed that Strike Force Parrabell had categorised 62 cases as solved, 17 as “suspected bias crime”, 26 as “insufficient information” and 34 as “no evidence of bias crime”<sup>3808</sup>—whereas the actual figures in the Police Report are, respectively, 63, 19, 25 and 34.<sup>3809</sup>
- 13.1172. The academic team summarised their own findings as follows:<sup>3810</sup>
- a. There was anti-gay bias in 17 cases (two unsolved, 15 solved);
  - b. There was anti-paedophile animus in 12 cases (all of them solved cases);
  - c. There was insufficient information in 33 cases (19 unsolved, 14 solved); and
  - d. There was no evidence of bias crime in 23 cases (two unsolved, 21 solved).
- 13.1173. It may be noted that the academic team nominated “insufficient information” in a larger number of cases (33) than did the Strike Force Parrabell officers (25). This is perhaps not surprising, given that the academic team had less information than Strike Force Parrabell, not having had access to the underlying historical papers.

<sup>3806</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 89 (SCOI.02632).

<sup>3807</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 91ff (SCOI.02632).

<sup>3808</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 91–92 (SCOI.02632).

<sup>3809</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 24–25 (SCOI.02632).

<sup>3810</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 92 (SCOI.02632).



- 13.1174. As to the academic team’s three different types of bias crime, namely Type A, Type B and Type C, the academic team’s allocations were:<sup>3811</sup>
- a. 13 Type A cases (two unsolved, 11 solved);
  - b. Seven Type B cases (zero unsolved, seven solved); and
  - c. Nine Type C cases (zero unsolved, nine solved).
- 13.1175. As to the distinction made by the academic team between “anti-gay bias” and “anti-paedophile animus”, the academic team’s allocations were:<sup>3812</sup>
- a. Of the 13 Type A cases, eight were said to be anti-gay, and five anti-paedophile;
  - b. Of the seven Type B cases, four were said to be anti-gay, and five anti-paedophile; and
  - c. Of the nine Type C cases, five were said to be anti-gay, and four anti-paedophile.

## Submissions of Counsel Assisting and the NSWPF

### The Police Report

#### IMPETUS FOR, AND OBJECTIVES OF, THE PARRABELL REPORT

- 13.1176. In relation to the claim in the Police Report that Strike Force Parrabell “was developed to show proactivity, from this point in history at least, in the investigation of anti-gay crime”,<sup>3813</sup> Counsel Assisting submitted that this statement does not reflect reality, in two respects:<sup>3814</sup>
- a. First, Strike Force Parrabell did not involve any “investigation” of “anti-gay crime”. It was limited to reviewing, on the papers, materials related to deaths that had been previously investigated, and forming a view (from those papers alone) as to whether anti-gay bias or the like had been present in relation to those deaths.
  - b. Secondly, that being so, there was nothing “proactive” about Strike Force Parrabell: its focus was historical, and non-investigative.

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<sup>3811</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 93–94 (SCOI.02632).

<sup>3812</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 95 (SCOI.02632).

<sup>3813</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 14 (SCOI.02632).

<sup>3814</sup> Submissions of Counsel Assisting, 7 June 2023, [1373] (SCOI.84380).



- 13.1177. The NSWPF asserted that this submission was “infected with hindsight bias” and “more generally misplaced” for several reasons.<sup>3815</sup> First, it was said that, as a matter of principle, a strike force could be “proactive[e]” even where it conducts a historical review rather than a comprehensive re-investigation of cases, including where (as with Strike Force Parrabell) substantial resources are invested.<sup>3816</sup>
- 13.1178. Secondly, it was submitted that the Parrabell Report did not itself describe the exercise undertaken by Strike Force Parrabell as an “investigation”, but rather as an “investigative review”.<sup>3817</sup>
- 13.1179. Thirdly, the NSWPF sought to highlight certain elements of Strike Force Parrabell which were “proactive”. It contended that “the Strike Force Parrabell review exercise” extended to consideration of whether there was “evidence capable of identifying suspected bias on the part of the original investigator”; and whether a referral of suspects should be made to the UHT for further investigations.<sup>3818</sup> While acknowledging that no such bias was actually able to be discerned in individual cases,<sup>3819</sup> the gist of the NSWPF’s contention is that these aspects of the exercise were “proactive” when assessed at the time Strike Force Parrabell commenced and by reference to its *possible* (but not actual) findings.<sup>3820</sup>
- 13.1180. Attention was also drawn to the following “proactive” elements of Strike Force Parrabell:
- a. The “community relations/outreach component”, which was said to have generated publicity and thus yielded additional lines of inquiry in three cases, including the apprehension and charging of a suspect for the murder of Raymond Keam;<sup>3821</sup>
  - b. The academic team’s review, which was directed to identifying whether the NSWPF could learn from the approach taken by the academics to the identification of bias crime;<sup>3822</sup> and
  - c. Its task to “make recommendations for improvements to policing”,<sup>3823</sup> in the discharge of which some 12 recommendations were made concerning archiving and document management; the approach to the investigation of

<sup>3815</sup> Submissions of NSWPF, 28 June 2023, [786] (SCOI.84211).

<sup>3816</sup> Submissions of NSWPF, 28 June 2023, [786] (SCOI.84211).

<sup>3817</sup> Submissions of NSWPF, 28 June 2023, [786(b)] (SCOI.84211), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 19 (SCOI.02632).

<sup>3818</sup> Submissions of NSWPF, 28 June 2023, [786(c)] (SCOI.84211); Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 20–21 (SCOI.02632).

<sup>3819</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 22 (SCOI.02632).

<sup>3820</sup> Submissions of NSWPF, 28 June 2023, [786(c)] (SCOI.84211).

<sup>3821</sup> Submissions of NSWPF, 28 June 2023, [786(e)] (SCOI.84211), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 57–58 (SCOI.02632).

<sup>3822</sup> Submissions of NSWPF, 28 June 2023, [786(f)] (SCOI.84211), citing Transcript of the Inquiry, 9 December 2022, T969.32–35 (TRA.00014.00001).

<sup>3823</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 21 (SCOI.02632).

bias crimes; the need to develop a revised system for the early identification of bias crimes; training; and an expansion of the GLO program.<sup>3824</sup>

- 13.1181. As to the four purposes of the academic review cited in the Police Report,<sup>3825</sup> Counsel Assisting submitted, correctly, that the second, third and fourth purposes were ultimately not pursued.<sup>3826</sup>
- 13.1182. As for the second purpose (“where possible, identify evidence of poor or biased police investigations”), the NSWPF submitted that the academic team did not identify any such evidence because they were unable to discern bias in an academically rigorous way within the scope of the exercise being conducted.<sup>3827</sup>
- 13.1183. As for the fourth purpose (“develop a more suitable bias crime identification process”), the NSWPF submitted that “[a]s a result” of the academic team being unable to undertake the task of identifying evidence of poor or biased police investigations, the academic team devised a typology for identifying bias crimes which could not practicably be employed in the context of day-to-day policing.<sup>3828</sup> It was noted that Assistant Commissioner Crandell did not agree with the typology’s reference to anti-paedophile animus; and for that reason he sought the assistance of Dr Birch to consider alternative approaches to bias crime identification.<sup>3829</sup>

#### “A SIMPLE QUESTION”

- 13.1184. In relation to the assertion in the Police Report that what the Strike Force Parrabell officers did was answer “a simple question”: “Is there evidence of bias crime?”, Counsel Assisting submitted that the true position was much more complex, for the following reasons:<sup>3830</sup>
- a. The various constituent documents all posited either three questions or four questions, not just one;
  - b. The language of those questions was different in each of those constituent documents; and
  - c. The BCIF itself (including, in particular, the language of the questions) was subject to several successive changes over the course of the life of the strike force.

<sup>3824</sup> Submissions of NSWPF, 28 June 2023, [786(g)] (SCOI.84211).

<sup>3825</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 14 (SCOI.02632).

<sup>3826</sup> Submissions of Counsel Assisting, 7 June 2023, [1383] (SCOI.84380). See also Transcript of the Inquiry, 8 December 2022, T891.5–892.5 (TRA.00013.00001).

<sup>3827</sup> Submissions of NSWPF, 28 June 2023, [629]–[630], [788(a)] (SCOI.84211).

<sup>3828</sup> Submissions of NSWPF, 28 June 2023, [788(b)] (SCOI.84211).

<sup>3829</sup> Submissions of NSWPF, 28 June 2023, [788(b)] (SCOI.84211). See also Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [11] (SCOI.76961).

<sup>3830</sup> Submissions of Counsel Assisting, 7 June 2023, [1391] (SCOI.84380).

- 13.1185. Counsel Assisting submitted that in the version of the BCIF that ultimately appeared in the Parrabell Report, the first question (of four) was (emphasis added):<sup>3831</sup>

*Is there sufficient evidence/information to prove beyond a reasonable doubt that there might have been bias crime?*

- 13.1186. Counsel Assisting submitted that this question (one of four) is very different, in several significant respects, from the single (“simple”) question which the Police Report suggests was “foundational”. Rather, it is a complicated question with several components, all of which entail complexities, nuances and ambiguities which would need to be clearly resolved. Counsel Assisting submitted that there is no evidence that any such clear resolution was ever sought by or provided to the Strike Force Parrabell officers.<sup>3832</sup>
- 13.1187. Counsel Assisting also noted that Dr Dalton himself agreed that the “simple question” was not the question in the BCIF as it finally emerged, which he described as follows: “No, I guess it’s not. It’s a strange sort of sentence”.<sup>3833</sup>
- 13.1188. Assistant Commissioner Crandell’s position appeared to be, in substance, that there was no relevant difference between the questions, and/or that any differences did not really matter.<sup>3834</sup> Counsel Assisting submitted that such a position is unsustainable.<sup>3835</sup>
- 13.1189. The NSWPF submitted, correctly,<sup>3836</sup> that the first of the four alternative findings in the BCIF annexed to the Parrabell Report is in fact in slightly different terms, namely (emphasis added):<sup>3837</sup>

*Evidence of Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.*

<sup>3831</sup> Submissions of Counsel Assisting, 7 June 2023, [1392] (SCOI.84380); Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 121–131 (SCOI.02632).

<sup>3832</sup> Submissions of Counsel Assisting, 7 June 2023, [1393] (SCOI.84380).

<sup>3833</sup> Submissions of Counsel Assisting, 7 June 2023, [1394] (SCOI.84380), citing Transcript of the Inquiry, 28 February 2023, T2406.45–46 (TRA.00029.00001).

<sup>3834</sup> See, e.g., Transcript of the Inquiry, 7 December 2022, 822.9–30 (TRA.00012.00001); Transcript of the Inquiry, 12 December 2022, T1036.23–1037.12 (TRA.00015.00001).

<sup>3835</sup> Submissions of Counsel Assisting, 7 June 2023, [1395] (SCOI.84380).

<sup>3836</sup> Submissions of NSWPF, 28 June 2023, [791] (SCOI.84211), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 122 (SCOI.02632).

<sup>3837</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 122 (SCOI.02632).

- 13.1190. The NSWPF also drew attention to the second category, which stated (emphasis added):<sup>3838</sup>

*Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.*

- 13.1191. The NSWPF submitted that when these two categories are considered in tandem, they captured the cases where police had determined that bias may have played a part; and therefore in turn, both categories were responsive to the broader question “is there evidence of bias”.<sup>3839</sup> That question was, according to Assistant Commissioner Crandell, not:<sup>3840</sup>

*meant to be a definitive account of all the questions that the investigators asked; it was simply something that was very central to the way that I thought about what each investigator should be asking themselves.*

#### “EACH TEAM ENDORSED THE SYSTEMIC APPROACH OF THE OTHER”

- 13.1192. In relation to the assertion in the Police Report that “each team understood and endorsed the systemic approach of the other”,<sup>3841</sup> it was submitted by Counsel Assisting, and conceded by the NSWPF, that this assertion was not accurate and that the academic team expressly did *not* “endorse” the “systemic approach” of the police team, namely the use of the BCIF.<sup>3842</sup>
- 13.1193. In addition, Counsel Assisting submitted that the first sentence in the passage extracted above—that, the “academic research team did not necessarily adopt the same classification interpretation” (emphasis added)—was also far from accurate. Counsel Assisting contended that, in reality, the academic team did not adopt the same classification method at all, and in fact positively disavowed that system.<sup>3843</sup>
- 13.1194. The NSWPF accepted that there were some inaccuracies in the Parrabell Report, including in relation “to the observation that the [academic team] had ‘endorsed’ the ‘systemic approach’ of the police team”, and that there could have been some improvements to the Parrabell Report.<sup>3844</sup>

<sup>3838</sup> Submissions of NSWPF, 28 June 2023, [792] (SCOI.84211), citing Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 122 (SCOI.02632).

<sup>3839</sup> Submissions of NSWPF, 28 June 2023, [794] (SCOI.84211).

<sup>3840</sup> Transcript of the Inquiry, 12 December 2022, T1037.1–5 (TRA.00015.00001).

<sup>3841</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 22 (SCOI.02632).

<sup>3842</sup> See Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 68 n 20 (SCOI.02632).

<sup>3843</sup> Submissions of Counsel Assisting, 7 June 2023, [1401] (SCOI.84380).

<sup>3844</sup> Submissions of NSWPF, 28 June 2023, [796] (SCOI.84211).

13.1195. However, the NSWPF submitted that:<sup>3845</sup>

*The Parrabell Report was not an academic research paper, designed to outline the [Strike Force] Parrabell process in a way that would enable replication and peer review. The Parrabell Report was not submitted to a peer-reviewed journal. It was published on the NSWPF website. ...it was, in part, a public relations exercise, designed to communicate to the LGBTIQ community and the public at large what [Strike Force] Parrabell had found.*

...

*[Assistant Commissioner] Crandell's role does not ordinarily involve the creation of reports for public consumption; he is not a journalist, a copywriter, a public relations professional, or even an academic. It is unsurprising that there is room for improvement in aspects of the Parrabell Report. A reader's comprehension of the table on p. 24 would, for instance, have been assisted if the definitions of each of the categories were set out on that page, rather than left for the annexures and the Academic Report.*

*The Parrabell Report must be understood in this context. It should not be criticised by reference to standards it was not designed to meet.*

*All told, the Parrabell Report was readable, clearly acknowledged the impacts of the extraordinary violence the LGBTIQ community was subject to and the shortcomings of police in responding to it, and set out the results of the [Strike Force] Parrabell review process.*

#### FINDINGS OF STRIKE FORCE PARRABELL TEAM

- 13.1196. As to the findings in the Police Report, set out above, Counsel Assisting noted that those findings, and the way they were arrived at, were the subject of analysis by Associate Professor Lovegrove. I have considered the expert evidence earlier in this Chapter.<sup>3846</sup>
- 13.1197. The NSWPF made two points about the “insufficient information” category.
- 13.1198. First, it was noted that the definition for the “insufficient information” category expressly contemplated that it would encompass a case where there was a “lack of detail recorded by police or a lack of information supplied by victims and/or witnesses”.<sup>3847</sup> On this basis, this category (as defined) was said to have “candidly acknowledged” that a case might be categorised as such because of some shortcoming on the part of the NSWPF.<sup>3848</sup>

<sup>3845</sup> Submissions of NSWPF, 28 June 2023, [795] (SCOI.84211).

<sup>3846</sup> Submissions of Counsel Assisting, 7 June 2023, [1409] (SCOI.84380).

<sup>3847</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 69 (SCOI.02632).

<sup>3848</sup> Submissions of NSWPF, 28 June 2023, [802] (SCOI.84211).

- 13.1199. Secondly, it was submitted that the very existence of the “insufficient information” category tells against the proposition that Strike Force Parrabell sought to minimise the prevalence of bias crimes against the LGBTIQ community.<sup>3849</sup> It was suggested that Strike Force Parrabell could readily have adopted an approach whereby *no* distinction was drawn between cases where no bias was found, and cases where a determination as to the role played by bias could not be made because of a lack of information. Such an approach would have created an impression that a positive finding had been reached in the great majority of cases that bias was not involved. That is not what occurred; the way the Strike Force Parrabell results were recorded left open the possibility that bias played a role in 52 of the 86 cases reviewed.<sup>3850</sup>
- 13.1200. The NSWPF also submitted that the ultimate findings of the NSWPF Strike Force Parrabell team in the Parrabell Report were the “product of carefully considered judgments made by highly experienced investigators, informed by a range of discussions between the original investigators and the senior investigators”.<sup>3851</sup>
- 13.1201. I note that once again, such a submission proceeded on the entirely inaccurate premise that the contents of the 86 BCIFs were the work of multiple investigators. In fact, those contents were the work of one investigator alone, namely Detective Acting Sergeant Bignell, who was then aged 26 and thus not “highly experienced”, and whose drafts were altered by the review panel (of which he was a member) in only “a handful” of cases, and even then only in “pretty minor” ways.

### The Academic Report

- 13.1202. As noted above, the Academic Report asserted that officers “scored” the cases; but Dr Dalton clarified that no such mathematical “scoring” process occurred.<sup>3852</sup> The NSWPF contended that, on the whole of the available evidence, it was apparent that Strike Force Parrabell did not employ the BCIF in any kind of mathematical or “scientific” sense. Rather, it was a means by which potentially pertinent factors could be identified and recorded.<sup>3853</sup>
- 13.1203. The NSWPF acknowledged that the academic team developed and relied on a “typology” quite different from the approach of Strike Force Parrabell.
- 13.1204. The NSWPF submitted that the ultimate findings of the academic team did not correspond with those reached by Strike Force Parrabell (which was said to indicate that they were not pressured to reach the same findings); and that their “anti-paedophile animus” category, whatever its merits, was treated as a subset of anti-gay bias.<sup>3854</sup>

<sup>3849</sup> Submissions of NSWPF, 28 June 2023, [803] (SCOL.84211).

<sup>3850</sup> Submissions of NSWPF, 28 June 2023, [803] (SCOL.84211).

<sup>3851</sup> Submissions of NSWPF, 28 June 2023, [807] (SCOL.84211).

<sup>3852</sup> Transcript of the Inquiry, 28 February 2023, T2383.2–36 (TRA.00029.00001).

<sup>3853</sup> Submissions of NSWPF, 28 June 2023, [807] (SCOL.84211).

<sup>3854</sup> Submissions of NSWPF, 28 June 2023, [808] (SCOL.84211); Transcript of the Inquiry, 2 March 2023, T2705.36–2706.27 (TRA.00031.00001).

- 13.1205. I note that at page 91 of the Academic Report, the academic team incorrectly stated the findings of Strike Force Parrabell. The figures there cited are different from Strike Force Parrabell’s own summary of its conclusions, in the Police Report (as set out above). The academic team claimed that Strike Force Parrabell had categorised 62 cases as solved, 17 as “suspected bias crime”, 26 as “insufficient information” and 34 as “no evidence of bias crime”—whereas the actual figures in the Police Report are, respectively, 63, 19, 25 and 34.
- 13.1206. Counsel Assisting submitted that such discrepancies do not encourage confidence in the accuracy of the work of at least one of the teams.<sup>3855</sup>
- 13.1207. As noted above, the NSWPF accepted that there were aspects of the academic review process and report that could have been improved; but submitted that the academic team was not undertaking an exercise designed to result in publication in a peer-reviewed academic journal.<sup>3856</sup>
- 13.1208. Counsel Assisting submitted that, given the fundamental deficiencies in the academic team’s methodology (discussed earlier in this Chapter), little weight could be given to the academic team’s findings.<sup>3857</sup>

## Conclusions of the Inquiry

### The Police Report

#### IMPETUS FOR, AND OBJECTIVES OF, THE PARRABELL REPORT

- 13.1209. I accept that some of the elements of Strike Force Parrabell identified by the NSWPF were “proactive”, in the generic sense of being forward-looking and seeking to inform future LGBTIQ bias crime investigations and/or build a stronger relationship with the LGBTIQ community.
- 13.1210. However, Counsel Assisting’s submission was that, in reality, Strike Force Parrabell did not demonstrate “proactivity...in the investigation of anti-gay bias crime”, and that the Police Report was incorrect to state its objectives in those terms.<sup>3858</sup>
- 13.1211. In my view, that submission is plainly correct. It is common ground that Strike Force Parrabell was a historical review of cases, not a re-investigation.<sup>3859</sup> The only elements of the review exercise which may have had the potential to contribute directly to investigations—identifying bias on the part of original investigators, and referring suspects to the UHT—produced no fruitful outcome at all, as matters turned out. Nor, in my view, is it a sure sign of “proactivity” in the Strike Force

<sup>3855</sup> Submissions of Counsel Assisting, 7 June 2023, [1428] (SCOI.84380).

<sup>3856</sup> Submissions of NSWPF, 28 June 2023, [809] (SCOI.84211).

<sup>3857</sup> Submissions of Counsel Assisting, 7 June 2023, [1294], [1433] (SCOI.84380).

<sup>3858</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 14 (SCOI.02632).

<sup>3859</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 19–20 (SCOI.02632); Submissions of Counsel Assisting, 7 June 2023, [1379]–[1380] (SCOI.84380); Submissions of NSWPF, 28 June 2023, [786(b)] (SCOI.84211).



- Parrabell exercise that it may have generated publicity which incidentally contributed to successful investigative outcomes.
- 13.1212. I also observe that, as I have found elsewhere, I do not consider that the Strike Force Parrabell exercise involved any genuine community outreach component.
- 13.1213. I am also of the opinion that it was misleading for Strike Force Parrabell to describe its exercise as an “*investigative* review” (emphasis added).<sup>3860</sup> Nor do I accept Assistant Commissioner Crandell’s evidence that the word “investigative” was an appropriate description of what was involved in such a paper “review”.<sup>3861</sup>
- 13.1214. As to the four purposes of the academic review cited in the Police Report,<sup>3862</sup> my general conclusions as to the purposes and eventual outcomes of the academic review are set out above. These findings address the former of the NSWPF’s submissions on this topic, as well as the nature of the assistance provided by Dr Birch.
- 13.1215. However, I reject the proposition that the academic team developed their own bias crimes typology “as a result” of being unable to undertake the task of identifying evidence of poor or biased police investigations. As the evidence of Dr Dalton and Dr de Lint clearly outlined, the academic team developed their own typology because they did not agree with the classification system used by the NSWPF. There was no evidence that their doing so was linked to the task of identifying evidence of poor or biased police investigations.

#### “A SIMPLE QUESTION”

- 13.1216. In my view, the comparison which Counsel Assisting was making was between:
- a. The prominent assertion in the Police Report that, “to be clear”, what the strike force did was to answer one “simple”, “foundational” question, not involving any particular standard of proof, namely “Is there evidence of a bias crime?”; and
  - b. The fact that in truth the BCIF (the language of which underwent several successive changes, each of significance) actually required a selection to be made from a number of different possible “findings”, each of which had several distinct components and two of which (in the final version) brought in the requirement of giving consideration to the high criminal standard of proof namely “beyond reasonable doubt”.
- 13.1217. The NSWPF properly drew my attention to the full text of the first of the four available “findings” in the final version of the BCIF, and pointed out that Counsel Assisting had not set out the whole of that particular text in this part of their submissions. That is correct, but in my view this does not diminish the key point underlying the submission made by Counsel Assisting.

<sup>3860</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 19–20 (SCOI.02632).

<sup>3861</sup> Transcript of the Inquiry, 7 December 2022, T725.5–726.38 (IRA.00012.00001).

<sup>3862</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 14 (SCOI.02632).



- 13.1218. I understood Counsel Assisting to be highlighting the reality that the Strike Force Parrabell officers did not “apply a general tenet to case classification” by answering just one, “simple”, question (as was asserted in the Parrabell Report at page 21). Rather, the BCIF (which went through several successive different iterations) required a choice to be made from among either three or four alternatives (depending on which version was then in use), of varying complexity, and thus effectively posed not one but a number of complex, multi-faceted questions.
- 13.1219. I accept that other sections of the Parrabell Report, including the final version of the BCIF embedded therein and the description of the methodology used, gave the reader more information about the task undertaken by Strike Force Parrabell.
- 13.1220. But the fact remains that the Parrabell Report chose to represent to the reader, with considerable emphasis, that essentially, or “fundamentally”, its investigators answered one “simple question”. That emphatic representation was simply not correct.
- 13.1221. In fact, the bar was set so high for the first alternative “finding” (“Evidence of Bias Crime”), by the requirement of “beyond reasonable doubt”, that inevitably very few cases could meet that criterion.
- 13.1222. In my view very little weight can be given to the findings of the Police Report.

#### “EACH TEAM ENDORSED THE SYSTEMIC APPROACH OF THE OTHER”

- 13.1223. As Counsel Assisting submitted, and as was conceded by Assistant Commissioner Crandell and by the NSWPF, the assertion in the Police Report that “each team understood and endorsed the systemic approach of the other” is quite incorrect. The academic team most certainly did not “endorse” the “systemic approach” of the NSWPF.
- 13.1224. It was also incorrect, as Counsel Assisting submitted, for the Police Report to have suggested that the academic team did not “necessarily” adopt the same classification” as the Strike Force Parrabell team. The reality was that the academic team did not adopt the same classification at all, and indeed drew attention to numerous deficiencies in the NSWPF’s classification methodology.
- 13.1225. While it may be accepted (as the NSWPF submitted) that the Police Report was not an academic research paper, and Assistant Commissioner Crandell’s role did “not ordinarily involve the creation of reports for public consumption”, I do not think those matters assist the NSWPF on this issue.
- 13.1226. Those two bald statements in the Police Report were simply wrong. They should not have been made.

- 13.1227. This was an exercise that Assistant Commissioner Crandell and the NSWPF voluntarily chose to undertake. Moreover, according to the submissions of the NSWPF, “it was, in part, a public relations exercise, designed to communicate to the LGBTIQ community and the public at large what Strike Force Parrabell had found”.<sup>3863</sup>
- 13.1228. The NSWPF cannot have it both ways. If the Parrabell Report was “a public relations exercise”, and “designed to communicate to the LGBTIQ community and the public”, then surely it was essential that the Police Report so communicate accurately. It simply did not do that.
- 13.1229. It is not holding Assistant Commissioner Crandell to an unreasonable standard to consider that he ought fairly to be held responsible for serious inaccuracies within the Police Report which might mislead readers as to the true nature of the Parrabell exercise. That is particularly so where, as here, those inaccuracies concerned fundamental aspects of the exercise.

#### FINDINGS OF STRIKE FORCE PARRABELL TEAM

- 13.1230. The need for an “insufficient information” category may well be understandable, given the intractable inherent limitations of a review which was deliberately confined only to whatever historical papers happened to be still in existence, and could be found, for each case.
- 13.1231. It is also true, as the NSWPF submit, that in the Strike Force Parrabell results, over half of the deaths reviewed (52 out of 86) were categorised as either “evidence of bias crime”, or “suspected bias crime”, or “insufficient information” (which also, the NSWPF submitted, “left open the possibility” that bias played a role).
- 13.1232. However, I am of the view that the NSWPF deserves no particular credit for including “insufficient information” as a separate category. As noted above, such a category was unavoidable given the deliberately limited nature of the exercise. It would have been grievously misleading for the NSWPF deliberately to have made no distinction between cases where no bias was found, and cases where a categorisation could not be made because of a lack of information.
- 13.1233. More importantly, the numerical findings in the Police Report were derived from the use of an instrument (the several times-altered BCIF), which was flawed in all the numerous ways I have discussed earlier in this Chapter. That instrument was filled in by only one, relatively junior and inexperienced, officer. Hardly any changes to the forms as completed by him were made by the review panel (of which that junior officer was also a member).

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<sup>3863</sup> Submissions of NSWPF, 28 June 2023, [795] (SCOI.84211).

- 13.1234. Moreover, the numerical and statistical finding that would inevitably be of greatest interest to the readership of the Parrabell Report was always going to be: how many of the 86/88 deaths were deaths where there was evidence of a bias crime? The way in which Strike Force Parrabell went about the exercise, including the requirement of “beyond reasonable doubt” as the standard of proof applicable to that question, inevitably meant that:
- a. The answer to that question would be a low number, as indeed it proved to be: only eight of the 86 deaths met that difficult criterion; and
  - b. The number of cases to which the answer “insufficient information” had to be given would be significant, as indeed proved to be the case: 25 of the 86 deaths were consigned to that category.
- 13.1235. Further, although neither of the parties made submissions on this topic, I consider it important to make some comments as to the presentation of the findings of both Strike Force Parrabell and the academic team in the Parrabell Report. The names of all 88 victims were listed at the beginning of the Parrabell Report.<sup>3864</sup> However, when presenting the findings, the Report did not explicitly set out the classification of the NSWPF and the academic team for each of those deaths, or the reasoning by which each of the teams came to their selected classification.
- 13.1236. Instead, over 15 pages, the results are set out in 30 charts and graphs. It is impossible to know which particular deaths fall within each classification (with the exception that the Academic Report did discuss, by way of example, some of the deaths it classified).
- 13.1237. In my view, such an approach is surprising in circumstances where the “overriding objective” Strike Force Parrabell was said to be to bring the NSWPF and the LGBTIQ community “closer together by doing all that is possible from this point in history”.<sup>3865</sup> In the presentation of these findings, there is little transparency. A reader does not have the opportunity to understand, review, verify or challenge the reasoning of either of the teams in respect of particular cases (with the exception of the few examples discussed in the Academic Report).<sup>3866</sup>
- 13.1238. Given the historical background of mistrust between the LGBTIQ community and the NSWPF, what could be more likely to add to this mistrust than not revealing these crucial details? I consider that if the objective was to reinvigorate the relationship between the NSWPF and the LGBTIQ community, then the presentation of findings in the Parrabell Report clearly failed to achieve this purpose.

<sup>3864</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 7–9 (SCOI.02632).

<sup>3865</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 18 (SCOI.02632).

<sup>3866</sup> See, e.g., Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 99–100 (SCOI.02632).

- 13.1239. Finally, for the reasons given above, I reject the suggestion by the NSWPF that the ultimate findings of Strike Force Parrabell were the product of “carefully considered judgments made by highly experienced investigators” and “informed by a range of discussions”. Those judgments were actually made by a single (26 year old) investigator, Detective Acting Sergeant Bignell, whose views were rarely changed and then only in “pretty minor” ways.

### The Academic Report

- 13.1240. As to cases not having been “scored” by the Strike Force Parrabell officers, the evidence establishes that the BCIF, as used by Detective Acting Sergeant Bignell, did not involve the application of any rigid or mathematical “scoring” system.
- 13.1241. It is true, as the NSWPF submitted, that the numerical findings of the academic team did not correspond with those reached by the police team. However, as I have noted above, while the findings of the two teams were not *identical* they were *similar* in their numerical conclusions.
- 13.1242. I reject the submission of the NSWPF that the academic team’s “anti-paedophile animus” category, whatever its merits, was treated as a subset of anti-gay bias. In fact, as noted above, the findings of the academic team were presented in graph form with the categories of “anti-gay bias” and “anti-paedophile bias” as mutually exclusive and *not* as a subset.<sup>3867</sup>
- 13.1243. The methodology of the academic team was deeply flawed, in all the numerous ways critiqued by Associate Professor Lovegrove in particular, and also by Professor Asquith and Ms Coakley.
- 13.1244. The academics never saw the underlying source material on which the BCIFs were based. Partly for that reason, it was in my view inevitable that for the academic team, even more cases (33) had to be consigned to the category “insufficient information” than for the police team (25).
- 13.1245. More fundamentally, the failure of the academic team to check the BCIFs (which—although the product of the personal and unverifiable judgment of one junior officer—constituted the totality of the information available to them) against the material on which they were based had the consequence that their conclusions were at least as unreliable as those of the strike force.
- 13.1246. Its self-invented typology was unnecessary and of no assistance in, or relevance to, assessing the “systemic validity” of the approach of Strike Force Parrabell. Its distinction between anti-gay “bias” and anti-paedophile “animus” was strained and unhelpful.
- 13.1247. I accept the submission of Counsel Assisting that little weight can be accorded to any of the findings in the Academic Report.

<sup>3867</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 92 (SCOI.02632).



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# Chapter 14: Convergences

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## CONVERGENCES

- 14.1. In **Chapter 10**, I observed that the area of bias crimes has not historically been given sustained focus within the NSWPF. The BCU and its predecessors have been perennially understaffed and received limited resources. Additionally, the number of times that the BCU has been restructured or moved internally suggests a lack of strategic direction in this area, and that limited consideration has been given to how a better-resourced version of the BCU might contribute to the identification and investigation of such crimes by the NSWPF.
- 14.2. In **Chapter 11**, I recorded my conclusions about the creation, methodology and outcomes of Strike Force Macnamir, which commenced in February 2013 as a reinvestigation into the death of Scott Johnson at North Head in December 1988. I concluded that its lead investigator, Ms Young, held a strong view that no further investigation of Scott Johnson’s death was warranted; that Scott Johnson’s death was most likely a suicide; and that the Johnson family were using their political influence and extensive resources to “jump the queue” and receive priority treatment over other families of homicide victims.
- 14.3. I found that this view as to the likelihood of Scott Johnson’s death being a suicide was reflected in the 445-page coronial statement that Ms Young prepared in connection with a third inquest into Scott Johnson’s death; and in the comments she made during her sit-down studio interview with Ms Alberici on the ABC *Lateline* program on 13 April 2015. The view that Scott Johnson’s death was a suicide was described as an “absurd suggestion” in June 2023 by the judge who sentenced an offender for Scott Johnson’s manslaughter.<sup>3868</sup> I also found that Ms Young’s supervisor, Mr Willing, who was the Homicide Commander at the relevant time, was supportive of and sympathetic to Ms Young’s views as to the likelihood of suicide and need for a third inquest. I observed that these matters are suggestive of an institutional defensiveness on the part of the NSWPF about which I have commented in other parts of this Report.
- 14.4. In **Chapter 12**, I recorded my conclusions about the creation, methodology and outcomes of Strike Force Neiwand, which occurred between October 2015 and January 2018, ostensibly as a reinvestigation of the deaths of Mr Russell, Mr Warren and Mr Mattaini near Bondi in the 1980s. As I found, however, in reality that Strike Force did not carry out a meaningful reinvestigation. Instead, it was principally directed to rebutting and discrediting the work of Operation Taradale, which was an investigation into the three deaths which occurred between 2000 and 2002; and the findings of Senior Deputy State Coroner Milledge in the Milledge Inquest.

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<sup>3868</sup> *R v White* [2023] NSWSC 611, [45] (Beech-Jones CJ at CL).

- 14.5. During the course of Operation Taradale, some 116 POIs were identified. Strike Force Neiwand did not reinvestigate any of them. Rather, it overwhelmingly pursued lines of inquiry which buttressed theories of suicide and/or misadventure, rather than pursuing the findings of homicide which had already been made in relation to Mr Russell and Mr Warren, and Senior Deputy State Coroner Milledge's view that all three Taradale deaths were either probable (Mr Russell and Mr Warren) or possible (Mr Mattaini) "gay hate homicides". Strike Force Neiwand was highly critical of Operation Taradale and its Commander, Mr Page, who was a Detective Sergeant in the NSWPF at the relevant time. I have concluded that the grounds on which these criticisms were made were baseless.
- 14.6. Strike Force Neiwand also purported to make findings as to the manner and cause of the three Taradale deaths which were radically different from the findings of Senior Deputy State Coroner Milledge and which, in my view, were wholly unjustified on the available evidence. Notwithstanding this, the NSWPF did not notify the Coroners Court or Mr Page of these supposed findings, the existence of which was not publicly known until its exposure by this Inquiry.
- 14.7. In **Chapter 13**, I recorded my findings about the creation, methodology and outcomes of Strike Force Parrabell, to which I was directed to have regard by the Inquiry's Terms of Reference. That Strike Force was a NSWPF review of 88 deaths or suspected deaths in NSW between 1976 and 2000, the stated purpose of which was to consider whether "sexuality or gender bias" was involved in those deaths.
- 14.8. I observed that Strike Force Parrabell concluded that of the 23 deaths that it regarded as unsolved, not one met the threshold for "evidence of bias crime", and only five were "suspected" bias crimes. I found that Strike Force Parrabell had been established for a number of reasons, including to refute the suggestion that there had been a significant number of LGBTIQ bias motivated homicides in the period in question; to show that the number of such homicides which were unsolved was far lower than reported in the media; and to refute the suggestion that the NSWPF had not adequately investigated LGBTIQ hate crimes.
- 14.9. I found that the particular review form created and used by Strike Force Parrabell, the BCIF, was a deeply flawed instrument, and that only limited weight could be attributed to the conclusions reached by its use. I also found that there was a significant degree of collaboration between the Strike Force Parrabell team and the academic team engaged to review their findings, resulting in a review that was not conducted at arm's length, or in a manner which inspires confidence in its rigour and independence.

### The Strike Forces, viewed collectively

- 14.10. The evidence that the Inquiry heard about each of Strike Forces Macnamir, Neiwand and Parrabell individually, has also led me to consider whether their work, viewed collectively, provides any insights about the NSWPF's attitude, at an organisational or institutional level, towards the investigation of suspected LGBTIQ hate crimes, including in the period between 1970 and 2010.

- 14.11. In this regard, I received evidence and heard submissions concerning the views expressed by senior officers in the UHT around the time of these Strike Forces; and concerning the existence and extent of commonalities in the personnel, objectives and outcomes of each strike force. The relevant aspects of that evidence and those submissions are outlined below.

### The 2013 Issue Paper

- 14.12. It is necessary first to return to consider the 2013 Issue Paper, which I discussed in **Chapters 12 and 13**.
- 14.13. As I outlined in **Chapter 13**, between March and August 2013, a series of articles appeared in *The Sydney Morning Herald* and *The Sun Herald*, concerning historical “gay hate” deaths in NSW. The contents of those articles are set out in that Chapter.
- 14.14. In late July 2013, Mr Lehmann contacted Ms Thompson and asked her to provide the UHT with any information she had relating to the alleged “gay hate murders” referred to in Mr Feneley’s July 2013 articles.<sup>3869</sup> Ms Thompson provided two documents recording 88 deaths between 1977 and 1999 that were considered to be possible “gay hate murders”.<sup>3870</sup> Ms Thompson marked 30 of those 88 deaths as “unsolved”.
- 14.15. Mr Lehmann and Ms Young then conducted an “assessment of the 30 ‘unsolved’ cases listed by Ms Thompson to determine the veracity of her information”.<sup>3871</sup>
- 14.16. The results of their assessment were set out in the 2013 Issue Paper. It bears the name of Mr Lehmann, whose evidence was that while he “actually wrote it” in a “physical sense”, he and Ms Young agreed on what ultimately was written.<sup>3872</sup> For her part, Ms Young said she did not write the paper, but she “contributed to the commentary on some of the deaths that [Mr] Lehmann then constructed into the report”.<sup>3873</sup>

<sup>3869</sup> Exhibit 6, Tab 47, Detective Chief Inspector John Lehmann, “Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team to determine if any bias motivation existed” (Issue Paper, 25 September 2013), 1 (SCOI.74906).

<sup>3870</sup> Exhibit 6, Tab 56A, Document from Sue Thompson titled ‘Brief: Likely NSW Gay Hate Murders from Late 70s to Late 90s’, Undated (SCOI.77314); Exhibit 6, Tab 56B, Excel spreadsheet titled ‘Possible Gay Hate Murders List’ provided to Michael Willing by Sue Thompson, Undated (SCOI.77315).

<sup>3871</sup> Exhibit 6, Tab 47, Detective Chief Inspector John Lehmann, “Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team to determine if any bias motivation existed” (Issue Paper, 25 September 2013), 1 (SCOI.74906).

<sup>3872</sup> Transcript of the Inquiry, 26 September 2023, T6020.44–46 (TRA.00091.00001).

<sup>3873</sup> Transcript of the Inquiry, 5 October 2023, T6657.11–18 (TRA.00097.00001).



- 14.17. The conclusions reached by the 2013 Issue Paper were (emphasis in original):<sup>3874</sup>
- Only 8 cases from 30 were probable or possible ‘gay hate’ motivated murders and these are on file at the Unsolved Homicide Team with consideration for future investigation.*
- There is no doubt that anti-gay hostility, particularly in the 1980’s and 1990’s resulted in a number of murders and serious crime of violence in NSW. In my opinion, the suggestion of 30 ‘gay hate’ related unsolved murders is a gross exaggeration. Certainly there was no consultation with this command prior to the Sydney Morning / Sunday Herald articles which I suggest is poor, irresponsible journalism bordering on sensationalism.*
- 14.18. The death of Scott Johnson was one of the 22 cases categorised as not being a “probable” or even “possible” “gay hate motivated murder”. Four of the 30 cases were not reviewed because no records of those four cases had been located.
- 14.19. In a subsequent Issue Paper dated 10 January 2014, Mr Willing (then Homicide Commander) adopted and endorsed the views expressed in the 2013 Issue Paper, including “that the suggestion of 30 unsolved ‘gay hate’ related murders was and is a gross exaggeration”.<sup>3875</sup> As I outlined in **Chapter 13**, this Issue Paper was circulated to various senior NSWPF officers, including those then holding the positions of Commander, State Crime Command and Director, Serious Crime Directorate.<sup>3876</sup>
- 14.20. On 22 April 2015, prior to the instigation of Strike Force Parrabell, Ms Sharma sent a number of documents to Assistant Commissioner Crandell, one of which was the 2013 Issue Paper.<sup>3877</sup>
- 14.21. In the Lehmann Statement, Mr Lehmann gave evidence that the view expressed in the 2013 Issue Paper was “an opinion I stated in a report based purely on the fact that at the time of writing that report, I did not have evidence available to me, that indicated to me that homicide was involved in many of those cases”.<sup>3878</sup> In his oral evidence, he said that the 2013 Issue Paper was a genuine reflection of the views he held at the time based on the evidence he had before him.<sup>3879</sup>
- 14.22. Mr Lehmann said the assessment was based on “any documentation, physically or recorded electronically, on hand at the [UHT]”; and that “most of” it was based on physical searches of the Coroners Court in Glebe.<sup>3880</sup>

<sup>3874</sup> Exhibit 6, Tab 47, Detective Chief Inspector John Lehmann, “Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team (UHT) to determine if any bias motivation existed” (Issue Paper, 25 September 2013), 9 (SCOI.74906).<sup>3874</sup> Exhibit 6, Tab 47, Detective Chief Inspector John Lehmann, “Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team to determine if any bias motivation existed” (Issue Paper, 25 September 2013), 9 (SCOI.74906).

<sup>3875</sup> Exhibit 6, Tab 48, Advice of Detective Superintendent Michael Willing re: Correspondence received from the DPC relating to ‘Alleged Gay-Hate Killings in Sydney 1980’s onwards’, 10 January 2014, 1 (NPL.0113.0001.0156).

<sup>3876</sup> Exhibit 6, Tab 48, Advice of Detective Superintendent Michael Willing re: Correspondence received from the DPC relating to ‘Alleged Gay-Hate Killings in Sydney 1980’s onwards’, 10 January 2014, 4 (NPL.0113.0001.0156).

<sup>3877</sup> Exhibit 6, Tab 54, Email from Shoba Sharma to Anthony Crandell, 22 April 2015 (SCOI.74081).

<sup>3878</sup> Exhibit 6, Tab 513, Statement of John Lehmann, 29 August 2023, [35] (SCOI.85495).

<sup>3879</sup> Transcript of the Inquiry, 26 September 2023, T6104.38–47 (TRA.00091.00001).

<sup>3880</sup> Transcript of the Inquiry, 26 September 2023, T6021.46–6022.5 (TRA.00091.00001).

- 14.23. Mr Lehmann accepted that he would have been quite open about the views he held and that there was nothing secret about them, and accepted that Ms Young was open about her views too.<sup>3881</sup> He also agreed that the views expressed in the 2013 Issue Paper were held within “very senior levels of police” and that they “certainly went up the chain”.<sup>3882</sup> He said he was “not sure” whether his and Ms Young’s views had influenced the views of junior officers in the UHT.<sup>3883</sup> He did not “remember a feeling amongst the staff in the [UHT] office” that the levels of “gay hate crime” had been exaggerated either in Ms Thompson’s list or in the media.<sup>3884</sup>
- 14.24. Ms Young said she did not share the view that the number of unsolved “gay hate deaths” as reported in the media or Ms Thompson’s list was a “gross exaggeration”. She said she “would not have used the word gross” and would instead have expressed it as an “exaggeration”.<sup>3885</sup> She also accepted that her and Mr Lehmann’s views held considerable weight in the UHT generally.<sup>3886</sup> However, she said she doubted whether anyone in the UHT read the 2013 Issue Paper or knew it was being constructed.<sup>3887</sup> She also said that she and Mr Lehmann did not discuss the views given in the 2013 Issue Paper with any fellow officers in the UHT at that time because it had “no direct relevance to the staff”.<sup>3888</sup>
- 14.25. Detective Sergeant Brown’s evidence was that she was aware of the 2013 Issue Paper being prepared. She said the views of Mr Lehmann and Ms Young carried considerable weight in the UHT, but that neither of them spoke to her about their views as expressed in the 2013 Issue Paper.<sup>3889</sup>
- 14.26. Assistant Commissioner Crandell accepted that, having regard to the views of Mr Lehmann and Ms Young in September 2013 and the views of Mr Willing in January 2014, as at 2014 there was “a widely-held view at senior levels of the police that claims relating to the numbers of gay hate-related murders and bashings, especially in the 80s and 90s, were exaggerated and unfounded”, and that such claims “needed to be publicly refuted”.<sup>3890</sup>
- 14.27. Counsel Assisting submitted that the strongly-expressed views of Mr Lehmann and Ms Young in the 2013 Issue Paper, endorsed as they were in January 2014 by Mr Willing, “cannot have failed to influence and/or reflect the views of the members of the UHT generally”.<sup>3891</sup>

<sup>3881</sup> Transcript of the Inquiry, 26 September 2023, T6027.23–34 (TRA.00091.00001).

<sup>3882</sup> Transcript of the Inquiry, 26 September 2023, T6028.17–24 (TRA.00091.00001).

<sup>3883</sup> Transcript of the Inquiry, 26 September 2023, T6028.26–31 (TRA.00091.00001).

<sup>3884</sup> Transcript of the Inquiry, 26 September 2023, T6029.1–4, 6030.6–17 (TRA.00091.00001).

<sup>3885</sup> Transcript of the Inquiry, 5 October 2023, T6659.11–22 (TRA.00097.00001).

<sup>3886</sup> Transcript of the Inquiry, 5 October 2023, T6657.29–41 (TRA.00097.00001).

<sup>3887</sup> Transcript of the Inquiry, 5 October 2023, T6657.47–6658.8 (TRA.00097.00001).

<sup>3888</sup> Transcript of the Inquiry, 5 October 2023, T6658.9–13, 6659.29–37 (TRA.00097.00001).

<sup>3889</sup> Transcript of the Inquiry, 3 October 2023, T6471.38–42 (TRA.00095.00001).

<sup>3890</sup> Transcript of the Inquiry, 6 December 2022, T663.33–47 (TRA.00011.00001).

<sup>3891</sup> Submissions of Counsel Assisting, 7 June 2023, [362(b)] (SCOI.84380).

- 14.28. In response, the NSWPF contended that there was no attempt to minimise the extent of “gay hate” violence generally in the 2013 Issue Paper,<sup>3892</sup> and noted the statement in the Issue Paper that “[t]here is no doubt that anti-gay hostility, particularly in the 1980’s and 1990’s [sic] resulted in a number of murders and serious crime of violence in NSW”.<sup>3893</sup>
- 14.29. The NSWPF also submitted that at the time the 2013 Issue Paper was prepared, the conclusions it expressed were not unreasonable.<sup>3894</sup> As for the use of the word “gross”, the NSWPF emphasised that the document had not been authored for external publication.<sup>3895</sup>
- 14.30. Senior Counsel for Ms Young submitted that, since Mr Lehmann, Ms Young and Detective Sergeant Brown had given evidence that the 2013 Issue Paper was not discussed by other members of the UHT, there is no factual basis for a finding that the views in the 2013 Issue Paper influenced or reflected the views of others in the UHT.<sup>3896</sup> Senior Counsel for Ms Young also submitted that there is no basis to assert that the views expressed in the 2013 Issue Paper were not reasonably based;<sup>3897</sup> and suggested further that the Inquiry had investigated 25 of the 30 deaths referred to in the 2013 Issue Paper, and had only reached a different conclusion in one case (being the death of John Hughes), excluding the four deaths in respect of which Mr Lehmann and Ms Young could not locate records.<sup>3898</sup>
- 14.31. These submissions are dealt with in my conclusions below.

## Overlaps between the three Strike Forces

### Timing

- 14.32. On the evidence before me, it is uncontroversial that Strike Forces Parrabell, Neiwand and Macnamir overlapped temporally:
- a. Strike Force Macnamir was created in February 2013, and ran until November 2017.
  - b. Strike Force Parrabell commenced in August 2015, and was substantially completed (including the academic review) by late 2017, with the Parrabell Report being published in June 2018.
  - c. Strike Force Neiwand was established in October 2015, and ran until late 2017/early 2018.

<sup>3892</sup> Submissions of NSWPF, 28 June 2023, [135(a)], [277] (SCOI.84211).

<sup>3893</sup> Submissions of NSWPF, 28 June 2023, [135(a)], [277] (SCOI.84211).

<sup>3894</sup> Submissions of NSWPF, 28 June 2023, [137] (SCOI.84211).

<sup>3895</sup> Submissions of NSWPF, 28 June 2023, [278] (SCOI.84211).

<sup>3896</sup> Submissions of Pamela Young, 23 October 2023, [93] (SCOI.86379).

<sup>3897</sup> Submissions of Pamela Young, 23 October 2023, [95] (SCOI.86379).

<sup>3898</sup> Submissions of Pamela Young, 23 October 2023, [97] (SCOI.86379).

- 14.33. It follows that for more than two years from the second half of 2015 until the end of 2017, all three Strike Forces were running concurrently.<sup>3899</sup> As is considered below, two of them (Strike Forces Macnamir and Neiwand) were conducted by UHT officers who all worked in the one open plan room, some of whom participated in both those Strike Forces. Between late 2011 until around April 2017, Mr Willing was the Homicide Commander (which included the UHT) and was aware of all of the relevant events.<sup>3900</sup>
- 14.34. The NSWPF submitted, with respect to Strike Force Macnamir, that whilst it is true that the findings in the third Johnson inquest were handed down on 30 November 2017, all investigations into Scott Johnson’s death (including Strike Force Macnamir) were, from 13 April 2015 onwards, subject to the direction and control of the State Coroner and those assisting his Honour.<sup>3901</sup>
- 14.35. In my view, there was more, however, to the nature of the NSWPF’s involvement in the third Johnson inquest.
- 14.36. During the inquest the NSWPF was granted leave under s. 57 of the *Coroners Act 2009* to be represented as a party in its own right, with sufficient interest in the inquest. In that capacity the NSWPF provided instructions, based on input from NSWPF officers, to its legal representatives in the inquest. This was separate to and distinct from the role of those NSWPF officers responsible for assisting the State Coroner in the coronial investigation.
- 14.37. This distinction needs to be borne in mind when considering whether the NSWPF or some of its officers brought a certain institutional attitude to bear on Strike Force Macnamir, either before or after 13 April 2015. As for the period after April 2015, the relevant focus is on the NSWPF in its capacity as an interested party in the third inquest, rather than on NSWPF officers assisting the coronial investigation.
- 14.38. The NSWPF submitted that the fact Strike Force Macnamir, Strike Force Neiwand and Strike Force Parrabell were running concurrently “does not sensibly allow for an inference to be reached that they formed part of some collaborative LGBTIQ-bias minimisation project”.<sup>3902</sup> The NSWPF also submitted that Mr Willing had “no responsibilities in respect of [Strike Force] Parrabell and played no role in the day-to-day investigations conducted in respect of other strike forces”.<sup>3903</sup>

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<sup>3899</sup> Transcript of the Inquiry, 20 February 2023, T1627.26–31 (TRA.00023.00001).

<sup>3900</sup> Transcript of the Inquiry, 20 February 2023, T1628.39–1629.32 (TRA.00023.00001).

<sup>3901</sup> Submissions of NSWPF, 28 June 2023, [125] (SCOI.84211).

<sup>3902</sup> Submissions of NSWPF, 28 June 2023, [337] (SCOI.84211).

<sup>3903</sup> Submissions of NSWPF, 28 June 2023, [337] (SCOI.84211).

## Personnel – Strike Force Macnamir and Strike Force Neiwand

- 14.39. The evidence established that there were a number of officers who were involved, or said to have been involved, to varying degrees in both Strike Force Macnamir and Strike Force Neiwand. They included Mr Lehmann, Mr Leggat, Detective Sergeant Brown, Detective Sergeant Morgan, Mr Chebl and Detective Senior Constable Rullo. Aspects of this personnel overlap are discussed in **Chapters 11 and 12.**
- 14.40. When Strike Force Neiwand was established in October 2015, Detective Sergeant Brown was already the OIC of Strike Force Macnamir.<sup>3904</sup> At that time, a “management decision” was made to record her as the OIC of Strike Force Neiwand as well, due in part to her knowledge of the Taradale deaths.<sup>3905</sup> She “perform[ed] a role in the beginning stages” of Strike Force Neiwand.<sup>3906</sup> That role included, on 1 February 2016, her circulating by email among Strike Force Neiwand staff a list of 116 POIs who had been identified by Operation Taradale.<sup>3907</sup>
- 14.41. However, due to various factors including the demands posed by Strike Force Macnamir on her workload, she was replaced as OIC of Strike Force Neiwand by Mr Chebl in around February 2016,<sup>3908</sup> and had “no direct investigative role” in Strike Force Neiwand thereafter.<sup>3909</sup>
- 14.42. Detective Sergeant Morgan, who became Investigation Supervisor for Strike Force Neiwand in around February 2016,<sup>3910</sup> was also involved to some degree in Strike Force Macnamir. An email from Detective Sergeant Morgan to Detective Sergeant Brown on 14 June 2017 indicates that he was taking investigative steps (along with Detective Senior Constable Rullo) in relation to Strike Force Macnamir.<sup>3911</sup>
- 14.43. Detective Sergeant Morgan denied any involvement in the investigative side of Strike Force Macnamir. However, he agreed he prepared a statement for the third inquest into the death of Scott Johnson which sought to rebut the suggestion, made publicly by Garry Wotherspoon, that people do not tend to take their clothes off to die by suicide. Detective Sergeant Morgan said that he informed Ms Young that this was not correct and “volunteered” to prepare a statement to this effect. Detective Sergeant Morgan accepted that the effect of this statement was to advance the police theory that Scott Johnson died by suicide.<sup>3912</sup>

<sup>3904</sup> Exhibit 6, Tab 519A, Second Statement of Detective Sergeant Penelope Brown, 29 September 2023, [3] (SCOI.85950).

<sup>3905</sup> Exhibit 6, Tab 519A, Second Statement of Detective Sergeant Penelope Brown, 29 September 2023, [5] (SCOI.85950).

<sup>3906</sup> Exhibit 6, Tab 519A, Second Statement of Detective Sergeant Penelope Brown, 29 September 2023, [6] (SCOI.85950).

<sup>3907</sup> Exhibit 6, Tab 306, Email from Penelope Brown to Strike Force Neiwand team, 1 February 2016 (NPL.3000.0001.0026).

<sup>3908</sup> Exhibit 6, Tab 285, Email from Steven Morgan to Sebastian Herft, 26 February 2016 (NPL.0115.0004.3512).

<sup>3909</sup> Exhibit 6, Tab 519A, Second Statement of Detective Sergeant Penelope Brown, 29 September 2023, [7] (SCOI.85950).

<sup>3910</sup> Exhibit 6, Tab 17, NSWPF Strike Force Neiwand, Terms of Reference, 30 June 2016, 1 (SCOI.74884); Exhibit 6, Tab 285, Email from Steven Morgan to Sebastian Herft, 26 February 2016 (NPL.0115.0004.3512).

<sup>3911</sup> Exhibit 6, Tab 414, Email from Steven Morgan to I446 and Penelope Brown, 14 June 2017 (NPL.0115.0003.9730).

<sup>3912</sup> Transcript of the Inquiry, 22 February 2023, T1904.34–1908.1 (TRA.00025.00001).

- 14.44. Mr Chebl, the OIC of Strike Force Neiwand from February 2016 until the conclusion of the Strike Force,<sup>3913</sup> had at least some limited involvement in Strike Force Macnamir. Mr Chebl and another officer sought ministerial approval to travel to New Zealand in June 2017 to obtain statements from two witnesses, one relating to Strike Force Neiwand and another to Strike Force Macnamir.<sup>3914</sup> This application is recorded as having been “supported” by Mr Leggat on 8 May 2017.<sup>3915</sup>
- 14.45. Detective Senior Constable Rullo was allocated as an “investigator” to both Strike Force Neiwand and Strike Force Macnamir.<sup>3916</sup> His evidence was that his involvement in both Strike Forces was “task driven”, in that he was assigned specific tasks to complete but “was not involved in the direction of the investigation”.<sup>3917</sup> His statement indicates that he participated actively in Strike Force Macnamir between June 2013 and October 2015,<sup>3918</sup> and in Strike Force Neiwand from 6 June 2016 until some time in 2017.<sup>3919</sup>
- 14.46. For completeness, I note that there was some conflicting evidence from the NSWPF as to those actively involved in Strike Force Macnamir.
- 14.47. In September 2022, the Inquiry received an email from the NSWPF which listed some 20 officers involved in Strike Force Macnamir.<sup>3920</sup> According to that email, those officers included: Detective Superintendent Dickinson (“Investigation Supervisor”); Ms Young (“original OIC”); Detective Sergeant Brown (“OIC”); Mr Leggat (“Team Leader”); Detective Sergeant Morgan (“Team Leader”); Detective Senior Constable Rullo (“Investigator”); and Mr Chebl (“Investigator”).
- 14.48. Mr Willing’s evidence was that this list came from the NSWPF’s e@gle.i database; but that it was not accurate, as it included persons who “may not have actively played a part” but who were merely “available, should they [have been] required”.<sup>3921</sup> It did not reflect a “point in time allocation”, but rather “anyone who may have reason to be involved in the strike force”.<sup>3922</sup>

<sup>3913</sup> Exhibit 6, Tab 285, Email from Steven Morgan to Sebastian Herft, 26 February 2016 (NPL.0115.0004.3512); Exhibit 6, Tab 17, NSWPF Strike Force Neiwand, Terms of Reference, 30 June 2016, 1 (SCOI.74884).

<sup>3914</sup> Exhibit 6, Tab 413, Operational Travel Request – DSC Kilani and Chebl, 25 May 2017 (NPL.0115.0001.0026).

<sup>3915</sup> Exhibit 6, Tab 412, Issue Paper regarding request for UHT officers’ travel to New Zealand, 8 May 2017 (NPL.0115.0004.4193).

<sup>3916</sup> Exhibit 6, Tab 520, Statement of Detective Senior Constable Paul Rullo, 22 September 2023, [11] (SCOI.85772).

<sup>3917</sup> Exhibit 6, Tab 520, Statement of Detective Senior Constable Paul Rullo, 22 September 2023, [12] (SCOI.85772).

<sup>3918</sup> Exhibit 6, Tab 520, Statement of Detective Senior Constable Paul Rullo, 22 September 2023, [14]-[27] (SCOI.85772). There are also “Investigator’s Notes” before the Inquiry which record Detective Senior Constable Rullo as having interviewed at least five witnesses or persons of interest to Strike Force Macnamir between 11 June 2013 and 12 October 2015: see Exhibit 6, Tab 407, Strike Force Macnamir, Investigator’s Note, ‘Interview with NP98’, 26 September 2013 (SCOI.11055.00005); Exhibit 6, Tab 408, Strike Force Macnamir Investigator’s Note, ‘Interview with NP10’, 20 February 2014 (SCOI.11054.00041); Exhibit 6, Tab 409, Strike Force Macnamir, Investigator’s Note, ‘Interview with NP100’, 19 February 2014 (SCOI.11121.00081); Exhibit 6, Tab 410, Strike Force Macnamir, Investigator’s Note, ‘Interview with Ulo Klemmer’, 11 June 2013 (SCOI.11067.00004); Exhibit 6, Tab 411, Strike Force Macnamir Investigator’s note, ‘Interview with NP142’, 12 October 2015 (SCOI.11055.00312).

<sup>3919</sup> Exhibit 6, Tab 520, Statement of Detective Senior Constable Paul Rullo, 22 September 2023, [28]-[43] (SCOI.85772).

<sup>3920</sup> Exhibit 6, Tab 9, Email from Patrick Hodgetts to Kate Lockery, 16 September 2022, 1 (SCOI.82018).

<sup>3921</sup> Transcript of the Inquiry, 20 February 2023, T1658.5–7 (TRA.00023.00001).

<sup>3922</sup> Transcript of the Inquiry, 20 February 2023, T1659.1–26 (TRA.00023.00001).

- 14.49. According to Mr Willing, that was why, in the list of officers involved in Strike Force Macnamir that appeared in his statement, he did not include Mr Leggat and Detective Sergeant Morgan, notwithstanding that they were recorded as “team leaders” in the email from the NSWPF.<sup>3923</sup> On this basis the NSWPF contended that “nothing of note can be drawn from the mere fact that a particular officer was formally identified in the e@gle.i system as a member of [Strike Force] Macnamir”.<sup>3924</sup>
- 14.50. Even accepting this submission, and Mr Willing’s evidence as to the reality of personnel allocations on the e@gle.i database, I consider nonetheless that there is evidence of at least some involvement of Detective Sergeant Morgan in Strike Force Macnamir’s investigative activities, as noted above.
- 14.51. Assistant Commissioner Crandell gave evidence that the overlap in the resourcing between Strike Force Macnamir and Strike Force Neiwand meant that “it’s very difficult for them to have objectivity, given their history”.<sup>3925</sup> The NSWPF submitted that that evidence should be considered in light of “[Assistant Commissioner] Crandell’s lack of insight into how and why personnel were selected for the relevant strike forces”.<sup>3926</sup>
- 14.52. The NSWPF submitted that aside from the fact that Detective Sergeant Morgan prepared a statement in connection with a discrete aspect of Strike Force Macnamir, and the evidence regarding the limited work of Detective Sergeant Brown in Strike Force Neiwand, there is scant evidence in relation to the nature or extent of any cross-over between the investigative teams.<sup>3927</sup>
- 14.53. Counsel Assisting submitted that the overlap in personnel between Strike Force Macnamir and Strike Force Neiwand at every level meant that “communication and/or cooperation” were inherent and ever-present.<sup>3928</sup>
- 14.54. The NSWPF submitted that there was no evidence in support of this proposition; that it was “entirely speculative”; and that there is no evidence that would enable the Inquiry to satisfactorily discern the nature and extent of any such “communication and/or cooperation” or the matters to which it related.<sup>3929</sup>

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<sup>3923</sup> Transcript of the Inquiry, 20 February 2023, T1658.36–46 (TRA.00023.00001).

<sup>3924</sup> Submissions of NSWPF, 28 June 2023, [120] (SCOI.84211).

<sup>3925</sup> Transcript of the Inquiry, 6 December 2022, T678.9–11 (TRA.00011.00001).

<sup>3926</sup> Submissions of NSWPF, 28 June 2023, [358] (SCOI.84211).

<sup>3927</sup> Submissions of NSWPF, 28 June 2023, [356] (SCOI.84211).

<sup>3928</sup> Submissions of Counsel Assisting, 7 June 2023, [362(a)] (SCOI.84380).

<sup>3929</sup> Submissions of NSWPF, 28 June 2023, [132] (SCOI.84211).

- 14.55. Counsel Assisting also noted that two of the three strike forces, Strike Force Macnamir and Strike Force Neiwand, were conducted by the UHT; and that two of the UHT’s senior officers, Mr Lehmann and Ms Young, held strong views about the extent of “gay hate homicides” as expressed in the 2013 Issue Paper.<sup>3930</sup> The NSWPF’s response to the former observation was that it was unsurprising that two reinvestigations into unsolved homicides were conducted by the UHT.<sup>3931</sup>
- 14.56. The significance of the overlap in personnel between Strike Force Macnamir and Strike Force Neiwand is discussed below.

### Personnel – Strike Force Parrabell and the other strike forces

- 14.57. There was no evidence of any personnel overlap between Strike Force Parrabell and the other two Strike Forces. As the NSWPF noted,<sup>3932</sup> Superintendent Middleton,<sup>3933</sup> Detective Inspector Grace,<sup>3934</sup> and Detective Acting Sergeant Bignell<sup>3935</sup> all gave evidence that they did not have, or could not recall there being, any contact of any significance with any members of Strike Force Macnamir or Strike Force Neiwand during the course of Strike Force Parrabell.
- 14.58. As I outlined in **Chapter 13**, Detective Sergeant Brown gave evidence that it was actually Mr Willing who established Strike Force Parrabell, with the “endorsement” of Assistant Commissioner Crandell, “in response to the media attention being directed towards crimes involving sexuality or gender bias”.<sup>3936</sup> Mr Willing denied having any involvement in the establishment of Strike Force Parrabell.<sup>3937</sup>
- 14.59. Mr Willing recalled “a couple of meetings” with Assistant Commissioner Crandell about Strike Force Parrabell and also recalled attending a meeting with Mr Greenwich MP at Parliament House in relation to Strike Force Parrabell.<sup>3938</sup>

<sup>3930</sup> Submissions of Counsel Assisting, 7 June 2023, [345] (SCOI.84380).

<sup>3931</sup> Submissions of NSWPF, 28 June 2023, [134] (SCOI.84211).

<sup>3932</sup> Supplementary Submissions of NSWPF, 23 October 2023, [370]–[373] (SCOI.86378).

<sup>3933</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [85] (NPL.9000.0029.0001).

<sup>3934</sup> Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023, [75] (NPL.9000.0024.0012).

<sup>3935</sup> Exhibit 6, Tab 509, Statement of Detective Acting Sergeant Cameron Bignell, 8 September 2023, [78] (NPL.9000.0026.0007).

<sup>3936</sup> Exhibit 6, Tab 519, Statement of Detective Sergeant Penelope Brown, 20 September 2023, [8] (SCOI.85747).

<sup>3937</sup> Transcript of the Inquiry, 6 October 2023, T6798.22–43 (TRA.00098.00001).

<sup>3938</sup> Transcript of the Inquiry, 20 February 2023, T1740.35 (TRA.00023.00001).



- 14.60. In the Willing Statement, Mr Willing referred to a meeting with Assistant Commissioner Crandell about Strike Force Parrabell, at which Mr Olen may have been present.<sup>3939</sup> Mr Willing said he gave Assistant Commissioner Crandell his full support in conducting Strike Force Parrabell. He said it was mutually agreed that Strike Force Parrabell would be conducted independently from the UHT given the allegations that the UHT was biased, and that the Taradale and Scott Johnson deaths would (at least initially) be excluded from Strike Force Parrabell given that they were the subject of ongoing investigations and coronial proceedings.<sup>3940</sup> Mr Willing could not recall any of the specifics of any conversations at any meetings where he may have been present.<sup>3941</sup>
- 14.61. Mr Willing also recalled meeting with Dr Dalton, but again, he did “not recall the specifics of any conversation with him.”<sup>3942</sup>
- 14.62. In October 2016, Assistant Commissioner Crandell wrote to Mr Willing to advise him that Dr Dalton has been contracted and to offer a meeting: “Given the connection between Parrabell and the Unsolved Homicide Team, would you like to meet with him?”<sup>3943</sup>
- 14.63. In his oral evidence, Assistant Commissioner Crandell explained what he meant by “the connection between Parrabell and the Unsolved Homicide Team”:<sup>3944</sup>
- Well, the Unsolved Homicide Team are responsible for unsolved homicides, so there is a connection between Parrabell and the Unsolved Homicide Team, and so really, in my view, Commander Willing should have been involved in processes of review to understand – particularly in unsolved matters, to understand whether there was any progress or not.*
- 14.64. Assistant Commissioner Crandell did not identify any example in which anybody from the UHT was asked about any particular case or about the classification of that case by Strike Force Parrabell.<sup>3945</sup>
- 14.65. Counsel Assisting submitted, correctly, that the evidence established that:<sup>3946</sup>
- a. There was a meeting on 14 April 2016 attended by Assistant Commissioner Crandell, Mr Willing and others at which Strike Force Parrabell and Strike Force Neiwand were discussed;<sup>3947</sup>

<sup>3939</sup> Exhibit 6, Tab 252, Statement of Former Deputy Commissioner Michael Willing, 30 January 2023, [101]–[104] (SCOI.82369.00001).

<sup>3940</sup> Exhibit 6, Tab 252, Statement of Former Deputy Commissioner Michael Willing, 30 January 2023, [104] (SCOI.82369.00001).

<sup>3941</sup> Exhibit 6, Tab 252, Statement of Former Deputy Commissioner Michael Willing, 30 January 2023, [100] (SCOI.82369.00001).

<sup>3942</sup> Exhibit 6, Tab 252, Statement of Former Deputy Commissioner Michael Willing, 30 January 2023, [100], [108] (SCOI.82369.00001).

<sup>3943</sup> Exhibit 6, Tab 70, Email correspondence between Anthony Crandell and Michael Willing, 13 October 2016 (SCOI.74338).

<sup>3944</sup> Transcript of the Inquiry, 7 December 2022, T762.19–25 (TRA.00012.00001).

<sup>3945</sup> Transcript of the Inquiry, 7 December 2022, T763.24–30 (TRA.00012.00001).

<sup>3946</sup> Submissions of Counsel Assisting, 7 June 2023, [613] (SCOI.84380).

<sup>3947</sup> Exhibit 6, Tab 164A, Strike Force Neiwand Progress Report, 1 July 2016 (SCOI.82054); Transcript, 7 December 2022, T696.8–28 (TRA.00012.00001).

- b. On 17 May 2016 there was another meeting between Assistant Commissioner Crandell and Mr Willing at Parliament House;<sup>3948</sup>
- c. Between 6 and 20 May 2016, there was email correspondence between Assistant Commissioner Crandell, Mr Willing and others in relation to forthcoming media coverage of one or both Strike Forces;<sup>3949</sup> and
- d. On 21 and 22 May 2016, two articles appeared in *The Sydney Morning Herald* on successive days, the first about Strike Force Parrabell and the second about Strike Force Neiwand.<sup>3950</sup> These articles were the result of what Assistant Commissioner Crandell described as his doing “collaborative media” with Mr Willing about the two Strike Forces, as discussed below.<sup>3951</sup>
- 14.66. Counsel Assisting submitted that, overall, there was evidence of “considerable and ongoing communication and cooperation between the UHT and Strike Force Parrabell, from at least as early as 14 April 2016”.<sup>3952</sup>
- 14.67. The NSWPF submitted that the nature of the “considerable and ongoing communication” had not been articulated or identified, and that such a suggestion was “totally without foundation”.<sup>3953</sup> The NSWPF also relied on Mr Willing’s evidence specifically denying that there was any coordination between Strike Force Parrabell and the UHT.<sup>3954</sup>
- 14.68. The NSWPF further submitted that the contact between Strike Force Parrabell and the Homicide Squad was limited because:<sup>3955</sup>
- a. There was no contact between Strike Force Neiwand and Strike Force Parrabell *per se*. There was, however, contact between Assistant Commissioner Crandell and Mr Willing, and Strike Force Neiwand was mentioned or discussed during this contact, along with other issues;
  - b. The email correspondence referred to at [14.6514.65(c)] above cannot properly be characterised as being “between” Mr Willing and Assistant Commissioner Crandell and others, and that the phrasing of it occurring “between 6 and 20 May” is apt to give an inflated impression of the extent of the correspondence; and

<sup>3948</sup> Transcript of the Inquiry, 7 December 2022, T697.5–9 (TRA.00012.00001) (Assistant Commissioner Crandell); Transcript of the Inquiry, 20 February 2023, T1740.27–43 (TRA.00023.00001) (Mr Willing).

<sup>3949</sup> Exhibit 6, Tab 60, Email correspondence between Anthony Crandell, Georgie Wells and Ainslie Blackstone, 6–7 May 2016 (SCOI.74209); Exhibit 6, Tab 61, Email correspondence between Ainslie Blackstone, Anthony Crandell and others, 20 May 2016 (SCOI.74221).

<sup>3950</sup> Exhibit 6, Tab 221, Ava Benny-Morrison, ‘Police to Review 88 Possible Gay-Hate Deaths’, *The Sydney Morning Herald* (online), 21 May 2016 (SCOI.82030); Exhibit 6, Tab 222, Ava Benny-Morrison, ‘Police Reopen Sydney Gay-Hate Homicide Cases’, *The Sydney Morning Herald* (Sydney), 23 May 2016 (SCOI.82028); Exhibit 6, Tab 259, Ava Benny-Morrison, ‘Unsolved homicide investigation reopens into Sydney’s gay killings’, *The Sydney Morning Herald* (online), 20 May 2016 (SCOI.82370).

<sup>3951</sup> Transcript of the Inquiry, 7 December 2022, T763.45–764.7 (TRA.00012.00001).

<sup>3952</sup> Submissions of Counsel Assisting, 7 June 2023, [362(c)] (SCOI.84380).

<sup>3953</sup> Submissions of NSWPF, 28 June 2023, [149] (SCOI.84211).

<sup>3954</sup> Transcript of the Inquiry, 20 February 2023, T1740.7–26 (TRA.00023.00001).

<sup>3955</sup> Submissions of NSWPF, 28 June 2023, [338] (SCOI.84211).

- c. The description of the events of 17 May 2016 as a “meeting between [Assistant Commissioner] Crandell and Mr Willing, at Parliament House” is also likely to give an erroneous impression, and what occurred that day was a meeting between Assistant Commissioner Crandell, Mr Willing and Mr Greenwich MP for the purposes of briefing Mr Greenwich on the progress of Strike Force Parrabell and the reinvestigation of the Taradale deaths.

### “Collaborative media”

- 14.69. Assistant Commissioner Crandell referred to his dealings with Mr Willing in about May 2016, in connection with a series of articles by Ava Benny-Morrison published in short succession in *The Sydney Morning Herald*, as his having done “collaborative media” with Mr Willing.<sup>3956</sup>

- 14.70. On 21 May 2016, an article by Ms Benny-Morrison was published in *The Sydney Morning Herald* titled, “Police to review 88 possible gay-hate deaths”. The article outlined the work of Strike Force Parrabell and quoted then-Superintendent Crandell:<sup>3957</sup>

*The true beauty of Parrabell is it is an open and honest and transparent investigation and we are here to make sure that happens... Whether the outcomes are good or bad for the police I am not concerned about that. We will report the truth.*

- 14.71. On 22 May 2016, a second article by Ms Benny-Morrison was published in *The Sydney Morning Herald* titled, “Unsolved homicide investigation reopens into Sydney’s gay killings”. The article outlined the establishment of Strike Force Neiwand (although not by name) and quoted Mr Willing:<sup>3958</sup>

*Flowing on from the UHT’s ongoing investigation into the death of Scott Johnson, the investigations into the deaths of Gilles Mattaini, John Russell, and Ross Warren have been recommenced... As the death of Scott Johnson is subject to an upcoming coronial inquiry, and will touch on these matters, I’m not in a position to comment further. I would like to remind the community there are government rewards on offer for information in each investigation.*

<sup>3956</sup> Transcript of the Inquiry, 7 December 2022, T763.45–764.7 (IRA.00012.00001).

<sup>3957</sup> Exhibit 6, Tab 221, Ava Benny-Morrison, ‘Police to Review 88 Possible Gay-Hate Deaths’, *The Sydney Morning Herald* (online), 21 May 2016 (SCOI.82030).

<sup>3958</sup> Exhibit 6, Tab 259, Ava Benny-Morrison, ‘Unsolved homicide investigation reopens into Sydney’s gay killings’, *The Sydney Morning Herald* (online), 20 May 2016 (SCOI.82370).

- 14.72. Mr Willing was asked about the sequence and timing of these articles in quick succession. He could not recall how it came about, other than that Ms Benny-Morrison was a police reporter who regularly asked questions of the NSWPF Media Unit. He denied speaking to Assistant Commissioner Crandell directly about the matter, but suggested that they may have coordinated through a media liaison officer who would “gather the response together”. He did not recall whether he spoke to Ms Benny-Morrison about this article, but he did recall speaking to her regularly. He assumed that Assistant Commissioner Crandell had also spoken to her, but denied that they had spoken to her together. He thought that the impetus for the two stories came from Ms Benny-Morrison.<sup>3959</sup>
- 14.73. Counsel Assisting submitted that the “collaboration” between Assistant Commissioner Crandell and Mr Willing in relation to these articles, as early as May 2016, indicated that both men were well aware by at least that time of what both strike forces (Strike Force Parrabell and Strike Force Neiwand) were doing, and were collaborating *inter alia* in the way in which those matters were portrayed in the media.<sup>3960</sup>
- 14.74. The NSWPF submitted that any contact between the NSWPF and Ms Benny-Morrison was “wholly conventional”, that “any collaboration regarding media was relatively limited”, and that any interactions between Mr Willing and Assistant Commissioner Crandell would have occurred via a MLO.<sup>3961</sup> It was submitted that this contact was plainly aimed at community outreach as concerned, on the one hand, the work of Strike Force Parrabell and, on the other, an attempt to publicise “the Taradale investigations” and to potentially elicit helpful information from members of the public.<sup>3962</sup>
- 14.75. As to these submissions, I recapitulate a number of features of the evidence that emerged in this Inquiry:
- a. Although the subject of Ms Benny-Morrison’s second article was evidently the work of Strike Force Neiwand, its name was not mentioned;
  - b. Indeed, so far as the evidence reveals, the name of Strike Force Neiwand was never publicly mentioned by the NSWPF until it was effectively compelled to do so by this Inquiry in late 2022;
  - c. By May 2016, the date of these articles, it appears that the decision had already been made that Strike Force Neiwand would not pursue any of the 116 known POIs in relation to the three Taradale deaths; and
  - d. Indeed, by May 2016, Strike Force Neiwand appeared already to have embarked upon its chosen path of criticising Operation Taradale and overturning the findings of Senior Deputy State Coroner Milledge.

<sup>3959</sup> Transcript of the Inquiry, 21 February 2023, T1873.38–1874.16 (TRA.00025.00001).

<sup>3960</sup> Submissions of Counsel Assisting, 7 June 2023, [624] (SCOI.84380).

<sup>3961</sup> Submissions of NSWPF, 28 June 2023, [346] (SCOI.84211).

<sup>3962</sup> Submissions of NSWPF, 28 June 2023, [346] (SCOI.84211).

- 14.76. None of those facts is easy to reconcile with the NSWPF’s submission that this “collaborative media” was “wholly conventional”.
- 14.77. According to the NSWPF, that “some pejorative inference is sought to be drawn from the fact that both [Assistant Commissioner] Crandell, and Mr Willing were involved in communications with the media in connection with Strike Force Parrabell and Strike Force Neiwand is remarkable. It simply defies logic”.<sup>3963</sup> The NSWPF went so far as to claim that the submissions of Counsel Assisting amounted to “grave allegations of collusion (framed as ‘coordination’)”.<sup>3964</sup>
- 14.78. These submissions as to “collusion” are dealt with in my conclusions below.

### “Putting to the test” the Taradale findings

- 14.79. In Ms Young’s interview with Ms Alberici on 10 April 2015, discussed in **Chapter 11**, the following exchange occurred:<sup>3965</sup>

*Q. What’s changed since the last coronial inquest that would warrant another one?*

*A. ... We have put to the test some of the findings of Operation Taradale, which was - did identify or reinvestigate some gay-hate crimes in Bondi, and two were found to be possible homicides.*

- 14.80. Counsel Assisting submitted that this exchange pointed to a commonality of objectives between Strike Force Macnamir and Strike Force Neiwand.<sup>3966</sup>
- 14.81. The evidence of Mr Willing and Ms Young and the various submissions about what Ms Young meant by “put to the test” in this context are outlined in **Chapter 12**.

### Subject matter and outcomes

- 14.82. As Counsel Assisting submitted, all three Strike Forces were looking into aspects of the reported wave of “gay hate” crimes in the 1970s–1990s. Counsel Assisting further submitted that all three arrived at “strikingly comparable conclusions”, namely:<sup>3967</sup>
- a. As to Strike Force Macnamir, in late 2017 the NSWPF were still submitting to the Coroner that the death of Scott Johnson was likely to have been a suicide and that a finding of homicide “would not be open”;

<sup>3963</sup> Submissions of NSWPF, 28 June 2023, [347] (SCOI.84211).

<sup>3964</sup> Submissions of NSWPF, 28 June 2023, [341] (SCOI.84211).

<sup>3965</sup> Exhibit 6, Tab 342, Transcript of recorded interview between Emma Alberici and Detective Chief Inspector Pamela Young in the Lateline Studio, 10 April 2015, 20 (NPL.2017.0004.0549).

<sup>3966</sup> Submissions of Counsel Assisting, 7 June 2023, [349] (SCOI.84380).

<sup>3967</sup> Submissions of Counsel Assisting, 7 June 2023, [347] (SCOI.84380).

- b. As to Strike Force Parrabell, its conclusion, arrived at by about late 2017 and published in June 2018, was that the vast majority (59) of the 86 deaths that were reviewed were not even “suspected” cases of bias crime; and
  - c. As to Strike Force Neiwand, its conclusion, also arrived at by late 2017, was that Senior Deputy State Coroner Milledge’s 2005 findings (that two of the three deaths were homicides which were probably “gay hate” crimes, and there was a “strong possibility” the third was also a “gay hate” crime) should be disregarded because other hypotheses (namely suicide or homicide) were as likely, or more likely, in each case.
- 14.83. The NSWPF acknowledged that each Strike Force did have “at [its] heart a similar subject matter, being the investigation into historical deaths that were possibly motivated by anti-LGBTIQ bias”.<sup>3968</sup> However, the NSWPF denied that each came to a comparable conclusion, or that they sought to minimise findings of LGBTIQ bias. The NSWPF submitted *inter alia* that:<sup>3969</sup>
- a. As to Strike Force Macnamir, Counsel for the NSWPF at the third Johnson inquest had submitted that a “positive finding could not be made in relation to any of the three case theories to the requisite standard, but that equally, none of the three case theories can be ruled out”, and that Scott Johnson’s death was ultimately not found to be motivated by LGBTIQ bias;<sup>3970</sup>
  - b. As to Strike Force Neiwand, in the Mattaini case it did not depart from the open finding suggested by Senior Deputy State Coroner Milledge, but merely suggested that the death “may well” have been a suicide;
  - c. As to Strike Force Parrabell, the findings were that there were 27 cases of bias or suspected bias and a further 25 cases where there was Insufficient Information to rule bias in or out, resulting in up to 52 cases which potentially involved bias and only 34 cases where “No Evidence of Bias Crime” had been found;
  - d. In the Inquiry’s “tender bundle cases” up to 28 June 2023, the conclusions of Counsel Assisting had “aligned very closely with those of [Strike Force] Parrabell”; and
  - e. Strike Force Parrabell had classified the Taradale deaths differently to Strike Force Neiwand.

<sup>3968</sup> Submissions of NSWPF, 28 June 2023, [138] (SCOI.84211).

<sup>3969</sup> Submissions of NSWPF, 28 June 2023, [140]–[143] (SCOI.84211).

<sup>3970</sup> Exhibit 6, Tab 333, Submissions of the Commissioner of Police, 18 October 2017, [5]–[6] (SCOI.11069.00006).

- 14.84. The NSWPF went on to submit, here as in several other parts of the June NSWPF submissions,<sup>3971</sup> that while there might have been a “commonality of outcome” as between the three Strike Forces, Counsel Assisting was really alleging that such “commonality” was the result of a “conspiracy”, as between the personnel of each of these strike forces, “to seek to minimise the number of deaths found to have been motivated by anti-LGBTIQ bias”.<sup>3972</sup>
- 14.85. I do not find these submissions persuasive. My conclusions as to the issues of “commonality”, “collusion”, “conspiracy” and convergence, and as to any “alignment” between the views of the Inquiry and those of Strike Force Parrabell in relation to particular deaths, are set forth below.

### Coordination generally

- 14.86. There was evidence before me to the effect that at the time of these Strike Forces, all the teams within the UHT (including those assigned to Strike Forces Macnamir and Neiwand) worked in the same room in a large open plan office, and that investigators would typically talk to others in the room about what they were working on.<sup>3973</sup> The NSWPF submitted that this evidence could not support the inference that there was some kind of “ignoble ‘coordination’ afoot between the strike forces”.<sup>3974</sup>
- 14.87. The NSWPF relied upon the evidence of various officers and former officers,<sup>3975</sup> to the effect that:<sup>3976</sup>
- a. They did not attempt, and/or were not encouraged by any senior NSWPF officers, to minimise the incident of “gay hate” homicide; and/or
  - b. No one to their knowledge had sought to promote a “company line” that “gay hate” crimes had been exaggerated; and/or
  - c. To their knowledge there was no coordination between any of the strike forces directed to discrediting claims that so many deaths were “gay hate” crimes.
- 14.88. These submissions are dealt with in my conclusions below.

<sup>3971</sup> Submissions of NSWPF, 28 June 2023, [15], [18], [155], [423] (SCOI.84211).

<sup>3972</sup> Submissions of NSWPF, 28 June 2023, [144] (SCOI.84211).

<sup>3973</sup> Transcript of the Inquiry, 25 September 2023, T5938.45–5939.16 (TRA.00090.00001).

<sup>3974</sup> Supplementary Submissions of NSWPF, 23 October 2023, [374] (SCOI.86378); Transcript of the Inquiry, 25 September 2023, T5938.45–5939.3 (TRA.00090.00001).

<sup>3975</sup> Supplementary Submissions of NSWPF, 23 October 2023, [375] (SCOI.86378).

<sup>3976</sup> Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [87] (NPL.9000.0029.0001); Transcript of the Inquiry, 21 September 2023, T5876.1–7; 5876.46–5877.11 (TRA.00089.00001); Transcript of the Inquiry, 25 September 2023, T5997.17–22; T6001.33–36 (TRA.00090.00001); Transcript of the Inquiry, 26 September 2023, T6111.16–6112.7 (TRA.00091.00001); Transcript of the Inquiry, 3 October 2023, T6522.7–30 (TRA.00095.00001); Exhibit 6, Tab 517, Statement of Detective Sergeant Alicia Taylor, 20 September 2023, [39] (NPL.9000.0033.0001); Exhibit 6, Tab 520, Statement of Detective Senior Constable Paul Rullo, 22 September 2023, [45]–[46], [50], [52] (SCOI.85772).

## Conclusions of the Inquiry

### The 2013 Issue Paper

- 14.89. The views expressed in the 2013 Issue Paper were those of the two most senior members of the UHT, namely Mr Lehmann and Ms Young. They described the suggestion that there were up to 30 unsolved LGBTIQ bias motivated homicides in NSW at that time as a “gross exaggeration”; and considered that only eight of the 30 were probable or even possible LGBTIQ hate crimes (the death of Scott Johnson not being one of those eight).
- 14.90. Those views were expressly endorsed by Mr Willing as Homicide Commander. They were circulated to other very senior officers, including the Commander, State Crime Command and the Director, Serious Crime Directorate, the latter of whom made a notation that the Issue Paper “provides details that negate” the assertions of 30 “gay hate” murders.<sup>3977</sup>
- 14.91. The 2013 Issue Paper was produced on 25 September 2013, early in the life of Strike Force Macnamir (which had been established in February 2013), and some two years before Strike Forces Parrabell and Neiwand were established (in August and October 2015 respectively).
- 14.92. I infer that the views expressed in the 2013 Issue Paper were widely held in the UHT, and in the NSWPF more generally, including at the highest levels. The evidence of Assistant Commissioner Crandell was squarely consistent with that inference. There can be little doubt that those views would have become known, and carried weight and influence, within the UHT.
- 14.93. Although this was a document that was circulated among high-ranking officers of the NSWPF, the NSWPF submitted that it was not intended for external publication because it could be perceived “in a negative fashion”.<sup>3978</sup>
- 14.94. In my view, it is of concern that the implication seems to be that the public should only receive some different, or perhaps more sanitised, version of the message that the NSWPF sought to convey internally in the 2013 Issue Paper. In a context where part of the NSWPF response was either never made publicly available (Strike Force Neiwand) or suffered from an egregious lack of transparency (Strike Force Parrabell), it is regrettable that the NSWPF apparently considers that the public are not entitled to the real views of those who serve within the NSWPF.

<sup>3977</sup> Exhibit 6, Tab 48, Advice of Detective Superintendent Michael Willing re: Correspondence received from the DPC relating to ‘Alleged Gay-Hate Killings in Sydney 1980’s onwards’, 10 January 2014, 4 (NPL.0113.0001.0156).

<sup>3978</sup> Submissions of NSWPF, 28 June 2023, [278] (SCOI.84211).



- 14.95. As for the suggestion that the conclusions expressed by the 2013 Issue Paper were not unreasonable, I note that I have reached very different conclusions from those of both that Issue Paper and Strike Force Parrabell, as follows:
- a. In the 2013 Issue Paper, Mr Lehmann and Ms Young concluded that, of the 30 deaths regarded by Ms Thompson as “unsolved”, only eight were probable or even possible “gay hate homicides”.
  - b. The Parrabell Report regarded 23 of the 86 deaths which it reviewed as “unsolved”. Of those 23, it concluded that not one met its criteria for “Evidence of Bias Crime”, and only five met the criteria for “Suspected Bias Crime”. The other 18 were categorised as either “No Evidence of Bias Crime” or “Insufficient Information”.
  - c. By contrast, I inquired into 30 of the deaths considered by Strike Force Parrabell, and concluded that there is objectively reason to suspect that LGBTIQ bias was a factor in 21 of those deaths.
- 14.96. That represents a stark difference from the views expressed in the 2013 Issue Paper.

### Convergence or conspiracy

- 14.97. The NSWPF repeatedly submitted that Counsel Assisting had contended for a finding that a “conspiracy” existed between the three Strike Forces to seek to minimise the number of deaths found to have been motivated by LGBTIQ bias.<sup>3979</sup> This was said to follow as a matter of “implication”, from the submissions themselves, and from various statements of current and former police officers,<sup>3980</sup> even though no such words as “conspiracy” had been used.<sup>3981</sup> The NSWPF submitted that such contentions might lead to grave reputational damage to the persons to whom they relate, and that Counsel Assisting should “expressly and publicly” disavow such submissions.<sup>3982</sup>
- 14.98. Proceeding from that contention, the NSWPF denied that the evidence revealed any attempt to minimise the extent of LGBTIQ bias-motivated crime in this way, either in the 2013 Issue Paper or in the conduct of any of the three Strike Forces.<sup>3983</sup>

<sup>3979</sup> Submissions of NSWPF, 28 June 2023, [15], [18], [144], [155], [423] (SCOI.84211).

<sup>3980</sup> For example, Exhibit 6, Tab 513, Statement of John Lehmann, 29 August 2023, [43] (SCOI.85495); Supplementary Submissions of NSWPF, 23 October 2023, [72]–[75] (SCOI.86378).

<sup>3981</sup> Supplementary Submissions of NSWPF, 23 October 2023, [65] (SCOI.86378).

<sup>3982</sup> Supplementary Submissions of NSWPF, 23 October 2023, [76] (SCOI.86378).

<sup>3983</sup> Submissions of NSWPF, 28 June 2023, [15], [135(a)], [139], [153]–[156], [241], [277], [335]–[336], [340], [364], [531], [803], [817], (SCOI.84211).

- 14.99. Mr Willing’s submissions also included accusations that Counsel Assisting had asserted the existence of a “conspiracy”.<sup>3984</sup> In the October Willing Submissions, Mr Willing contended that while Counsel Assisting did not use the word “conspiracy”, there was a “common thread” of “negative explanations” and “unbecoming law enforcement”.<sup>3985</sup>
- 14.100. In my opinion, Counsel Assisting made no submission, express or implied, of any such “conspiracy”. It was not submitted by Counsel Assisting, nor is it my own view, that the remarkable similarities in outcome of these three Strike Forces, at almost exactly the same time, were the product of a “conspiracy”, much less one stigmatised by words such as “nefarious” (as asserted by the NSWPF).<sup>3986</sup> Accordingly, the gravamen of the submissions by both the NSWPF and Mr Willing is simply misconceived.
- 14.101. The issues, and the currents and cross-currents swirling around them, are more complicated, more subtle, and more nuanced, than that.
- 14.102. The outcome of each of the three strike forces was to discredit (publicly in the cases of Strike Force Macnamir and Strike Force Parrabell, and non-publicly in the case of Strike Force Neiwand) claims that *so many* deaths were or might have been “gay hate” crimes (which claims carried with them, explicitly or implicitly, the corollary that police had not investigated some or many of those deaths satisfactorily).
- 14.103. Those outcomes reflected, in different but consistent ways, the views expressed by Mr Lehmann and Ms Young in the 2013 Issue Paper: that “the suggestion of 30 ‘gay hate’ related unsolved murders is a gross exaggeration”, and that the media criticism of the police for their approach to those cases was irresponsible and sensationalist.
- 14.104. As Counsel Assisting submitted, perhaps this was merely a coincidence. Perhaps each Strike Force came to its conclusions independently. Perhaps this similarity of outcomes was “an artefact of the reproductive power of police culture”.<sup>3987</sup> Perhaps it was an indication that the “company line” on LGBTIQ bias crime deaths was so well-known that it did not need to be said.<sup>3988</sup> All of those are possible explanations.

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<sup>3984</sup> Submissions of Michael Willing, 28 June 2023, [19], [20] (SCOI.84210).

<sup>3985</sup> Supplementary Submissions of Michael Willing, 23 October 2023, [422]–[425] (SCOI.86377).

<sup>3986</sup> Submissions of NSWPF, 28 June 2023, [18] (SCOI.84211).

<sup>3987</sup> Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023, [143]–[144] (SCOI.82368.00001).

<sup>3988</sup> Submissions of Counsel Assisting, 7 June 2023, [637] (SCOI.84380).

- 14.105. Certainly there were differences in approach. For example, as observed in **Chapter 13**, the Parrabell Report was at pains to acknowledge the extent of the violence against the LGBTIQ community during the period under review and the role that the NSWPF played in the marginalisation of that community. On the other hand, as Counsel Assisting submitted, the two UHT strike forces adopted a more obviously adversarial approach.
- 14.106. Strike Force Macnamir persisted throughout in propounding the suicide hypothesis in the case of Scott Johnson, and Ms Young saw the Johnson family as “opponents” to be “defeated”.<sup>3989</sup>
- 14.107. Strike Force Neiwand continued, and expanded upon, what had been embarked upon by Strike Force Macnamir (“putting to the test” the Taradale findings).<sup>3990</sup> It did so by devoting its efforts to undermining and discrediting Operation Taradale, the work of Mr Page and the findings of Senior Deputy State Coroner Milledge—and did so unbeknown to Mr Page, to Senior Deputy State Coroner Milledge, to the families of the three deceased men, and to the public.
- 14.108. The NSWPF submitted that there is no adequate foundation on which to conclude that any of the three identified Strike Forces “was designed or intended” to downplay or minimise the incidence of “gay hate” violence. To reason otherwise, it was submitted, would be to rely on “specious inferences”.<sup>3991</sup>
- 14.109. According to the NSWPF, there is an “important distinction” between (on the one hand) a finding that the investigations in Strike Force Neiwand “were narrowly focused and failed to meet their original objectives” and (on the other hand) a conclusion that those investigations were “established and pursued in accordance with an overarching objective... to minimise the prevalence of gay hate homicide”.<sup>3992</sup>
- 14.110. As I have observed, Counsel Assisting did not advance that latter proposition, or any other “conspiracy theory”. To the contrary, Counsel Assisting noted that the reasons for the remarkable convergence of outcomes were opaque.
- 14.111. However, as Senior Counsel Assisting put it in his closing address to the Inquiry, there are some noticeable resonances among the three strike forces.

<sup>3989</sup> Transcript of the Inquiry, 15 May 2023, T3727.45-3728.18 (TRA.00051.00001).

<sup>3990</sup> Exhibit 6, Tab 342, Transcript of recorded interview between Emma Alberici and Detective Chief Inspector Pamela Young in the Lateline Studio, 10 April 2015, 20 (NPL.2017.0004.0549).

<sup>3991</sup> Submissions of NSWPF, 28 June 2023, [241], [333] (SCOI.84211).

<sup>3992</sup> Submissions of NSWPF, 28 June 2023, [364] (SCOI.84211).

- 14.112. All three were directed, at the same time, within the last five to 10 years, at aspects of possible LGBTIQ hate crimes. All three arose in the context of, and to greater or lesser extent as a response to, media publicity about “gay hate murders”. All three arrived at outcomes, at virtually the same time in about 2016–2017, that were remarkably consistent:
- a. Strike Force Macnamir maintained—“absurdly”, in the view of the judge who sentenced Scott Johnson’s killer earlier this year—that the death of Scott Johnson at North Head in 1988 was unlikely to be a homicide at all, and much more likely to be suicide;
  - b. Strike Force Neiwand maintained that the deaths of Mr Warren, Mr Russell and Mr Mattaini, contrary to the explicit findings by Senior Deputy State Coroner Milledge in 2005 after a lengthy inquest, may well not have been “gay hate” murders; and
  - c. Strike Force Parrabell maintained that of the 23 deaths that it regarded as unsolved (of the 86 deaths it considered), not one met the threshold for “evidence of bias crime” and only five were even “suspected” bias crimes.
- 14.113. Thus, in all three strike forces, all of which were still under way as recently as six years ago, there was a convergence of outcomes that had the effect of indicating that the extent of LGBTIQ bias, as a possible factor in all these heavily-publicised deaths of members of the LGBTIQ community, was far less than had been suggested by various interested parties or the media.
- 14.114. This convergence strongly suggests that, even very recently, there appears to have been present, in three separate Strike Forces simultaneously, an attitude of mind which was resistant to acknowledging the extent of the hostility experienced by the LGBTIQ community in the 40 year period under examination in this Inquiry.
- 14.115. If that is so, it is to be regretted, and it may be hoped that the experience of this Inquiry may assist in dispelling such views for all time.
- 14.116. I do not consider, and nor did Counsel Assisting submit, that some crude “conspiracy” existed, or was implemented, within the NSWPF to minimise the number of homicides found to have been motivated by LGBTIQ bias. But I do consider that the NSWPF approached each Strike Force with a similar intention, whether explicitly or implicitly—namely, to respond to and refute adverse publicity, to propound the view that the prevalence of LGBTIQ hate crimes was less than asserted by activists and in the media, and to defend its reputation against the suggestion that it had previously failed to adequately investigate suspected hate crimes against the LGBTIQ community.
- 14.117. Against the backdrop of decades of hostility and prejudice towards the LGBTIQ community in NSW, which is explored elsewhere in this Report and in which the NSWPF played a prominent part, for these three NSWPF Strike Forces apparently to have had such intentions and outcomes, so recently, begs the question as to whether and to what extent such attitudes persist in the present day.



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# **Chapter 15:** **Response of the NSWPF** **to the Inquiry**

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## RESPONSE OF THE NSWPF TO THE INQUIRY

- 15.1. The nature of the Inquiry's work was such that the NSWPF was the primary repository of material relevant to that work. This was obvious both to the Inquiry, and to the NSWPF, at the commencement of the Inquiry.<sup>3993</sup>
- 15.2. The work of the Inquiry was, in large part, reliant on three things. First, the quality of the original police investigation into a death. Secondly, whether the NSWPF had retained documentary and exhibit material. Thirdly, whether the NSWPF was able to produce the totality of that material at all, and in a timely way.
- 15.3. A problem at any of these stages affected the ability of the Inquiry to form a complete evidentiary picture in relation to any given matter. This, in turn, affected the investigative steps and factual findings available to the Inquiry.
- 15.4. Regrettably, the process of obtaining investigative files and other material from the NSWPF was not straightforward. The primary reason for this was the historical legacy of poor record and exhibit management practices concerning unsolved homicides. This topic is dealt with in detail in **Chapter 8**, which concerns the Investigative Practices Hearing.
- 15.5. As is dealt with in the context of many of the individual cases, and in **Chapter 8**, the inability of the NSWPF to produce some relevant material did impact on the findings available in some cases.
- 15.6. In some cases, entire investigative files were not able to be produced. In others, the Inquiry is not in a position to know whether some investigative steps were not taken at all, or were simply not recorded. In many instances it is unclear whether material was lost, destroyed in an authorised manner, or destroyed in an unauthorised manner.
- 15.7. **Chapter 8** of this Report, deals with some of the difficulties encountered by the Inquiry as a consequence of deficiencies in record keeping and exhibit management. That material need not be repeated in this Chapter, although at times reference will be made to aspects of that Chapter.

### Acknowledgement of the work of the NSWPF

- 15.8. Over the course of the Inquiry, the Inquiry issued a total number of 200 summonses on the NSWPF, with the first summons issued on 18 May 2022, and the final summons issued on 7 November 2023.

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<sup>3993</sup> Exhibit 58, Affidavit of Natalie Marsic, 26 June 2023, [13]–[14] (SCOI.84212).

- 15.9. The NSWPF has produced, and Inquiry staff have reviewed, over 100,000 documents. The Inquiry has been made aware of the considerable resources that the NSWPF has expended on responding to these summonses and providing the required material to the Inquiry. On 4 October 2023, Mr Tedeschi KC made the following observations concerning the resources applied by the NSWPF to the Inquiry:<sup>3994</sup>

*Those resources that have been applied have included over 188 summonses - responding to them; over 200 boxes of evidence produced; over 100,000 documents, both electronic and hard copy; the NSW Police have been involved in one form or another with the production of 45 witness statements; we understand that we're now up to something like bearing days that the Commissioner's been represented; there have been separate suspected homicides where there have been documentary tender bundles which have been considered and submissions made; and, Commissioner, to date, the estimated cost to the NSW Police is \$5.2 million*

- 15.10. I also recognise all the other work of the NSWPF and its representatives in the context of this Inquiry, key features of which were summarised by Mr Tedeschi as quoted above. I am grateful for the efforts of all those who assisted with locating and producing the material central to the Inquiry's work and in providing other assistance to the Inquiry. I appreciate that those efforts have been considerable.
- 15.11. I also wish to make abundantly clear that, in respect of any criticism which follows, I do not, nor do I intend to, make any criticism about the work and dedication of the counsel, external lawyers and lawyers within the Office of General Counsel. I am sure they have acted at all relevant times on instructions.

## The extensions

- 15.12. The enormity of the task before the Inquiry necessitated two separate applications to the Premier of NSW to extend the Inquiry. The first, sought by letter of 14 March 2023, requested an extension of time from 30 June 2023 to 30 August 2023.<sup>3995</sup> The second extension was sought on 30 June 2023, which extended the Inquiry reporting date from 30 August 2023, until the date that this report is provided to the Governor, being 15 December 2023.<sup>3996</sup>
- 15.13. As at March 2023, the Inquiry understood that it had received all of the holdings necessary from the NSWPF and contemplated that all documentary tender hearings may be concluded by May 2023. The extension was necessary due to, amongst other factors, the voluminous material before the Inquiry, and the additional investigative steps which were underway.

<sup>3994</sup> Transcript of the Inquiry, 4 October 2023, T6592.26-39 (TRA.00096.00001).

<sup>3995</sup> Letter from the Inquiry to the Honourable Dominic Perrottet, 14 March 2023 (SCOI.86699).

<sup>3996</sup> Letter from the Inquiry to the Honourable Chris Minns, 30 June 2023 (SCOI.86705).

- 15.14. However, by 30 June 2023, this picture had changed significantly, as is dealt with in more detail below. It became clear that there was an amount—and perhaps a substantial amount—of relevant material that had not been previously produced. The outcome of this was twofold: first, this was a matter referred to in the letter to the Premier of 30 June 2023; and secondly, this informed a significant aspect of the questions that eventually formed the basis of the Investigative Practices Hearing.

### The question of resourcing

- 15.15. The question of the NSWPF's response to the Inquiry raises a range of considerations. One of those, which recurs throughout the correspondence and other topics canvassed in this Chapter, is the question of resourcing.
- 15.16. This is a topic which was revisited on a number of occasions, particularly by reference to the resourcing of the UHT. A number of key statements from the correspondence concerning this issue are set out below.
- 15.17. Given the way in which this issue evolved over the course of the Inquiry, it is apt to commence this Chapter by referring to the submissions of Counsel Assisting made in respect of the Investigative Practices Hearing:<sup>3997</sup>

*It is indisputable that there are many demands on the resources of the NSWPF. The question of the appropriate allocation of resources to the UHT is not one that falls within the purview of the Inquiry, and is necessarily a question that raises complex social and policy considerations.*

- 15.18. This submission was subsequently embraced by the NSWPF in correspondence dated 21 September 2023, and in the submissions filed by the NSWPF in relation to Public Hearing 2. In the September letter, the NSWPF acknowledged that:<sup>3998</sup>

*... we acknowledge that the progression of UHT matters since the commencement of the Inquiry, including at the present time, are a consequence of the allocation of resources by the NSWPF.*

- 15.19. I accept that the allocation of resources for the purposes of responding to this Inquiry was a matter for the NSWPF.
- 15.20. However, I observe that, as is clear from **Chapter 8**, the process of responding to summonses from the Inquiry was burdensome in large part due to historical records and exhibit management processes. It is now acknowledged by the NSWPF that the systems used for historical record storage and management were insufficient.<sup>3999</sup>

<sup>3997</sup> Submissions of Counsel Assisting, 15 September 2023, [911] (SCOI.85649).

<sup>3998</sup> Exhibit 63, Tab 3, Letter from NSWPF to the Inquiry, 21 September 2023, 2 (SCOI.85861).

<sup>3999</sup> See remarks made by Mr Tedeschi KC on behalf of the NSWPF, Transcript of the Inquiry, 4 October 2023, T6595.33–6596.11 (TRA.00096.00001).



## The process of locating material for production

- 15.21. Corporate Records is central to the process of the management of records within the NSWPF. Initially, and when the searches concerning Summons NSWPF 1 and 3 were conducted, persons within the NSWPF responsible for compliance understood that Corporate Records would be able to locate all responsive hard copy records.
- 15.22. In an affidavit dated 26 June 2023, Natalie Marsic, the General Counsel of the NSWPF (**NSWPF General Counsel**), explained that following the production of large volumes of hard copy records in answer to the initial summonses issued by the Inquiry in June and August 2022, it became evident in October 2022 that some hard copy records responsive to the summons might be held in unknown locations, including at PACs.<sup>4000</sup>
- 15.23. Evidence received by the Inquiry indicates that since at least 2016 it has been well known at least to a number of senior members of the UHT and to certain other senior members of the NSWPF that there have been serious and ongoing difficulties in locating documentary records and exhibits in unsolved homicide cases.<sup>4001</sup> This is in large part due to historical failures to properly archive and record material. This was, however, not appreciated by those who initially conducted the search for responsive material for this Inquiry.
- 15.24. It subsequently became clear that Corporate Records were not necessarily able to identify all potentially responsive material because in some instances material had not been properly archived and recorded. For Summons NSWPF4 and subsequent summonses, eight steps were taken to locate responsive material:<sup>4002</sup>
- a. Reviewing NSWPF computer systems;
  - b. Liaising with the Corporate Records Team;
  - c. Searches of PACs;
  - d. Conducting searches of the FETS Command;
  - e. Conducting searches of the MEPC;
  - f. Contacting current and former NSWPF officers;
  - g. Contacting the NSW Department of Health; and
  - h. Contacting the Coroners Court.

<sup>4000</sup> Exhibit 58, Affidavit of Natalie Marsic, 26 June 2023, [47] (SCOI.84212).

<sup>4001</sup> Exhibit 51, Tab 6F, Report of Detective Chief Inspector Lehmann, 5 August 2016 (NPL.0100.0018.0001).

<sup>4002</sup> Exhibit 58, Affidavit of Natalie Marsic, 26 June 2023, [46] (SCOI.84212).

- 15.25. The realisation that additional hard copy records of relevance to the Inquiry's Terms of Reference might be held at PACs came about as a consequence of correspondence sent by the Inquiry concerning the paucity of material produced by the NSWPF in relation to Mr Rooney.
- 15.26. As a consequence of this correspondence, the NSWPF identified that hard copy files might be held by the Wollongong PAC. Similar letters were sent to the NSWPF in relation to Mr Currie and Mr Rattanajurathaporn, and this triggered what NSWPF General Counsel described as "PAC sweeps", in which the OGC requested searches be undertaken in PACs across NSW for any responsive material.<sup>4003</sup>
- 15.27. The Inquiry was not informed, at this time, that these PAC sweeps were occurring systematically or generally, although there were references in correspondence from late September to early December 2022 concerning individual matters to physical searches being conducted.<sup>4004</sup>
- 15.28. The PAC sweeps were completed in November 2022 and January 2023, and limited additional material was produced in early 2023.<sup>4005</sup> The first definitive reference to general enquiries being made with PACs is in a letter of 17 February 2023.<sup>4006</sup>
- 15.29. In April 2023, it became apparent to the OGC and UHT teams working on the police response that investigative files may have been centralised and catalogued under other names than the names used to search for documents when first responding to summonses in 2022. As a consequence, the UHT requested that Corporate Records conduct searches which allowed for variations in the name under which things might have been stored.
- 15.30. Those further searches were conducted on 14 June 2023, which resulted in material being located that had not previously been produced in response to summonses 1 and 3.<sup>4007</sup>
- 15.31. In addition, NSWPF General Counsel explained that, on 1 June 2023, a member of the UHT identified boxes of hard copy files in a storage room, responsive to summonses, which had not previously been reviewed and produced. Responsive documents from the files held in that storage room were produced on 25 June 2023.<sup>4008</sup>

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<sup>4003</sup> Exhibit 58, Affidavit of Natalie Marsic, 26 June 2023, [48] (SCOI.84212).

<sup>4004</sup> Exhibit 16, Tab 32, Letter from the Inquiry to NSWPF re enclosures, 23 September 2022 (SCOI.82578); Exhibit 16, Tab 33, Letter from the Inquiry to NSWPF, 25 November 2022 (SCOI.82582); Exhibit 13, Tab 19, Email from Patrick Hodgetts to Enzo Camporeale, 24 October 2022, 2 (SCOI.82312); Exhibit 67, Tab, 4, Email from Patrick Hodgetts to Emily Burstn, 6 December 2022 (SCOI.86414).

<sup>4005</sup> Exhibit 58, Affidavit of Natalie Marsic, 26 June 2023, [52]–[55] (SCOI.84212).

<sup>4006</sup> Exhibit 67, Tab 6, Letter from Katherine Garaty to Enzo Camporeale, 17 February 2023 (NPL.0198.0001.4349).

<sup>4007</sup> Exhibit 58, Affidavit of Natalie Marsic, 26 June 2023, [56]–[57] (SCOI.84212).

<sup>4008</sup> Exhibit 58, Affidavit of Natalie Marsic, 26 June 2023, [58] (SCOI.84212).

- 15.32. I regard it as unacceptable that the Inquiry was not notified contemporaneously of the need for further searches and that it was possible that further material might be produced. I also regard it as unacceptable that this material was not located earlier in time.

### The impact of the problems with production

- 15.33. The problems with historical record-keeping and exhibit management, and the lack of appreciation of these problems at the beginning of the process of production, had an impact on both the Inquiry and the NSWPF. As noted above, it was thought by March 2023 that the Inquiry had received all relevant material. This was not, in fact, the case.
- 15.34. The delayed production of relevant material from the NSWPF hampered and delayed the work of the Inquiry. For example, on 18 May 2022, early in the life of the Inquiry, Summons NSWPF1 (discussed further below) was issued requesting all documents in relation to each of the deaths investigated by Strike Force Parrabell which might fall within Category A (30 persons).
- 15.35. The production deadline was 1 June 2022. The NSWPF produced material in response in tranches, beginning on 8 June 2022 and continuing sporadically thereafter. In mid-June 2023, over a year after the production deadline, the NSWPF produced over 2900 documents in relation to 13 deaths, 7 of which had already proceeded to a public hearing. In many cases, the number of new documents was substantial and their probative value high.
- 15.36. A number of scheduled documentary tender hearings had to be postponed.
- 15.37. In cases which had proceeded to documentary tender, the late production of further material caused significant frustration to the work of the Inquiry. Where the Inquiry had already received submissions of Counsel Assisting the Inquiry, the NSWPF and other interested parties, there was often a need for supplementary submissions.
- 15.38. In some cases, the further NSWPF material produced required the undertaking of additional investigative steps, including forensic testing and conducting private hearings with persons of interest, who were identified for the first time in the materials produced at that late stage.
- 15.39. The Inquiry found it extremely difficult to be satisfied that the NSWPF had produced all the documents the Inquiry had requested. By way of example, by letter dated 15 June 2023, the Inquiry was advised by the NSWPF that all documents in relation to the death of Scott Miller had been produced. However, on 30 June 2023, the Inquiry received material from FASS indicating that the UHT had considered Mr Miller's death in 2010 and requested further forensic testing.
- 15.40. Senior Counsel Assisting the Inquiry, on 4 October 2023, submitted:<sup>4009</sup>

<sup>4009</sup> Transcript of the Inquiry, 4 October 2023, T6586.12–20 (TRA.00096.00001).

*It is fair to say that if those involved in gathering documents responsive to the initial summonses were not aware of the legacies of poor record management practices, they should have been so aware.*

*That they appear not to have been was regrettable and it contributed to the time and cost incurred by the police in responding to summonses.*

- 15.41. I accept this submission. Not only did it contribute to the time and cost incurred by police, it also contributed to the time and cost incurred by the Inquiry. This should not have occurred.
- 15.42. The rest of this Chapter focuses on a chronology and summary of those aspects of the NSWPF's response to the Inquiry which I consider call for comment. This addresses, but is not limited to, the NSWPF. As I explain below, there have been other features of the NSWPF response to this Inquiry that have caused me some concern, many of which might reflect what I describe below as a culture of institutional defensiveness and a resistance to engaging in self-criticism.
- 15.43. This resistance to self-criticism was by no means universal. There were significant occasions—addressed below and elsewhere in this Report—in which NSWPF recognised past institutional failings and took proactive steps, before recommendations had been made, to address matters of concern.

### The expectation that the NSWPF would draw factual matters to the attention of the Inquiry

- 15.44. Given the context and subject matter of this Inquiry, in my view the NSWPF had an obligation to seek to put information or material before the Inquiry which rebutted or qualified facts advanced by Counsel Assisting that the NSWPF considered to be erroneous. It will often be the case, as here, that the NSWPF had matters peculiarly within its own knowledge. Inquiries such as the present should be able to rely upon organisations such as NSWPF to be proactive in candidly informing the Inquiry of matters it is in a unique position to know. This cannot be emphasised enough when time is of the essence.
- 15.45. An example where this did not occur was in relation to the evidence of Mr Crandell. It was assumed by the Inquiry and, it seems, by the NSWPF, that, as the architect and promoter of Strike Force Parrabell, Mr Crandell would have all relevant information about that strike force. It subsequently became clear that this was not correct.
- 15.46. This was discovered, effectively by chance, because Detective Acting Sergeant Bignell was called to give evidence. Detective Acting Sergeant Bignell is a serving NSWPF officer. There was no reason the NSWPF could not have made inquiries with Detective Acting Sergeant Bignell. The failure of the NSWPF to be proactive and discover the true facts wasted public money and time because it led to the Inquiry temporarily proceeding on a factually incorrect basis.

- 15.47. In addition, the failure to speak to Detective Acting Sergeant Bignell had a further consequence. The NSWPF initially said in submissions (emphasis added):<sup>4010</sup>

*In turn, Counsel Assisting **could have called evidence from more junior members of the team** to explore the extent to which they were labouring under any confusion as to what was being asked of them. The absence of such evidence, in circumstances where Counsel Assisting elected not to adduce it, is no basis on which to submit that the Inquiry cannot “have any confidence that all the [Strike Force] Parrabell officers understood and applied all the different variations in the constituent documents, and all the changes to the successive versions of the [B]CIF, in the same way” (cf, CA, [894]).*

- 15.48. It emerged through Mr Bignell’s evidence that most, if not all, of the officers involved did little more than retrieve what they believed to be relevant documents from holdings that could be located. Mr Bignell then conducted the analysis. No adverse findings were sought in the submissions of Counsel Assisting concerning the selection of documents. It was obviously unnecessary to call those who had performed that task. Had the NSWPF proactively made inquiries with Detective Acting Sergeant Bignell to discover the true facts earlier, the NSWPF would have known that the more junior members of the team could not have assisted and, it is to be hoped, would not have made that submission.
- 15.49. It is no answer to assert, as the NSWPF asserted on several occasions, that it was a matter for Counsel Assisting to call witnesses and adduce evidence. Given the unique position of the NSWPF in relation to the subject matter of the Inquiry, that does not absolve the NSWPF of the need to make internal inquiries (including holding conferences with relevant witnesses) to ensure they have sufficient information to assist the Inquiry. I return to this further below.

## Compliance with Practice Guidelines and timeframes set by the Inquiry

### PRACTICE GUIDELINES

- 15.50. The Inquiry issued three Practice Guidelines. Practice Guideline 1 (**PG 1**) concerned Public Hearings. It was issued on 13 September 2022 and amended on 18 July 2023. Practice Guideline 2 (**PG 2**), which was issued on 1 February 2023, concerned non-publication orders. Practice Guideline 3 (**PG 3**), dealing with submissions, was first issued on 7 February 2023, and was revised on 27 February 2023 and 15 May 2023.

<sup>4010</sup> Submissions of NSWPF, 28 June 2023, [894] (SCOI.84211).

- 15.51. The Practice Guidelines were put in place to ensure the orderly progression of the Inquiry's work. There was, unfortunately, frequent non-compliance with the Practice Guidelines. On 3 July 2023, for example, the Inquiry wrote to NSWPF to raise the fact that, contrary to PG 1, the written submissions filed on behalf of the NSWPF referred to documents that had not been tendered.<sup>4011</sup> This failure to comply with PG 1 had to be detected and raised by Inquiry staff.
- 15.52. In addition, on 20 June 2023 a representative of the NSWPF stated in an email to the Inquiry that "the Inquiry ha[d] not notified the Commissioner and other possibly affected parties of any process for procedural fairness be provided to parties against whom adverse findings may be made in the final report (for example the issuing of Notices of Potential Adverse Findings)".<sup>4012</sup> That topic is dealt with at Part C of PG 1. It is unfortunate that representatives of the NSWPF were, in June 2023, unfamiliar with the Practice Guideline issued in September 2022 and of direct relevance to the NSWPF.

### TIMETABLES

- 15.53. **Annexure 6** to this Report comprises a table setting out the summonses issued by the Inquiry to the NSWPF, the date for production, whether an extension was sought (and if so, on what date), and the date of production. This table demonstrates that the NSWPF habitually failed to comply with the timeframes set by the Inquiry, and frequently sought extensions on the due date for production (or after production ought to have occurred). In many instances, the NSWPF did not seek an extension of time at all but failed to comply with by the due date.
- 15.54. This, in turn, affected the ability of Inquiry staff to plan for the management of material to be produced, and the ability of the Inquiry to manage the review of material and progression of cases being considered by the Inquiry. It is an unfortunate reality that slippage in timetables for production is a common feature of litigation involving the production of large volumes of documentary material. However, the real difficulties were created by the NSWPF belatedly requesting extensions, and the failure by the NSWPF to recognise and candidly acknowledge, at the commencement of the Inquiry's work, the legacy of poor historical record-keeping and exhibit management.

<sup>4011</sup> Exhibit 67, Tab 12, Letter from the Inquiry to the NSWPF re Practice Guideline 1, 3 July 2023 (SCOI.86399).

<sup>4012</sup> Exhibit 67, Tab 10, Email correspondence between the Inquiry and NSWPF re procedural fairness, 16–21 June 2023, 1 (SCOI.86410).

## The NSWPF as a model litigant

- 15.55. It was to be expected, in my view, that the NSWPF conduct itself in this Inquiry as a model litigant. Although the Inquiry may not be “litigation”, in my view those bound by the model litigant obligations should observe those obligations in proceedings generally. Those obligations require the NSWPF not to cause unnecessary delay and to “act with complete propriety, fairly and in accordance with the highest professional standards”.<sup>4013</sup> This topic is revisited in the context of the Chapters concerning Public Hearing 2.
- 15.56. I regard the failure to recognise and acknowledge promptly the legacy of poor historical record-keeping and exhibit management as falling short of what is to be expected of a model litigant. I also have concerns that the other matters set out in this Chapter demonstrate conduct by the NSWPF falling short of this standard. In saying this, as I state above, I recognise the hard work and professionalism of counsel, solicitors and others tasked with representing the NSWPF in this Inquiry and make no criticism of them individually.

## The commencement of the Inquiry’s work

### Summons NSWPF1 and NSWPF3

- 15.57. Summonses NSWPF1 and NSWPF3 were the first, and primary, vehicle by which the Inquiry sought to obtain all the requisite documents relating to investigations by the NSWPF of the known deaths that the Inquiry was tasked to report on. Both summonses were in effectively the same terms and specified a non-exhaustive list of ten known forms of police material.
- 15.58. Summons NSWPF1, which was issued on 18 May 2022, related to the list of cases the subject of Category A of the Inquiry’s Terms of Reference which, at the time, pertained to the deaths of 42 persons which were the subject of Strike Force Parrabell. On 25 May 2022, following a review of the Case Summaries for the 88 Strike Force Parrabell cases, this was limited to a total of 30 persons.
- 15.59. Summons NSWPF3, which was issued on 21 July 2022, concerned 28 specified cases which may have fallen within Category B of the Inquiry’s Terms of Reference.
- 15.60. Summons NSWPF1 was issued with a production date of 1 June 2022. The production date of NSWPF3 was 5 August 2022.

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<sup>4013</sup> Exhibit 6, Tab 534, NSW Department of Premier & Cabinet, M2016-03 Model Litigant Policy for Civil Litigation and Guiding Principles for Civil Claims for Child Abuse, cl 3.1 (SCOI.86186).



## Method and timing of production – Summonses NSWPF1 and NSWPF3

### TIMING OF PRODUCTION

- 15.61. Production in respect of Summons NSWPF1 occurred across 18 tranches from 8 June 2022 to 5 July 2023. Production comprised both hardcopy files in boxes and electronic files. For two cases, no material was able to be produced at all.
- 15.62. In respect of Summons NSWPF3, production occurred through 16 tranches of material from 9 August 2022 until 5 July 2023. No hard copy files were produced for two cases, and no electronic files were produced in respect of another.

### METHOD OF PRODUCTION

- 15.63. In her affidavit of 26 June 2023, NSWPF General Counsel detailed the method of production undertaken by the NSWPF in response to NSWPF1 and NSWPF3:<sup>4014</sup>

*For both summons 1 and summons 3 because the Inquiry wished to receive the records urgently, the original hard copy records were provided to the Inquiry and copies of the records were not retained by the NSWPF. My understanding from discussions with the OGC and the UHT teams in preparing this affidavit is that given the volume of material involved, a lengthy period would have been required for the hard copy material to be copied or digitised and this would have delayed the work of the Inquiry.*

*At the time the searches for records responsive to summons 1 and 3 were being conducted, it was the understanding of the OGC team and the UHT officers involved that the UHT's engagement with the CRRIM [NSWPF Corporate Records, Records and Information Management] team would ensure that all responsive hard copy records were identified. As I explain later in this affidavit at paragraphs 47 to 49, that understanding later changed and, as a consequence, further searches for hard copy records were undertaken.*

- 15.64. As is explained above, it came to be appreciated that these steps were not sufficient to locate all relevant material.
- 15.65. By August 2022 it was thought that all relevant material had been produced pursuant to Summonses NSWPF1 and 3. By email of 8 September 2022, a legal representative of the NSWPF stated that “Summonses 1 – 11 have now been complied with in full to date (apart from a number of discrete outstanding items which have been identified to the Inquiry).”<sup>4015</sup>
- 15.66. It later became apparent that this was not the case. The reasons for the difficulties with production are dealt with below.

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<sup>4014</sup> Exhibit 58, Affidavit of Natalie Marsic, 26 June 2023, [43]–[44] (SCOI.84212).

<sup>4015</sup> Exhibit 6, Tab 19, Email from Patrick Hodgetts to Kate Lockery, 8 September 2022 (SCOI.82014).



## A MISSED OPPORTUNITY

- 15.67. In **Chapter 8** it is explained that the evidence before the Inquiry demonstrates that the significant difficulties in locating exhibits and records in relation to unsolved homicides were appreciated within the NSWPF since at least 2016, and should have been thoroughly understood much earlier.
- 15.68. As is set out in that Chapter, it is unfortunate that this reality was not communicated to the Inquiry in mid-2022.
- 15.69. The correspondence from the NSWPF, at times, sought to explain the reason for delays in production—for example, because material was stored in State Archives.<sup>4016</sup> However, the true state of affairs in relation to record-keeping and exhibit management was not appreciable to the Inquiry until mid-2023 when a large amount of additional material was produced, on some occasions shortly before documentary tenders.<sup>4017</sup>
- 15.70. Had this been appreciated earlier, the Inquiry’s plans for the progress of its work could have accommodated an understanding of these historical difficulties and how long it would actually take for all relevant material to be located. It is unfortunate that the NSWPF did not raise this issue expressly with the Inquiry earlier.
- 15.71. It is also incumbent on the NSWPF to ameliorate, to the greatest degree possible, any risk of human error in light of the potential consequences of poor exhibit management practices or record-keeping deficiencies on future investigations or prosecutions. This may be achieved through constant vigilance and the implementation of robust exhibit management procedures, rigorous record-keeping practices, adequate monitoring or oversight and ongoing training. I received evidence at the Investigative Practices Hearing concerning the significant improvements in record and exhibit management procedures.

## Initial correspondence with the NSWPF

- 15.72. As noted above, Summons NSWPF1, which was issued on 18 May 2022, concerned Category A cases.

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<sup>4016</sup> See e.g., Exhibit 11, Tab 82, Email from Patrick Hodgetts to Elizabeth Blomfield, 25 October 2022, 3 (SCOI.82155); Letter from the Inquiry to NSWPF, 19 October 2022, referred to in Exhibit 1 (Relevance Application), Tab 4, Letter from Enzo Camporeale to Natalie Marsic, 21 October 2022 (SCOI.82097); Exhibit 22, Tab 37, Email from Patrick Hodgetts to Elizabeth Blomfield, 18 October 2022 (SCOI.82569).

<sup>4017</sup> Exhibit 56, Tab 113A, Letter from Katherine Garaty to Enzo Camporeale, 21 June 2023 (SCOI.84214); Exhibit 59, Tab 115I, Letter from Katherine Garaty to Enzo Camporeale, 21 June 2023 (SCOI.84109).

- 15.73. Subsequently, in a private hearing held on 6 and 7 June 2022, a senior officer from the UHT gave oral evidence and provided some documents to the Inquiry. While held privately in order to maintain confidentiality concerning the status of any ongoing investigations, the hearing was convened with a view to obtaining information to assist in identifying deaths which may be captured by the Inquiry's Terms of Reference. At no point during the private hearing was I informed of the exhibit and document management issues noted above.
- 15.74. On 10 June 2022 (prior to the issue of Summons NSWPF3) the Inquiry wrote to the NSWPF requesting information concerning matters which might fall within Category B of the Inquiry's Terms of Reference. The process by which Category B cases were identified is set out in detail in **Chapter 6**.
- 15.75. On 7 July 2022, the Inquiry wrote to the NSWPF to follow up certain requests for information and documents, and to confirm that some information was no longer required.<sup>4018</sup> On 18 July 2022, the NSWPF replied to the Inquiry. That reply included the following:<sup>4019</sup>

*It has not been possible to make provision for full-time designated police resources to respond to the requisitions of the Inquiry. We suggest that the exercise of preparing short form case summaries should be undertaken by the team assisting the Inquiry. The Commissioner of Police has not received any funding or additional resources in relation to the Inquiry. Many of the case files for the "undetected" deaths are voluminous. While it is acknowledged that your letter of 7 July 2022 substantially reduces the scope of the work requested, the preparation of summaries in respect of the remaining deaths would likely be a substantial undertaking. In order to complete this task, it may be necessary for the Commissioner to re-allocate significant resources away from ongoing active investigations by the UHT. The precise scope of the task will depend on the amount of material in each of the relevant files. Even accounting for the recent reduction in its scope, the task is likely to be a demanding one.*

- 15.76. On 25 July 2022 the Inquiry sent an email to the NSWPF concerning NSWPF1. By that time, the Inquiry had received 118 boxes of investigative material from the NSWPF. The email noted that no investigative records had been produced in relation to the matters of Mark Stewart, Paul Rath, David Lloyd-Williams, Peter Sheil, Andrew Currie, Russell Payne, Graham Paynter and Brian Walker, and that the records produced in relation to William Rooney and Samantha Raye were "very minimal" and "unlikely to be the complete investigative file."<sup>4020</sup>

<sup>4018</sup> Referred to in Exhibit 1 (Relevance Application), Tab 4, Letter from Enzo Camporeale to Natalie Marsic, 21 October 2022, 12 (SCOI.82097).

<sup>4019</sup> Exhibit 67, Tab 1, Letter from Patrick Hodgetts to James Herrington (SC), 18 July 2022, 2 (SCOI.86394).

<sup>4020</sup> Exhibit 22, Tab 36, Email correspondence between Patrick Hodgetts, Kate Lockery and Elizabeth Blomfield, 25 July–15 September 2022, 5–6 (SCOI.82564).

- 15.77. On 9 August 2022, 125 additional boxes of material were produced to the Inquiry.<sup>4021</sup> The Inquiry made further inquiries concerning the matters of Mark Stewart, Paul Rath and Willian Rooney. There was further correspondence about these matters across August and September, and in relation to the matter of Peter Sheil.
- 15.78. By the end of August, the Inquiry had issued 13 summonses to the NSWPF (NSWPF1-13). Some of these summonses related to information which fell within NSWPF1 or NSWPF3, but which it appeared to the Inquiry had not been produced. For example, NSWPF5 sought specified documents in relation to the death of Mr Allen.

## Summons 12

- 15.79. On 25 August 2022, the Inquiry issued Summons NSWPF12 which sought documents related to Operation Parrabell, Strike Force Parrabell, and the academic review concerning Strike Force Parrabell.
- 15.80. Summons NSWPF12 was initially returnable on 8 September 2022. On 8 September 2022 the NSWPF wrote to the Inquiry indicating that it would not be in a position to produce any material in relation to Summons NSWPF12 and that an email relating to that Summons would be sent the following day, and would include a request for an extension.<sup>4022</sup>
- 15.81. In the email of 8 September 2022, a solicitor for the NSWPF said:<sup>4023</sup>
- We acknowledge the delay in the production of some material in response [to] various summonses, and also acknowledge that extensions in respect of some of the summonses have been sought on or close to the return dates for those Summonses. We will endeavour to ensure that, where it may not be possible to comply with a given summons in the allotted timeframe, that fact is communicated promptly to the Inquiry and, if necessary, an extension is sought at an earlier stage.*
- 15.82. As it transpired, this was not the last example of a regrettable number of instances on which an extension to produce material was requested either on the day production was due, or once the NSWPF was in default of the date for production.
- 15.83. The production of Summons NSWPF12 occurred between 9 September 2022 and 14 February 2023 as follows:
- a. Six documents were produced on 9 September 2022 (relating to items 18-22 of the Summons);

<sup>4021</sup> Exhibit 22, Tab 36, Email correspondence between Patrick Hodgetts, Kate Lockery and Elizabeth Blomfield, 25 July–15 September 2022, 4 (SCOI.82564).

<sup>4022</sup> Exhibit 6, Tab 19, Email from Patrick Hodgetts to Kate Lockery, 8 September 2022 (SCOI.82014).

<sup>4023</sup> Exhibit 6, Tab 19, Email from Patrick Hodgetts to Kate Lockery, 8 September 2022 (SCOI.82014).

- b. 872 documents were produced on 14 September 2022 (relating to items 1-10 of the Summons);
  - c. Two documents were produced on 16 September 2022 (relating to item 14 of the Summons);
  - d. 20 documents were produced on 23 September 2022 (relating to items 11-12 of the Summons);
  - e. 743 documents were produced over 30 September 2022 and 5 and 6 October 2022 (relating to items 1-2 of the Summons);
  - f. Over 2000 documents were erroneously produced on 21 October 2022;
  - g. 55 documents were produced on 9 November 2022 (relating to the Annexure A Schedule described below);
  - h. 271 documents were produced on 18 November 2022 (relating to the Annexure A and B Schedules described below); and
  - i. 18 documents were produced on 14 February 2023.
- 15.84. It is important to observe that the number of documents did not necessarily correlate to the volume of material; sometimes a small number of documents might run to many hundreds of pages.

## September to December 2022

- 15.85. In the period from September to 31 December 2022, the Inquiry issued 37 summonses to the NSWPF (Summonses NSWPF14–50). The Inquiry also corresponded with the NSWPF in relation to issues arising concerning a number of these summonses, including in relation to delays in production or seemingly incomplete production. In addition, the Inquiry corresponded with the NSWPF concerning production in relation to Summons NSWPF12. The following section does not canvass the totality of the correspondence with the NSWPF.
- 15.86. On 21 October 2022, the Inquiry provided the NSWPF with a chronology of the 32 summonses issued, as of that date, noting that the production of many of the summonses had been late and/or incomplete. However, the Inquiry did acknowledge that since the NSWPF letter of 8 September 2022, the NSWPF had helpfully begun to provide advanced notice of expected failure to comply with a production timetable.<sup>4024</sup>

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<sup>4024</sup> Exhibit 1 (Relevance Application), Tab 4, Letter from Enzo Camporeale to Natalie Marsic, 21 October 2022, 2 (SCOI.82097).

15.87. In this letter, the Inquiry requested that the NSWPF provide the Inquiry with the following details:<sup>4025</sup>

1. *Whether the material represents complete or partial production (including, when material is produced in tranches, whether there are further tranches to be produced);*
2. *A clear cross-referencing of the item number and summons to which the material is responsive; and*
3. *An account of the searches undertaken by the NSWPF to locate information, where items sought pursuant to the summons are unable to be produced.*

15.88. In cases where it appeared that material had been lost or destroyed, the Inquiry commenced the practice of requesting a formal letter or statement setting out the searches undertaken to find identified material. The first request was made of the NSWPF in relation to the matter of Currie, in October 2022.<sup>4026</sup> Similar requests continued to be made of the NSWPF in respect of cases where such material had not yet been produced.

15.89. In the letter responding to this request, the NSWPF provided the following information about the searches:<sup>4027</sup>

- *A request to Corporate Records and State Archives to search for any records associated with the name “Andrew Currie”;*
- *Searches of all NSWPF electronic databases for any material associated with the name “Andrew Currie”. Those databases include E@glei, COPS, pre-COPS data, and using KODA (being the “overarching” NSWPF search engine). The only material identified was that contained under the Strike Force Parrabell E@glei file, which has been provided to the Inquiry;*
- *A request was recently made the Northern Beaches Police Area Command (being the Police Area Command that included North Manly, being the location where Mr Currie’s body was found) for a search to be undertaken for any hard copy material held “locally” in relation to the death of Mr Currie. That search has been completed and did not identify any material in relation to the matter.*

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<sup>4025</sup> Exhibit 1 (Relevance Application), Tab 4, Letter from Enzo Camporeale to Natalie Marsic, 21 October 2022, 11 (SCOI.82097).

<sup>4026</sup> Exhibit 13, Tab 18, Letter from Enzo Camporeale to Patrick Hodgetts, 10 October 2022, 2 (SCOI.82186).

<sup>4027</sup> Exhibit 13, Tab 19, Email from Patrick Hodgetts to Enzo Camporeale, 24 October 2022, 2 (SCOI.82312).

- 15.90. As will be discussed further below, this response from the NSWPF did not provide the Inquiry with an understanding of the broader document storage and exhibit issues which plagued NSWPF. Rather, the Inquiry, in this matter as well as in subsequent cases, was provided only with a snapshot, until the full picture became apparent in June 2023.
- 15.91. In a letter to NSWPF of 20 December 2022, a status report of ten summonses—returnable from 5 August 2022 to 16 December 2022—was requested, in which production appeared to be incomplete.<sup>4028</sup> By this stage, the NSWPF had indicated to the Inquiry that further material may be forthcoming, but no explanation was provided about why or how this further material had come to the attention of the NSWPF.

### An issue emerges in relation to NSWPF resourcing

- 15.92. On 18 October 2022, the NSWPF wrote to the Commissioner in relation to its resourcing. That reply included the following:<sup>4029</sup>

*I am instructed that to date, the services of 10 UHT staff have needed to be drawn on to respond to the Summonses, with that work requiring full-time allocation for varying periods. This is because searching through electronic databases to locate information or material responsive to the Summonses and searching large numbers of archive boxes for hard copy responsive material is time intensive. Since late July, three UHT staff have been allocated to the response to the Inquiry full time. Three staff have also been drawn from the Central Metropolitan Region and North West Region to assist with the response to the Inquiry.*

*The effect on the day to day operations of the UHT, and in turn the Homicide Squad, has been significant as those staff are drawn away from their usual day to day tasks. This has on three specific occasions resulted in the stalling of live investigations and “reviews” being conducted by the UHT. If the trend of the number and scope of Summonses being issued is expected to continue or increase without resourcing being properly addressed, it is anticipated that this may result in further delay or suspension of reviews and investigations.*

- 15.93. The concerns held by the Inquiry in relation to this correspondence arose on a number of occasions from this date onwards. As explained above, the NSWPF was necessarily the primary repository of the documents essential to the work of the Inquiry.

<sup>4028</sup> Exhibit 67, Tab 5, Letter from Enzo Camporeale to Katherine Garaty, 20 December 2022 (SCOI.86396).

<sup>4029</sup> Exhibit 1 (Relevance Application), Tab 3, Letter from Natalie Marsic to the Commissioner, 18 October 2023, [5]–[6] (SCOI.82098).

- 15.94. On no occasion has the NSWPF sought to have a summons issued by the Inquiry set aside. This being the case, it can be assumed that the NSWPF did not contest the relevance of the material sought by the Inquiry, and consequently the lawfulness of summonses issued by the Inquiry.<sup>4030</sup>
- 15.95. There is no doubt that responding to requests to the Inquiry for documents and information would necessarily require NSWPF resources to be deployed. However, as is explored in **Chapter 8**, to the extent that this task was burdensome, much of that is attributable to record-keeping and exhibit management within the NSWPF. Similarly, many of the statements requested from the NSWPF were necessary as the Inquiry sought to understand why particular material had not been or could not be produced.
- 15.96. The concern of the Inquiry was that statements like those made in the 18 October 2022 letter, divorced from context, risked creating a sense of grievance in relatives or friends of other persons whose deaths had been referred to the unsolved homicide team. In a directions hearing conducted concerning this issue on 4 October 2023, in relation to statements made by members of the UHT to members of the public (discussed below), Counsel Assisting observed that:<sup>4031</sup>
- Family members have strong and legitimate interests in the progression of their matters within the Unsolved Homicide Team. Their matters are obviously important, as is recognised by the NSW Police Force and by this Inquiry. Great care is appropriate if communications are made which might create a perception that those family members' matters are being deprioritised. That is serious, because it risks creating a sense of grievance or dissatisfaction. It would be highly regrettable if that grievance or dissatisfaction affected their perception of the work of this Inquiry.*
- 15.97. Those submissions, which I accept, were made in the context of communications made to persons other than the Inquiry. Those communications are dealt with below. However, they also capture the nature of the concerns that emerged in October 2022. As was later articulated by the NSWPF, the resources deployed by the NSWPF were a matter for the NSWPF.
- 15.98. On 21 October 2022, the Inquiry wrote to the NSWPF in response to the letter of 18 October 2022. The Inquiry noted that the apparent assertion at [6] was inappropriate and should be withdrawn. The Inquiry further noted that any impact on the work of the UHT is entirely attributable to resourcing decisions taken, or not taken, by the NSWPF.<sup>4032</sup> I observe that the assertions made in the 18 October 2022 letter were never withdrawn.

<sup>4030</sup> An issue arose in respect of Summonses NSWPF170 and 180. No application was made for either Summons to be set aside, but by reason of the way these issues evolved, the Inquiry did not press for the production of some material.

<sup>4031</sup> Transcript of the Inquiry, 4 October 2023, T6588.5–15 (TRA.00096.00001).

<sup>4032</sup> Exhibit 1 (Relevance Application), Tab 4, Letter from Enzo Camporeale to Natalie Marsic, 21 October 2022, 12 (SCOI.82097).

15.99. That letter also indicated that, by reason of the large number of deaths or suspected deaths, and the unique position of the NSWPF in relation to the holding of records relating to those deaths, it is and always was inevitable that a large amount of material would be called for from the NSWPF. That matter was recognised by the NSWPF when the Inquiry was announced.<sup>4033</sup>

15.100. On 1 November 2022, the NSWPF wrote to the Inquiry. In that letter, the NSWPF stated:<sup>4034</sup>

*As you are aware, in response to 32 summonses and other requests for information and material over an approximately 4 month period, the Commissioner of Police has provided a very large number of both hard copy and electronic documents to the Inquiry on a confidential basis. The provision of documents on this basis has been necessary having regard to the volume of material captured by such summonses and requests (much of which was only available in hard copy and stored with State Archives given its age), and the limited time provided by the Inquiry for provision of that material.*

15.101. On 3 November 2022 the Inquiry wrote to the NSWPF in response to the letter of 1 November 2022 and stated:<sup>4035</sup>

*At [1] of your letter, you take issue, in a general sense, with “the limited time provided by the Inquiry for the provision of” material sought by way of summons. In that respect, I reiterate various points made in my letter to you of 21 October 2022 regarding the timeframe for the Inquiry, the importance of the Inquiry to the Parliament and Government of NSW, and the late or incomplete compliance by the NSWPF in respect of many of the summonses issued by the Inquiry.*

15.102. On 2 December 2022, the NSWPF wrote to the Inquiry and noted the following in relation to its resourcing:<sup>4036</sup>

*The Unsolved Homicide Team and the Office of the General Counsel of the NSW Police Force have devoted considerable resources to assisting the Commission’s Inquiries as expeditiously as possible. The material provided by the NSWPF to date includes:*

- a. over 220 boxes of archived materials; and*
- b. approximately 77,000 electronic files.*

*This has necessarily had a substantial impact on police resources; 11 operational police officers, including 7 members of the unsolved homicide team have been called upon to assist in the provision of materials to the*

<sup>4033</sup> Exhibit 58, Affidavit of Natalie Marsic, 26 June 2023, [14] (SCOI.84212).

<sup>4034</sup> Exhibit 67, Tab 2, Letter from Natalie Marsic to Enzo Camporeale, 1 November 2022 (SCOI.86440).

<sup>4035</sup> Exhibit 67, Tab 3, Letter from Enzo Camporeale to Natalie Marsic, 3 November 2022, 2 (SCOI.86395).

<sup>4036</sup> Exhibit 1 (Relevance Application), Tab 5, Letter from Natalie Marsic to the Commissioner, 2 December 2022, [11]–[12] (SCOI.82099).



*Commission. That has necessarily impacted upon their capacity to engage in other investigative tasks. Indeed, we are instructed that approximately 12 UHT investigations and reviews have had to be placed on hold while the relevant officers assist in the context of this Inquiry.*

- 15.103. On 5 December 2022, the Inquiry commenced Public Hearing 2. An objection was made to the tender of some material. In the course of the submissions made on that topic, an exchange occurred between myself and Mr Tedeschi KC, Senior Counsel for the NSWPF, in relation to the production of material and the 2 December letter. In that exchange, I indicated that I wished to publicly reject the assertions by NSWPF General Counsel that the Inquiry had “distracted police from police work they would otherwise be undertaking” (my words, not NSWPF General Counsel’s).<sup>4037</sup> I went on to say:<sup>4038</sup>

*Every summons I have issued, I have exercised a discretion to do so. Not one complaint was made. ... if, in truth - the resources of the NSW Police were so slim or unappreciated, in terms of the quantum, then you should have come to me sooner and you should have asked for time or something else. But to accuse this Commission of either wittingly or even unwittingly deliberately interrupting the proper police work in relation to unsolved homicides is frankly unacceptable. If it is intended to put pressure on this Commission, it's not going to work.*

*If it is intended to be offensive, it worked, because it is offensive and, if I may say so, last time it happened I was very concerned about the tenor of the suggestion, because I asked myself, what on earth am I being told this for? Is it being suggested, as it were, anxious to wound but afraid to strike? Is it being suggested that I have unreasonably issued summonses? If so, nobody's stood up in a courtroom, nobody's stood up before me and said, 'You are interrupting the serious police work that is undertaken.'*

*Now, I regard both of her assertions in that regard as entirely without foundation, because I don't actually know what it is she is intending for me to understand by them.*

- 15.104. On 13 December 2022, Mr Tedeschi KC communicated the following on behalf of the NSWPF and General Counsel for the NSWPF:<sup>4039</sup>

*“Commissioner, the New South Wales Commissioner of Police and her General Counsel have asked me to convey to you their support for this Inquiry that you are conducting and their ongoing willingness to assist and cooperate with your Inquiry to the greatest extent that they can. They would like you to know that every effort has been and will be made to comply as completely and efficiently as possible with any requests for information,*

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<sup>4037</sup> Transcript of the Inquiry, 5 December 2022, T584.29–34 (TRA.00010.00001).

<sup>4038</sup> Transcript of the Inquiry, 5 December 2022, T584.40–585.16 (TRA.00010.00001).

<sup>4039</sup> Transcript of the Inquiry, 13 December 2022, T1134.16–30 (TRA.00016.00001).

*assistance or summonses by you. They understand the importance of your Inquiry and the significance of your report to the LGBTIQ communities and to the community at large.”*

## **The beginning of 2023**

- 15.105. On 23 January 2023 the Inquiry served the first summons of 2023, Summons NSWPF51. Between January and 31 May 2023 the Inquiry served 65 summonses on the NSWPF (Summons NSWPF51-NSWPF115). Once again, a number of these summonses sought material that it appeared to the Inquiry should have been produced earlier but had not been produced, for example because material was referred to in documents that had been produced to the Inquiry.
- 15.106. Over the early part of 2023 the Inquiry continued to correspond with the NSWPF concerning the location of exhibit and documentary material in some cases.
- 15.107. From January to June 2023, the majority of summonses issued by the Inquiry were directed to obtaining exhibits for retesting, and/or specific investigative material. The loss or destruction of exhibits or documentary material is dealt with in the context of the individual cases. However, it is fair to say that the NSWPF were unable to locate a large proportion of the exhibits and documents sought by the Inquiry, which had the effect of limiting avenues for reinvestigation or additional testing, in addition to requiring a significant volume of correspondence between the Inquiry, the NSWPF and FASS.

## **June and July 2023**

- 15.108. In June and July 2023, the Inquiry issued 38 summonses to the NSWPF (Summonses NSWPF116–153, 155).
- 15.109. As is set out above, in June 2023 the NSWPF produced additional material in a number of cases before the Inquiry. On five occasions, this necessitated the adjournment of a planned documentary tender. Not only did this disrupt the progress of the work of the Inquiry, it had the capacity to cause additional distress to the friends, family and loved ones of those persons whose deaths were being investigated by the Inquiry through the abrupt adjournment of the planned documentary tenders.
- 15.110. In the case of Mr Malcolm, for example, the Inquiry had understood that it had completed its work and Mr Malcolm’s case could proceed to documentary tender on 15 June 2022. However, on 5 June 2022 the NSWPF produced an additional 1500 pages of material. The documentary tender was adjourned until 22 June 2023. At 4.30pm on 21 June 2023 the NSWPF indicated that “further documents” had been located. Subsequently, an additional 1827 documents were produced. The documentary tender could not proceed.

- 15.111. In other cases, documentary tenders went ahead only because Inquiry staff worked extensively out of hours in order for the tenders to proceed. This should not have been necessary, and was not acceptable. On 22 June 2023, I described the fact that a hearing concerning the late location and production of documents having to take place so many months after the commencement of the Inquiry was “extraordinary”, “intolerable” and “unprofessional”.<sup>4040</sup>
- 15.112. On 15 June 2023 the Inquiry wrote to the NSWPF advising of the need to reschedule the Investigative Practices Hearing, which had been scheduled to commence on 20 June 2023. The correspondence observed that the need to reschedule the Investigative Practices Hearing had come about because of delays in the NSWPF providing material and information requested.<sup>4041</sup>
- 15.113. On 20 June 2023 the NSWPF wrote to the Inquiry. That letter included the following statements:<sup>4042</sup>

*For completeness, we also wish to record that the provision of the statements associated with the Investigative Practices Hearing has occurred during a period of intense activity by the NSWPF in connection with the Inquiry.*

...

*In those circumstances, while every effort was made to comply with the Inquiry’s deadlines, it was not feasible in many cases, necessitating requests for extensions. The requested statements were not (and could not have been) the subject of compulsory orders. Nevertheless, in an effort to assist the Inquiry, the various officers have sought to respond to the Inquiry’s requests in a considered and thorough manner.*

*In the circumstances, the Commissioner of Police considers she has complied with the Inquiry’s requests as efficiently and fulsomely as possible, and will continue to do so.*

*NSWPF’s response to the above tasks has and continues to involve extremely high volumes of work that has seen the extended internal and external teams engaged by the Commissioner working well beyond business hours, 7 days a week (including on public holidays). Often the individuals responsible for completing statements (for example, DI Warren) are the same individuals who are responsible for reviewing documents for responsiveness to summonses and reviewing material for the purpose of considering any applications for NPOs to be pressed by the Commissioner. Many of the other deponents of the statements requested hold very senior positions with the NSWPF with demanding schedules and competing responsibilities, which impacts on their availability to prepare witness statements.*

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<sup>4040</sup> Transcript of the Inquiry, 22 July 2023, T4481.11–33 (TRA.00064.00001).

<sup>4041</sup> Exhibit 67, Tab 7, Letter from Enzo Camporeale to Katherine Garaty, 15 June 2023 (SCOI.86397).

<sup>4042</sup> Exhibit 67, Tab 8, Letter from Natalie Marsic to Enzo Camporeale, 20 June 2023 (SCOI.86441).

*We understand high volumes of work are to be expected in an Inquiry of this scale and are reflective also of a very significant amount of work being undertaken by the Inquiry team. However, the Commissioner of Police's response to the request for statements needs to be considered in the above context.*

- 15.114. This letter expressed disagreement with the proposition that the rescheduling of the Investigative Practices Hearing had occurred as a consequence of delays in the NSWPF providing material and information requested by the Inquiry.
- 15.115. On 21 June 2023 the Inquiry responded to this letter. That correspondence acknowledged that the statements requested could not have been the subject of compulsory process, although the Commissioner could have exercised compulsory powers to compel the attendance of witnesses and the production of documents. It was observed that the process adopted by the Inquiry “has sought to ensure that the NSWPF is on notice of the specific concerns held by the Inquiry, and has the opportunity to put forward a considered and thorough response”.<sup>4043</sup> The letter observed that the Inquiry has frequently accommodated requests for extensions from the NSWPF, and that the question of allocation of resources to respond to the Inquiry is a matter for the NSWPF.<sup>4044</sup>

## Public Hearing 15

- 15.116. On 22 June 2023 the planned documentary tender in Mr Malcolm’s case did not proceed. Rather, Senior Counsel Assisting explained that the scheduled documentary tenders in relation to Mr Malcolm, Mr Allen and Mr Dye had required postponement due to the late production of material.<sup>4045</sup>
- 15.117. At that hearing, the prospect of requiring an appropriately senior lawyer to depose an affidavit addressing issues concerning the production of material was raised. It was suggested by Counsel representing the NSWPF that one of the people undertaking the searches would be the appropriate deponent.<sup>4046</sup> However, I observed:<sup>4047</sup>

*I am going to insist that a lawyer take responsibility, somebody who has professional obligations. That lawyer can, of course, as would be expected, provide information to the Inquiry on information and belief. I'm not expecting for a moment that whoever it might be – and it has to be someone senior; I'm not going to nominate that person but it has to be someone with senior professional responsibilities – I want to know when it was that somebody took notice of how many repositories there might be, how much difficulty there might be and, quite frankly, how much time.*

<sup>4043</sup> Exhibit 67, Tab 9, Letter from Enzo Camporeale to Natalie Marsic, 21 June 2023, 2 (SCOI.86398).

<sup>4044</sup> Exhibit 67, Tab 9, Letter from Enzo Camporeale to Natalie Marsic, 21 June 2023, 1-2 (SCOI.86398).

<sup>4045</sup> Transcript of the Inquiry, 22 June 2023, T4466.14–25 (TRA.00064.00001).

<sup>4046</sup> Transcript of the Inquiry, 22 June 2023, T4482.10–23 (TRA.00064.00001).

<sup>4047</sup> Transcript of the Inquiry, 22 June 2023, T4482.10–23 (TRA.00064.00001).

*It would beggar belief that someone in the legal department of the Police Force has only just recently sat down to work out what might be involved in procuring these records.*

- 15.118. On 22 June 2023 orders were made under s 24 of the SCOI Act requiring a legal representative of the NSWPF to depose an affidavit addressing the following matters:<sup>4048</sup>
- a. Stating whether, in every case that the Inquiry has considered and presented in a documentary tender to date, and in every case the Inquiry is scheduled to proceed to a documentary tender in the coming weeks (as both set out in Annexure A [to the short minutes of order]):
    - i. All searches of all possible holdings and repositories of documents have been conducted and completed; and
    - ii. All documents, exhibits and material called for by every summons issued to date by the Inquiry in these cases have been produced to the Inquiry; and
  - b. Identifying with precision the totality of documents, exhibits and other material considered by officers of Strike Force Parrabell when reviewing each of the cases listed in Annexure B [to the short minutes of order].
- 15.119. On 26 June 2023, the affidavit of NSWPF General Counsel, was served on the Inquiry. Some of the substance of that affidavit has been canvassed above.
- 15.120. NSWPF General Counsel acknowledged in that affidavit that:<sup>4049</sup>
- a. It was recognised immediately on publication of the Inquiry’s Terms of Reference that it would be a significant and high-profile inquiry requiring a substantial involvement from the NSWPF, including by the provision of records, exhibits and information.
  - b. As the Inquiry has progressed, the NSWPF increased both the internal resources dedicated by the NSWPF to the Inquiry and the engagement of external counsel and solicitors.
  - c. She accepted that “notwithstanding a substantial commitment of personnel, resources and time, the NSWPF has not always provided the Inquiry with records that may be relevant to its work in compliance with the timeframes set by the Inquiry”.

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<sup>4048</sup> Exhibit 67, Tab 11, Short Minutes of Order, 22 June 2023 (SCOI.86442).

<sup>4049</sup> Exhibit 58, Affidavit of Natalie Marsic, 26 June 2023, [14]–[16] (SCOI.84212).

- 15.121. NSWPF General Counsel acknowledged in her affidavit that despite, what she described as “comprehensive and wide-ranging searches”, she could not exclude the possibility that there may be some documents relating to the Inquiry’s cases which had not been identified.<sup>4050</sup> She explained:<sup>4051</sup>

*I consider that risk is minimal where records were originally created electronically or where hard copy records have been digitised but that there is a possibility that some potentially relevant hard copy records may not have been identified in the searches that have been conducted (notwithstanding those searches have been very extensive).*

*In particular, in circumstances where many of the hard copy records may be decades old and where historical record keeping practices may have been deficient, I acknowledge there is a possibility that other hard copy records relevant to the cases exist. For example, even if PACs were diligent at all relevant times in centralising their records in a timely fashion (which may not always have been the case particularly in the 1970s and 1980s), it is possible that the police officers at those commands who undertook the archiving may have made errors in labelling and packing the records when providing them to the CRRIM. That would have affected the ability of the CRRIM to accurately identify and catalogue records such that the effectiveness of searches undertaken now of the CRRIM Records Management System may not capture those records. However, given the CRRIM holdings are currently in excess of 300,000 archive boxes I believe it would not be practicable to do more than undertake the targeted searches that have been undertaken to date.*

- 15.122. On 13 July 2023, NSWPF General Counsel gave oral evidence in relation to the searches for documents and provision of documents both generally, and in relation to Strike Force Parrabell. NSWPF General Counsel gave oral evidence that she was aware there could be hard-copy files stored at PACs from the start of the Inquiry, but that she had not been aware that the searches conducted would not have located such material.<sup>4052</sup>

## August to November 2023

- 15.123. Over the course of August to 31 November 2023, 33 summonses were issued to the NSWPF (Summonses NSWPF167, 169–202).
- 15.124. In the first part of this Chapter, there was discussion of statements made in correspondence with the Inquiry to the effect that the need to respond to summonses issued by the Inquiry was taking police officers, and particularly members of the UHT, away from their ordinary duties.

<sup>4050</sup> Exhibit 58, Affidavit of Natalie Marsic, 26 June 2023, [62] (SCOI.84212).

<sup>4051</sup> Exhibit 58, Affidavit of Natalie Marsic, 26 June 2023, [62]–[63] (SCOI.84212).

<sup>4052</sup> Transcript of the Inquiry, 13 July 2023, T5264.12–14 (TRA.00076.00001).

## Correspondence with the NSWPF concerning statements made by members of the UHT concerning the work of the Inquiry

- 15.125. On 22 August 2023 the Inquiry wrote to the NSWPF enclosing Summons NSWPF170.<sup>4053</sup> This Summons sought, relevantly, “[a]ll correspondence including letters, emails, file notes of telephone calls, text messages and other records of communication between members of the NSWPF Unsolved Homicide Team and next of kin or family members of deceased persons which reference the Special Commission of Inquiry into LGBTIQ hate crimes.” (**Category 3**) In addition, it sought information in relation to a matter (not within either Category A or B) being considered by the UHT (**Categories 1 and 2**).<sup>4054</sup>
- 15.126. On 30 August 2023 the NSWPF produced material responsive to Category 3, which is described further below. However, the NSWPF raised concerns about producing the material the subject of Categories 1 and 2. The NSWPF also indicated that there were “no LGBTIQ factors” in relation to the relevant case. The NSWPF asked the Inquiry to confirm whether it pressed for production of material responsive to Categories 1 and 2.<sup>4055</sup>
- 15.127. Material produced to the Inquiry in response to Summons NSWPF170 indicated that in at least four instances an officer of the UHT had informed a relative or next of kin of a deceased person that delays in progressing cases allocated to the UHT were attributable to the impact of the Inquiry’s requests on the resources of the UHT.<sup>4056</sup> This involved a repetition of the type of statements made in late 2022, except in this case these statements were made to the next of kin or relatives of deceased persons, without the knowledge of the Inquiry.
- 15.128. One of the statements that troubled me was made by one officer in the UHT in May 2023. In that correspondence, the officer stated to a family member that the UHT’s investigative capacity had been significantly reduced as a result of the summonses issued by the Inquiry and that the UHT “weren’t able to get additional staffing to help us with these requests”.<sup>4057</sup> This statement was later publicly acknowledged by the NSWPF to be in error.<sup>4058</sup> I stress that, apart from Senior Counsel for the NSWPF acknowledging that the statement was in error, I have not received evidence about the circumstances in which the statement was made. Accordingly, I make no criticism of the officer personally.

<sup>4053</sup> Exhibit 67, Tab 13, Letter from Enzo Camporeale to Patrick Hodgetts enclosing Summons NSWPF170, 22 August 2023 (SCOI.86400).

<sup>4054</sup> Exhibit 63, Tab 4, Summons to NSWPF (NSWPF170), 22 August 2023, 2 (SCOI.85243).

<sup>4055</sup> Exhibit 67, Tab 14, Letter from Katherine Garaty to Enzo Camporeale, 30 August 2023 (SCOI.86418).

<sup>4056</sup> See Exhibit 63, Tabs 5–8 (NPL.0212.0002.0009; NPL.0212.0002.0005; NPL.0212.0002.0006; NPL.0212.0002.0007).

<sup>4057</sup> Exhibit 63, Tab 7, Text messages from Detective Senior Constable Meredith, 25 February 2023–11 July 2023 (NPL.0212.0002.0007).

<sup>4058</sup> Transcript of the Inquiry, 4 October 2023, T6593.8–15 (TRA.00096.00001).

- 15.129. The Inquiry was not, and is not, in a position to understand whether similar statements have been made orally by other NSWPF or UHT officers, or on how many occasions. The concern that arises in relation to statements of this kind is that they risk creating a sense of grievance in interested parties, particularly when those persons do not have an appreciation of the long-standing delays in progressing UHT matters. It may well have been most appropriate for no reference to the reasons for delays to have been made. However, it was not appropriate for these delays to be attributed to the work of the Inquiry.
- 15.130. On 5 September 2023 the Inquiry wrote to the NSWPF in response to the NSWPF’s letter of 30 August 2022, and explained that the communications made by the UHT officers was a matter of grave concern, particularly when much of the burden of responding to summonses was primarily attributable to the unsatisfactory state of records in a significant number of cases before the Inquiry.<sup>4059</sup> Again, I do not criticise these officers personally, who might have an explanation for how they came to make these statements, but the fact that the statements were made was a matter of serious concern.
- 15.131. On 8 September 2023 the NSWPF wrote to the Inquiry indicating that it considered that the material called for under categories 1 and 2 of Summons NSWPF170 fell outside the scope of matters relevant under the Inquiry’s Terms of Reference. The NSWPF invited the Inquiry to “reconsider its position and no longer press for [that material].”<sup>4060</sup>
- 15.132. The letter went on to say, in relation to the Category 3 material (being the UHT communications):<sup>4061</sup>

*We are instructed that the Commissioner considers that the production of these documents in circumstances where the communications relate to matters/cases which were not considered by Strike Force Parrabell and where there are no LGBTIQ hate crime indicators, to be outside of the Inquiry’s Terms of Reference. On this basis, we request confirmation from the Inquiry that this material will not be relied upon or referred to in the final report to be prepared by the Special Commissioner.*

- 15.133. I consider it surprising that the Commissioner of Police decided, unilaterally, to decline to produce documents pursuant to NSWPF170, and I observe that no application was made to set the Summons aside. Nevertheless, on 15 September 2022, the Inquiry responded saying that production of material responsive to Categories 1 and 2 would not be required.<sup>4062</sup>

<sup>4059</sup> Exhibit 63, Tab 1, Letter from the Inquiry to NSWPF, 5 September 2023, 1–2 (SCOI.85860).

<sup>4060</sup> Exhibit 67, Tab 15, Letter from NSWPF to the Inquiry, 8 September 2023, 1-2 (SCOI.86401).

<sup>4061</sup> Exhibit 67, Tab 15, Letter from NSWPF to the Inquiry, 8 September 2023, 2(SCOI.86401).

<sup>4062</sup> Exhibit 63, Tab 2, Letter from the Inquiry to NSWPF, 15 September 2023, 4 (SCOI.85748).



- 15.134. By this stage, the Inquiry had determined to canvass the issues arising in relation to the statement made by members of the UHT in a public hearing. I declined to provide the assurance sought by the NSWPF in respect of the Category 3 communications, given their very real relevance to the work of the Inquiry. Those communications were ultimately tendered at the directions hearing held on 4 October 2023.<sup>4063</sup>
- 15.135. By letter dated 21 September 2023, the NSWPF made the following statements:<sup>4064</sup>

*With respect to your references to the letters from this office sent to the Inquiry on 18 July 2022, 18 October 2022 and 2 December 2022 respectively, we respectfully submit that the content of those letters represented an accurate assessment of the resourcing constraints confronting the NSWPF (in particular the Homicide Squad and Unsolved Homicide Team (UHT)) at the time those letters were sent.*

*Your letter also refers to the assurance provided at the public hearing on 13 December 2022 by Mr Tedeschi KC (on behalf of the Commissioner of the NSWPF and myself) regarding the ongoing willingness of the NSWPF to assist the Inquiry and to cooperate with the Inquiry in every way we are able to.*

*This assurance to the Inquiry was, and continues to be, reflective of the attitude of the Commissioner of the NSWPF and myself. We re-iterate that it continues to be the intention of the NSWPF to assist the Inquiry and cooperate with it in every appropriate way. The allocation of very significant internal and external resources to meet the needs and requirements of the Inquiry (as detailed in my affidavit of 26 June 2023 (Affidavit) demonstrates the NSWPF's support for the Inquiry. That cooperation and support has continued since this assurance was provided by Mr Tedeschi KC. It continues to this day.*

*As to the observations contained in your letter concerning my Affidavit and the evidence given during the course of the public hearing on 13 July 2023, it is true that the NSWPF has made extensive arrangements to ensure that adequate and devoted resources are in place (including police officers, internal legal officers and external lawyers) to respond to requests from the Inquiry for documents, exhibits, statements and information.*

...

*We further do not accept the imputations that the statements made by members of the UHT are inconsistent with the NSWPF's professed support for the work of the Inquiry. Nor do we accept that the statements touch on whether or not the Inquiry is operating within its Terms of*

<sup>4063</sup> See Exhibit 63, Tabs 5–8 (NPL.0212.0002.0009; NPL.0212.0002.0005; NPL.0212.0002.0006; NPL.0212.0002.0007).

<sup>4064</sup> Exhibit 63, Tab 3, Letter from Patrick Hodgetts to Enzo Camporeale, 21 September 2023, 1–2 (SCOI.85861).

*Reference. If anything, statements of the kind you refer to would convey the impression to an objective bystander that the NSWPF is fully supportive of the Inquiry, to the extent that it has redirected its resources so as to ensure that the requirements of the Inquiry are met as efficiently as possible.*

*Whether the statement made by members of the UHT were authorised by their supervisors or the Commissioner of the NSWPF is, in our respectful submission, not a matter for the Inquiry; the internal resourcing considerations of the NSWPF and the communications members of the NSWPF have with interested parties in respect of investigations that are not the subject of the Inquiry's work are not within the Inquiry's Terms of Reference.*

...

*To address the Inquiry's concern, we acknowledge that the progression of UHT matters since the commencement of the Inquiry, including at the present time, are a consequence of the allocation of resources by the NSWPF. We confirm that UHT officers will be advised within the next 48 hours that they are not to mention the work they are performing for the Inquiry in the context of any communication they have with families or next of kin related to other UHT investigations.*

- 15.136. A short public hearing in relation to these statements was held on 4 October 2023. At that directions hearing, the relevant communications were placed on the public record. Senior Counsel Assisting the Inquiry stated:<sup>4065</sup>

*Such communications raise concerns for this Inquiry... Great care is appropriate if communications are made which might create a perception that those family members' matters are being deprioritised.... It would be highly regrettable if [a] grievance or dissatisfaction affected their perception of the work of this Inquiry.*

*The statements made by Unsolved Homicide Team members were also concerning because they present only a partial picture and one which could be regarded as misleading by omission. To the extent that it has been resource intensive to response to summonses by this Inquiry, the evidence indicates that this was due to the state of the NSW Police Force records and to the inadequacy of the Police Force initial response to summonses last year. If members of the public were to be told anything about a connection between this Inquiry's operations and other matters in the Unsolved Homicide Team, this full picture needed to be provided.*

...

<sup>4065</sup> Transcript of the Inquiry, 4 October 2023, T6588.4–35 (TRA.00096.00001).

*A substantial body of evidence before this Inquiry demonstrates that the Unsolved Homicide Team has been experiencing considerable delays in progressing matters and had been prior to the commencement of this Inquiry.*

- 15.137. I accept these submissions. In response, Mr Tedeschi KC, appearing on behalf of the NSWPF, reinforced the NSWPF's support of and commitment to the Inquiry, and stated that:
- a. Detective Superintendent Doherty had provided instructions to the members of the UHT that no further statements of the type that concerned this Inquiry were to be made, and that the importance of this direction, and compliance with it, had been emphasised to the UHT members;<sup>4066</sup>
  - b. The officer I referred to above had made an inadvertent error in informing the family member that no further resources had been allocated to the UHT;<sup>4067</sup> and
  - c. There would be no further statement of this kind made by the UHT.<sup>4068</sup>
- 15.138. I accept these submissions made on behalf of the NSWPF.

### A belated issue arises concerning NSWPF1

- 15.139. A further issue concerning Summons NSWPF1 emerged in the twilight weeks of the Inquiry. That issue had its genesis in the matter of Mr Meek. Following the documentary tender in Mr Meek's case, the Inquiry became aware that the NSW Ombudsman had conducted an inquiry into a complaint made by Mr Meek's daughters concerning the investigation by the NSWPF into Mr Meek's death.
- 15.140. The Inquiry issued a Summons (Summons NSWPF159) to the NSWPF seeking documents concerning this investigation, and documents were produced. These documents were of significant relevance to the question of the efficacy of the NSWPF investigation into Mr Meek's death.
- 15.141. On 26 September 2023 the Inquiry wrote to the NSWPF and asked why the material produced in response to Summons NSWPF159 had not been produced in response to Summons NSWPF1.<sup>4069</sup>
- 15.142. On 3 October 2023 the NSWPF responded to this letter in these terms:<sup>4070</sup>

*The terms of summons NSWPF1 when read in their context are clear. Summons NSWPF1 is directed to documents which were used and/or created by the NSW Police Force (NSWPF) for the purposes of investigating the deaths of the persons listed in Annexure B. This is evident*

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<sup>4066</sup> Transcript of the Inquiry, 4 October 2023, T6593.1–6 (TRA.00096.00001).

<sup>4067</sup> Transcript of the Inquiry, 4 October 2023, T6593.8–15 (TRA.00096.00001).

<sup>4068</sup> Transcript of the Inquiry, 4 October 2023, T6593.17–21 (TRA.00096.00001).

<sup>4069</sup> Exhibit 67, Tab 16, Letter from Enzo Camporeale to Katherine Garaty, 26 September 2023 (SCOI.86402).

<sup>4070</sup> Exhibit 67, Tab 17, Letter from Katherine Garaty to Enzo Camporeale, 3 October 2023 (SCOI.86403).

*by the fact that the category is prefaced by the terms “documents relating to investigations ... of the deaths”, implying that documents which may touch on one of the Persons listed in Annexure B, but are not directed to the investigations of the manner and cause of the deaths, are not captured. The non-exhaustive list of sub-categories of documents that must be produced in answer to the summons also provides important context.*

*Further, when read together, the two categories of documents called for by summons NSWPF1 direct production of investigation files and “other material held or created by” the Unsolved Homicide Squad. On no reasonable reading of the summons was the Commissioner [of the NSWPF] required to interrogate holdings of the Police Standards Commission (PSC) to identify any records held by the PSC relevant to complaints that may have been made by family members and others in relation to one of the Persons listed in Annexure B.*

*For these reasons, the Commissioner [of the NSWPF] reasonably interpreted summons NSWPF1 to include all documents which touched on the investigation into the death of Mr Meek.*

..

*The documents called for by summons NSWPF159 do not relate to the manner and cause of Mr Meek’s death, but rather address records relevant to complaints by family members regarding the conduct of officers involved in that investigation. Such records would be held and created by the PSC and would not be readily identifiable by or readily available to other members of the NSWPF.*

...

*The Commissioner reasonably and appropriately interpreted the scope of summons NSWPF1 by reference to the text of that summons and the Terms of Reference of the Inquiry. To the extent necessary, the Commissioner rejects any assertion, implied or otherwise, that there was a deliberate attempt not to produce documents to the Inquiry in response to summons NSWPF1. Indeed, once a clear and unambiguous request for the Complaint Documents was made, they were provided, subject to the admissibility concerns raised in our letter dated 18 August 2023.*

- 15.143. On 11 October 2023 the Inquiry wrote to the NSWPF indicating the Inquiry’s view that, contrary to the position set out in the NSWPF correspondence, Summons NSWPF1 does not seek documents which were used and/or created for the purposes of investigating the deaths of persons in Annexure B, or “investigation files” (though those categories of documents are undoubtedly within the scope of NSWPF1). Rather, Summons NSWPF1 required the production of all documents *relating to* the investigation by the NSWPF of the deaths of the persons listed in Annexure B to the Summons. The letter noted that the examples contained in sub-paras (a) to (j) are inclusive, and do not confine the language of (1). In addition, the letter observed that the NSWPF has never cavilled with the proposition that the efficacy of NSWPF investigations into the cases being considered by the Inquiry falls within the Inquiry’s Terms of Reference.<sup>4071</sup>
- 15.144. The letter went on to observe that the NSWPF had produced documents concerning internal investigations in the matter of Mr Allen. The letter made the following statements concerning the failure by the NSWPF to communicate the view of the Commissioner of the NSWPF concerning the scope of the Summons.<sup>4072</sup>

*The Inquiry does not accept the position taken by the NSWPF in relation to NSWPF1 is correct. However, it is of further concern to the Inquiry that this position was not communicated by the NSWPF, particularly as the production of documents in Mr Allen’s case suggested the contrary position was taken.*

*The NSWPF is aware, and has now been aware since at least 6 February 2023 (when written submissions were served in relation to the first documentary tender cases) that Counsel Assisting had invited the Commissioner to make findings concerning the investigations conducted by the NSWPF into the cases being considered by the Inquiry.*

*In those circumstances, it could be expected that the NSWPF would either: (a) communicate to the Inquiry that the Commissioner of Police had decided not to produce some documents connected with disciplinary investigations, apparently on the basis that she (or her representatives) formed the view that such documents fell outside NSWPF1 because they did not concern manner and cause of death; or (b) produce the relevant documents.*

<sup>4071</sup> Exhibit 67, Tab 18, Letter from Enzo Camporeale to Patrick Hodgetts enclosing Summons NSWPF159, 11 October 2023, 1–2 (SCOI.86404).

<sup>4072</sup> Exhibit 67, Tab 18, Letter from Enzo Camporeale to Patrick Hodgetts enclosing Summons NSWPF159, 11 October 2023, 2 (SCOI.86404).

- 15.145. The letter indicated my concern that other relevant material may not have been produced. To avert any further contest concerning the scope of Summons NSWPF1, the Inquiry issued a new summons specifically seeking material held by the Professional Standards Command (**PSC**), and material concerning any inquiries or investigations into the NSWPF investigations of cases before the Inquiry (Summons NSWPF197).
- 15.146. On 17 October 2023 the NSWPF responded to the Inquiry's letter of 11 October 2023. That letter identified that material had been located pertaining to Mr Dye's case. It raised some logistical matters concerning the searches that could be conducted in relation to the PSC, including the fact that the searched would be reliant on the deceased's name having been manually entered into a narrative or free text area in the records. The letter asked the Inquiry to provide a list of officers involved in the cases considered by the Inquiry so that searches could be conducted on the basis of their names. The letter went on to say:<sup>4073</sup>

*Historical production in response to NSWPF1*

*At the time of receiving NSWPF1, as explained in our letter of 3 October 2023, the Commissioner [of the NSWPF] considered that the documents caught by NSWPF1 were the investigative materials relating to the relevant deaths. At no stage prior to your correspondence of 26 September and 11 October 2023 did the Commissioner [of the NSWPF] form a view that NSWPF1 might extend to complaints and/or internal investigations regarding the conduct of NSWPF officers.*

*Upon receipt of NSWPF1, our office made enquiries of the Unsolved Homicide Team (UHT) for material responsive to NSWPF1. UHT then retrieved all hard copy investigative materials for the individuals listed in Annexure B to the Schedule of NSWPF1. In an effort to avoid what is likely to have been a delay of many weeks, this material was not reviewed for responsiveness to NSWPF1 and in interests of timely production, was handed over in its entirety to the Inquiry. To the extent that this investigation material contained any disciplinary material, as was the case in the matter of William Allen, at no stage was the Commissioner aware of the existence of such material amongst the investigative materials provided to the Inquiry in hard copy in response to NSWPF1.*

*To the extent that certain material which the Inquiry considers should have been produced in response to NSWPF1 was not produced, the omission of that material was entirely inadvertent. At no stage was the material consciously not placed before the Inquiry. The submission made at [118] of the Commissioner's submissions in Mr Meek's case was referable to the material set out at [76] of Counsel Assisting's submissions and to that contained in the relevant tender bundle. Plainly, those representing the*

<sup>4073</sup> Exhibit 67, Tab 19, Letter from Patrick Hodgetts to Enzo Camporeale, 17 October 2023 (SCOI.86405).

*Commissioner [of the NSWPF] were not aware of any document identifying what was alleged to have been said.*

*We assure the Inquiry that the Commissioner [of the NSWPF] has approached her production to all summonses in good faith and will continue to do so.*

15.147. On 24 October 2023, the Inquiry responded to the NSWPF. Noting the finite time within which the Inquiry must complete its report, and emphasising the late stage at which this issue arose, the Inquiry informed the NSWPF that further steps in relation to the Summons NSWPF197 were not required.<sup>4074</sup>

15.148. However, the Inquiry noted:<sup>4075</sup>

*It is of concern to the Inquiry that the records kept by the NSWPF do not permit the NSWPF to readily identify whether disciplinary action had been taken in the context of an identified matter.*

...

*The failure to produce material held by the Professional Standards Command in response to Summonses NSWPF 1 and 3, or to draw the exclusion of this material to the Inquiry's attention, is a matter that the Commissioner proposes to address in his Final Report.*

*The Commissioner is presently of the view that these events are regrettable and represent another demonstrable deficiency in the ability of the NSWPF to readily locate relevant records in respect of a given investigation. They are also, on one view, consistent with a level of institutional defensiveness, or resistance to criticism, which the Commissioner has had occasion to remark upon at other times during this Inquiry.*

15.149. In their response of 27 October 2023, the NSWPF “strongly rejected” the Inquiry’s interpretation of the actions of the NSWPF. The NSWPF said:<sup>4076</sup>

*Contrary to your letter, disciplinary material of the type provided for in NSWPF197 was not deliberately or consciously “excluded” from the material produced in response to Summonses NSWPF1 and NSWPF3. Material held by the PSC, being documents relating to complaints and / or internal investigations regarding officers of the NSWPF, are not related to investigations into the deaths of the individuals in Annexure B. They are records of a different character to those called for by NSWPF1 and NSWPF3.*

...

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<sup>4074</sup> Exhibit 67, Tab 20, Letter from Enzo Camporeale to Katherine Garaty, 24 October 2023, 1 (SCOI.86406).

<sup>4075</sup> Exhibit 67, Tab 20, Letter from Enzo Camporeale to Katherine Garaty, 24 October 2023, 1 (SCOI.86406).

<sup>4076</sup> Exhibit 67, Tab 21, Letter from Katherine Garaty to Enzo Camporeale, 27 October 2023, 1-2 (SCOI.86407).

*The Inquiry’s criticism, as set out in your most recent letter of 24 October 2023, that the Commissioner [of the NSWPF] has been deficient in her efforts to locate and produce material to the Inquiry and in its commitment and transparency in her dealings with the Inquiry, is unfair and ungrounded for the reasons set out in our letter of 17 October 2023. If it was the Inquiry’s intention to call for material relating to complaints, internal investigations or disciplinary action, this should have been specified in the annexure to the summons (or any summons that could have been issued before NSWPF197) and that the Commissioner [of the NSWPF] should not be unfairly criticised for not producing material that was not called for.*

- 15.150. Further, in respect of the searches which had been undertaken by the PSC, and which the Inquiry sought to be discontinued owing to the time constraints, the NSWPF indicated that the Commissioner of Police rejected the suggestion that the time required to perform searches of PSC material reflected any “deficiency in the ability of the NSWPF to readily locate relevant record”.<sup>4077</sup>

*As directed in your letter of 24 October 2023, we have instructed PSC not to take any further action in regard to the balance of the searches. In light of the extensive list of officers that the PSC was required to consider in order to conduct their searches for material potentially responsive to NSWPF197, the Commissioner rejects the suggestion that the time required to perform such searches reflects any “deficiency in the ability of the NSWPF to readily locate relevant records”.*

- 15.151. In my view, Summonses NSWPF1 and NSWPF3 clearly required production of disciplinary material insofar as that material concerned conduct that occurred during the NSWPF investigations of cases. Such documents are documents relating to investigations by the NSWPF of the relevant deaths.
- 15.152. I accept the statement of the NSWPF in the letter of 17 October 2023 that material was not consciously withheld from the Inquiry. The inference appears to be that nobody turned their mind to the possibility that disciplinary material might be captured by the summons or that PSC might hold relevant material. If so, that is troubling.
- 15.153. I do not suggest that the NSWPF acted other than in good faith in advancing the interpretation of Summonses NSWPF1 and NSWPF3 set out in the letter of 3 October 2023. However, I consider that it should have been apparent to the representatives of the NSWPF, had they turned their mind to this issue, that there was at least a strong argument that this material *was* captured. This view should have been reinforced by the NSWPF’s appreciation that a significant aspect of this Inquiry’s work has been examining the quality of the NSWPF investigations into the relevant deaths. Disciplinary material in relation to those investigations were

<sup>4077</sup> Exhibit 67, Tab 21, Letter from Katherine Garaty to Enzo Camporeale, 27 October 2023, 2 (SCOI.86407).



obviously of significance to the Inquiry, as well as falling within the ordinary meaning of documents “relating to” the relevant investigations.

- 15.154. The failure to produce these documents risked doing a disservice to the public perception of the NSWPF, given that it would improve public confidence to know that investigative oversights and deficiencies had not—at least not in every case—gone uninvestigated by internal branches in the NSWPF at the time. In addition, I reject the submission made in correspondence that s. 170 of the *Police Act 1990* provided a basis for the NSWPF to err on the side of non-production. If there was conscious reasoning of this kind at the time of production, that is another matter that plainly should have been communicated. If there was no conscious reasoning of that kind, the attempt to later rely on s. 170 as a partial justification, even if it were otherwise legitimate, rings hollow.
- 15.155. If the NSWPF took the view such documents did not fall within the summonses, but recognised the possibility that reasonable minds might differ, I consider that this should have been communicated to the Inquiry. As it was, in at least one matter (that of Mr Meek), PSC held material of central relevance to the Inquiry’s work.
- 15.156. By the time the fact that this material had not been produced became clear to the Inquiry, as explained in the correspondence, there was insufficient time for the material to be fairly dealt with. In those circumstances, the Inquiry did not require further searches to be undertaken. The Inquiry should not have been placed in this position.
- 15.157. I am also concerned that it is, apparently, not possible for the NSWPF readily to ascertain whether disciplinary material connected to a particular investigation. I would have thought that material of this nature could be highly significant to, for example, the work of the UHT. It was, in one case before the Inquiry, centrally relevant.

### Gratuitous complaint about trans witnesses

- 15.158. There is a discrete matter that emerged in correspondence with the NSWPF in the course of the Inquiry that warrants comment in this Chapter. It is necessary to refer to the context only obliquely, to avoid disclosing sensitive information about police investigations. In the context of correspondence in relation to NSWPF investigative work, a solicitor for the NSWPF wrote the following:<sup>4078</sup>

*We are instructed that the UHT have encountered a number of difficulties identifying and locating witnesses. Such difficulties may be attributable to the differences between the date of birth and current names of witnesses. We are instructed that those difficulties arise especially when witnesses are transgender.*

<sup>4078</sup> Exhibit 67, Tab 25, Letter from Patrick Hodgetts to Enzo Camporeale, 18 October 2023 (SCOI.86459).

15.159. The Inquiry’s response included the following:<sup>4079</sup>

*The Inquiry is troubled by your instructions that the difficulties in identifying and locating witnesses ‘arise especially when witnesses are transgender’. The possible need to search for people under different names and different genders has been obvious for many years, indeed decades.*

*If the NSWPF does not have adequate systems in place to take this into account, that is a matter of significant concern that warrants comment by the Commissioner in his Final Report. If in fact these systems are in place, then the statement in your letter appears to be gratuitous and calls for an explanation. If that is the case it may also warrant comment in the Final Report, as it would tend to reinforce the importance of the second recommendation sought by Counsel Assisting in the Investigative Practice Hearing submissions: see at [934].*

15.160. As is explained in **Chapter 8**, the second recommendation sought in the Investigative Practices Hearing submissions related to additional mandatory education concerning the LGBTIQ community.

15.161. The letter indicated this was a matter which I considered called for comment in my report.

15.162. The NSWPF responded, setting out non-exhaustively the processes and systems used by the NSWPF to identify and locate witnesses. It is not necessary for me to set these processes out in this section of the report, but I observe that they appear to be appropriate systems and processes for identifying and locating witnesses. The NSWPF concluded the letter as follows:<sup>4080</sup>

*For clarity, these practical difficulties are not exclusive to transgender witnesses. The NSWPF has long been alive to issues relating to persons use of names other than a person’s legal name and has adapted its methods to account for this.*

15.163. I accept what the NSWPF said in the later letter, although I observe that the NSWPF offered no further explanation for having singled out trans witnesses in its earlier letter. That being the case, the instructions given to the author of the earlier letter, that difficulties arise “especially when witnesses are transgender”, appears to have been gratuitous.

15.164. To single out members of the trans community, and appear to complain that they make investigations more difficult, risks perpetuating stigma which can do real harm.

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<sup>4079</sup> Exhibit 67, Tab 26, Letter from Enzo Camporeale to Katherine Garaty, 25 October 2023 (SCOI.86457).

<sup>4080</sup> Exhibit 67, Tab 27, Letter from Katherine Garaty to Enzo Camporeale, 1 November 2023 (SCOI.86458).

- 15.165. I accept the submissions of the NSWPF, described elsewhere in this report, that the NSWPF considers that it is of the utmost importance that the NSWPF officers communicate in respectful and inclusive ways. I am sure that the earlier letter was not intended to be hurtful or disrespectful. Nevertheless, the fact that instructions were given to this effect reinforces my conclusion that I should make the proposed recommendation about additional mandatory education concerning the LGBTIQ community.

### Institutional defensiveness

- 15.166. Earlier in this Chapter, I referred to the concept of institutional defensiveness. The question of the appropriateness of the position taken by the NSWPF in relation to some of the individual cases before the Inquiry was canvassed in the Investigative Practices Hearing. I deal with this aspect of the Investigative Practices Hearing here.
- 15.167. Counsel Assisting made submissions concerning what I could infer from the consideration in the Investigative Practices Hearing, and generally, of individual matters before the Inquiry. Counsel Assisting submitted that in a significant number of individual cases before the Inquiry, exhibits or documentary material cannot be accounted for, or has been destroyed.
- 15.168. Counsel Assisting went on to submit at [902]-[908] that:

*As is set out above, in a significant number of individual cases before the Inquiry, exhibits or documentary material cannot be accounted for, or have been destroyed. In several cases, the NSWPF took the position in submissions that, when assessed by reference to the standards of the time, there was no failure to comply with proper police practice. At least in relation to the matters summarised above, those submissions by the NSWPF cannot be sustained having regard to the evidence of the NSWPF's own officers. As indicated, they candidly conceded many occasions on which lost documents, lost exhibits or investigative deficiencies reflected a failure to comply with proper police practice, including judged by the standards of their day.*

*This is a matter for which the NSWPF properly can be the subject of criticism.*

...

*It is disappointing that the position taken by the NSWPF, in the submissions filed in individual cases, frequently failed to accept that particular acts or omissions were inconsistent with proper police practice in circumstances where the NSWPF witnesses later conceded that this was the case. In addition, the NSWPF witnesses frequently made concessions in their oral evidence which went well beyond the evidence they gave in their statements, particularly in relation to matters where the evidence given in their statements was that they were not able to form a view about a particular matter. That was shown not to be the case when their evidence was tested during oral examination.*

- 15.169. The NSWPF submitted that it was important for its position, in regard to each case considered by the Inquiry, to be considered individually and not “reduced to generalisations”.<sup>4081</sup> Whilst the NSWPF acknowledged that it was possible that bias may have played a part in investigative failures observed in some cases, the NSWPF concurred with Counsel Assisting’s submission that there is insufficient evidence to make a positive finding to this effect.<sup>4082</sup>
- 15.170. Regarding the frequency of deviations from proper police practice, the NSWPF reiterated that unsolved homicides cannot be taken as a representative sample of police work. Failures in exhibit management or investigative practice are far more likely to occur in such cases.<sup>4083</sup>
- 15.171. The NSWPF took issue with Counsel Assisting’s characterisation of the position advanced on behalf of the NSWPF, outlined above. The NSWPF submitted that the NSWPF has routinely made significant concessions in relation to apparent failures in investigative practice or exhibit management. Where the NSWPF submitted that such criticism should be approached cautiously given the failure to seek evidence from, or afford procedural fairness to the person subject of the criticism, the NSWPF submitted that this approach was “scarcely unreasonable”.<sup>4084</sup>
- 15.172. In their reply submissions, Counsel Assisting submitted:<sup>4085</sup>

*In relation to [445], we submit that the characterisation of the submissions at [902] and [908] of the CA Submissions as “sweeping generalisations” is not apt. Those submissions are not generalisations, they are submissions referable to a significant number of individual cases, the detail of which is set out in the CA Submissions and in these submissions. In some of the cases referred to above we have acknowledged the force of the NSWPF submissions in relation to specific cases. However, we maintain the bulk of the submissions put about individual cases. In light of those matters, we respectfully maintain the submission at [902] at [908].*

- 15.173. I consider that the NSWPF can be criticised for the position taken in relation to some matters. This criticism obviously does not attach where the NSWPF made submissions that I have accepted, or that properly drew attention to difficulties with the submissions of Counsel Assisting. In their reply submissions, Counsel Assisting acknowledge the force of the NSWPF submissions in relation to some matters initially raised by Counsel Assisting. However, I do consider the NSWPF can be criticised in instances where the submissions made in individual documentary tender cases were later contradicted by their own witnesses.

<sup>4081</sup> Submissions of NSWPF, 10 October 2023, [445],[449] (SCOI.86127).

<sup>4082</sup> Submissions of NSWPF, 10 October 2023, [446] (SCOI.86127).

<sup>4083</sup> Submissions of NSWPF, 10 October 2023, [447] (SCOI.86127).

<sup>4084</sup> Submissions of NSWPF, 10 October 2023, [448] (SCOI.86127).

<sup>4085</sup> Submissions of Counsel Assisting in reply, 19 October 2023, [126] (SCOI.86354).

- 15.174. The NSWPF (then the NSW Police Service) has been criticised on previous occasions, notably in the context of the Royal Commission into the NSWPF between 1994–1997 (**the Wood Royal Commission**). In its final report, delivered on 15 May 1997, the NSWPF was criticised for its defensive attitude and tendency towards a “siege mentality” and “adversarial position to anyone who is not a police officer or who challenges police activity”.<sup>4086</sup>
- 15.175. In particular, the Wood Royal Commission observed that the motivations behind institutional defensiveness among the senior ranks of the police tends towards “altruistic notions of maintaining moral and protecting the reputation” of the NSWPF, at the expense of addressing problems or admitting to mistakes.<sup>4087</sup>
- 15.176. This characteristic of institutional defensiveness does not appear to be peculiar to the NSWPF and has been observed in other jurisdictions.<sup>4088</sup>
- 15.177. In fairness, the NSWPF on many occasions in this Inquiry has—sometimes promptly, sometimes eventually—acknowledged past failures and mistakes. To my observation, this constructive attitude became more evident in NSWPF submissions as the Inquiry progressed. I have noted where these acknowledgments have occurred in relevant sections of this Report. Nevertheless, the behaviours observed by Baroness Casey have been evident in some of the ways in which the NSWPF responded to this Inquiry, including many of the matters set out in this Chapter. It is to be earnestly hoped that one outcome of this Inquiry will be the NSWPF embracing and learning from its mistakes.

## Engagement of the NSWPF with the LGBTIQ community

- 15.178. Over the course of the Inquiry, the NSWPF has provided many documents which are relevant to the engagement of the NSWPF with the LGBTIQ community. This material has largely been referred to by the Inquiry in the context of specific matters or topics, and the Inquiry has not engaged in a broad-ranging consideration of the NSWPF’s current approach to the LGBTIQ community.
- 15.179. The question of how the NSWPF has engaged and will engage with the LGBTIQ community has been an important aspect of the Inquiry’s consideration of the cases before it, the NSWPF’s investigative practices, and the recommendations that may be appropriate. However, I have not received evidence that addresses holistically the NSWPF’s current relationship with the LGBTIQ community, and with its LGBTIQ employees. Those matters are beyond my Terms of Reference, and I have not made findings or drawn inferences about those wider matters.

<sup>4086</sup> Royal Commission into the NSW Police Force, Final Report, Volume 1, [1.45], [2.20], [6.15].

<sup>4087</sup> Royal Commission into the NSW Police Force, Final Report, Volume 1, [2.46], [4.186].

<sup>4088</sup> Exhibit 67, Tab 24, Baroness Casey, *An Independent Review into the Standards of Behaviour and Internal Culture of the Metropolitan Police Service* (Final Report, March 2023) 13 (SCOI.86613); Gloria J Epstein, *Missing and Missed: Report of the Independent Civilian Review into Missing Person Investigations* (Final Report, 13 April 2021) Volume I, 4.; Gloria J Epstein, *Missing and Missed: Report of the Independent Civilian Review into Missing Person Investigations* (Final Report, 23 April 2021), Volume IV, 871-872.

- 15.180. Having regard to the evidence I have received, and to the context of the Report, it is appropriate both to record observations made by the NSWPF concerning the Inquiry, and to make some comments concerning the relationship between the NSWPF and the LGBTIQ community going forward.
- 15.181. In a letter to the Inquiry of 7 November 2023, the Office of General Counsel conveyed the following sentiments on behalf of the NSWPF:<sup>4089</sup>

*For decades, sexuality and gender diverse people in NSW have been subject to violent crimes driven by prejudice and hate. In particular, from the 1970s to the 1990s, large numbers of people were attacked for no reason other than their sexuality – or what the attacker perceived their sexuality to be. Many people died as a result of such violence. Some of those deaths remained unsolved, decades after they occurred.*

*The establishment of a judicial inquiry to reinvestigate such deaths had been called for by a range of LGBTIQ community organisations as well as sexuality and gender diverse people in their individual capacities.*

*The Inquiry has provided a valuable opportunity to further explore these deaths with the aid of compulsory powers that would not otherwise have been available to the NSWPF. The significant resources invested into the Inquiry, and the substantial efforts of its staff, have allowed a more detailed exploration of these cases than would otherwise have been possible.*

*That exploration has also facilitated consideration of the historical and current investigative practices of the NSWPF, particularly in unsolved homicide investigations.*

*The Commissioner [of the NSWPF] acknowledges the violence and discrimination suffered by members of the LGBTIQ community, and the NSWPF's historical failure to respond adequately to that violence and discrimination. Of particular importance, well into the 1990s, the NSWPF failed to create an environment where sexuality and gender diverse people felt able to safely report the true extent of the violence they suffered.*

*From the time of the establishment of an informal gay-liaison capacity in 1985, the NSWPF has sought to improve its relationship with members of the LGBTIQ community, including by demonstrating that violence against LGBTIQ persons is treated with the utmost seriousness. Those efforts have been redoubled in recent years with the continued development of the Gay and Lesbian Liaison Officer network; the development of a Sexuality, Gender Diversity and Intersex corporate sponsorship, overseen at the Assistant Commissioner level; the provision of mandatory LGBTIQ awareness and inclusion training to NSWPF officers and*

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<sup>4089</sup> Exhibit 67, Tab 23, Letter from Katherine Garaty to Enzo Camporeale, 7 November 2023, 1 (SCOI.86612).

*recruits; significant enhancements to community engagement; and a variety of 'on the ground' community policing measures.*

*Consistent with such initiatives, the culture within the NSWPF (and society more broadly) has progressed very significantly; members of the LGBTIQ community now openly serve in the NSWPF, march in uniform during the annual Maridi Gras parade, and actively participate in initiatives such as the Wear It Purple Day.*

*The Commissioner [of the NSWPF] looks forward to considering the Inquiry's report, and to reviewing the evidence gathered by the Inquiry in its private hearings with a view to exploring whether further progress can be made in relation to the cases investigated by the Inquiry.*

*Violence driven by prejudice and hate is among the most pernicious forms of criminal conduct. The NSWPF will continue to strive, at every turn, to prevent such violence and to respond effectively when it occurs.*

- 15.182. In 2014, Victoria Police engaged the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) to complete an independent review into sex discrimination and sexual harassment within Victoria Police.<sup>4090</sup> Although the review was initially focused on sex discrimination and sexual harassment, it later expanded to encompass the experiences of LGBTIQ employees and led to the production of a report called *Proud, Visible and Safe*.<sup>4091</sup> In addition to the initial report in 2015, VEOHRC audited the implementation of the initial recommendations in 2017 and 2019.<sup>4092</sup>

### The value of an independent review

- 15.183. The evidence before the Inquiry concerning historical attitudes to the LGBTIQ community, the problems with historical investigation, exhibit management and record-keeping and the paucity of the education available to officers concerning the LGBTIQ community give me reason to think that an independent review of the NSWPF focused upon the NSWPF's institutional approach to the LGBTIQ community (and its LGBTIQ employees) would be of significant value.
- 15.184. On 31 October 2023 the Inquiry wrote to the NSWPF indicating that the Commissioner was considering making a recommendation that the NSWPF give consideration to commissioning an independent review of its institutional approach to the LGBTIQ community (including its LGBTIQ employees). The letter drew attention to the VEOHRC review.<sup>4093</sup>

<sup>4090</sup> Victorian Equal Opportunity and Human Rights Commission, 'The scope of the review', *Independent review of Victoria police* (Web Page) <<https://www.humanrights.vic.gov.au/legal-and-policy/research-reviews-and-investigations/police-review/>>.

<sup>4091</sup> Victorian Equal Opportunity and Human Rights Commission, "Proud, Visible and Safe – May 2019" (Web Page, May 2019) <<https://www.humanrights.vic.gov.au/resources/proud-visible-safe-may-2019>>.

<sup>4092</sup> Victorian Equal Opportunity and Human Rights Commission, 'The scope of the review', *Independent review of Victoria police* (Web Page) <<https://www.humanrights.vic.gov.au/legal-and-policy/research-reviews-and-investigations/police-review/>>.

<sup>4093</sup> Exhibit 67, Tab 22, Letter from Enzo Camporeale to Katherine Garaty, 31 October 2023 (SCOI.86616).

15.185. On 7 November 2023 the NSWPF responded, saying:<sup>4094</sup>

*The need for such an independent review, the appropriate scope of such a review, the identity of potential reviewer/s, and the process by which any review should be undertaken will need to be the subject of detailed consideration by the Commissioner of Police (Commissioner) in due course.*

*In that respect, it is appropriate to observe that, in view of its Terms of Reference, the Inquiry has not engaged in a broad-ranging consideration of the NSW Police Force's (NSWPF's) current approach to the LGBTIQ community. In particular, it has not examined the NSWPF's approach to its sexuality and gender diverse employees; with the exception of Detective Acting Sergeant Cameron Bignell, the Inquiry has not received evidence from any of the many members of the LGBTIQ community who presently serve in the NSWPF.*

*The Inquiry has received evidence from Assistant Commissioner Anthony Cooke, the Corporate Sponsor for the Sexuality, Gender Diversity and Intersex portfolio within the NSWPF. AC Cooke's evidence details some of the many initiatives undertaken by the NSWPF to foster positive relationships between the NSWPF and members of the LGBTIQ community, as well as to create an inclusive and supportive workplace for sexuality and gender diverse persons. AC Cooke, however, has not been called to give evidence, and those initiatives have not been explored in detail.*

*Should the Inquiry determine that a recommendation of the type foreshadowed is appropriate, the Commissioner will engage in a careful consideration of the need for a review, and the appropriate scope for it. That consideration will be informed by the NSWPF's ongoing commitment to fostering an inclusive workplace and contributing to a community in which sexuality and gender diverse people feel safe and supported.*

15.186. As noted above, it is correct to say that I have not conducted a broad-ranging consideration of the NSWPF's approach to the LGBTIQ community, although I have received some evidence on that topic. However, the evidence I have received suggests to me that a review of this kind is appropriate.

15.187. The NSWPF has an important role to play in the life of NSW. People from all backgrounds, walks of life and parts of society should believe that they can approach police and be met with respect and professionalism. I am concerned that the lack of any sustained or decisive action (overseen by people or groups independent to the NSWPF) suggests that the magnitude of the historical problem, and the harm it has done to the LGBTIQ community, has not been adequately understood and acknowledged by the NSWPF.

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<sup>4094</sup> Exhibit 67, Tab 23, Letter from Katherine Garaty to Enzo Camporeale, 7 November 2023, 1 (SCOI.86612).



- 15.188. I am satisfied that the NSWPF has taken steps towards engaging more productively and respectfully with the LGBTIQ community, and that many within the NSWPF are making a genuine and significant effort to address the wrongs of the past. However, it appears to me, from the evidence I have received, including that of Assistant Commissioner Cooke, that these efforts have not occurred in the context of any overarching or holistic plan that accounts for both the historical problem of the NSWPF's interactions with the LGBTIQ community, and the need for engagement to be consistent and continuous.
- 15.189. I note also the recent correspondence with the Inquiry, referred to above, which included a gratuitous remark about trans witnesses, and to the inappropriate language appearing on some UHT review forms. This amplifies my view that a review to identify any gaps in present education and practice, or opportunities for improvement, is likely to be a constructive exercise. It would also, in my view, be a valuable signal to the LGBTIQ community, particularly following from some of the findings of this Inquiry, that the NSWPF is committed to not only acknowledging the problems of the past, but actively committing to a better future.
- 15.190. I accept that, having regard to the Terms of Reference and to the limitations in the evidence I have received, that consideration would need to be given by the NSWPF to the scope of such a review, and to matters such as an appropriate reviewer. However, it is my hope that consideration given by the NSWPF to this course of action will result in a tangible outcome showing a commitment to progress. I consider that the VEOHRC review is a valuable example of a review which combined independent oversight with ongoing oversight of the implementation of its recommendations. I urge the NSWPF to commit to such a review.



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# Chapter 16: Concluding Remarks

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## CONCLUDING REMARKS

- 16.1. In the Executive Summary, I referred to a number of recommendations arising from aspects of the Inquiry's work. The recommendations I have made can broadly be divided into two categories. First, recommendations arising from the Investigative Practices Hearing, and second, the Category A and B deaths considered by the Inquiry. These recommendations are primarily directed to the NSWPF. I also make some observations below, which are directed primarily to the NSW Government, and emerge from the evidence received by the Inquiry in its totality, including in the Context Hearing.
- 16.2. In considering the number and scope of recommendations, it is appropriate to be mindful that significant aspects of this Report address historical matters, including attitudes, behaviours and practices that have been substantially improved upon in the intervening years. That is one reason why there are fewer recommendations than might ordinarily be expected of a Report of this size. In a key area where a large number of recommendations would otherwise have been appropriate—that of record and exhibit management—I received evidence from the NSWPF that indicated that many steps I would have recommended have already been implemented.
- 16.3. In this Chapter, I make further observations arising out of the work of the Inquiry, which I consider to be of wider significance.

### ACON's *In Pursuit of Truth and Justice* Report and recommendations arising from the Parliamentary Inquiry

- 16.4. A number of recommendations were previously made in both the *Parliamentary Committee Final Report* and the *In Pursuit of Truth and Justice* Report.
- 16.5. All of the recommendations made in the *Parliamentary Committee Final Report* were supported by the NSWPF, and on 4 November 2021 a brief response from the Government was tabled in Parliament setting out the progress in implementing those recommendations. The first of those recommendations resulted in this Inquiry.
- 16.6. In relation to the balance of those recommendations, I do not have evidence before me concerning the ongoing implementation of those recommendations. However, having regard to the evidence I have received, I encourage that the ongoing implementation of those recommendations be reviewed.
- 16.7. I understand, from discussions between Inquiry staff and ACON, that the recommendations from the *In Pursuit of Truth and Justice* Report have not been taken forward in any formal way. Many of those recommendations, while they raise important matters, fall in whole or in part outside my Terms of Reference (I return to the question of an acknowledgement or apology by the NSWPF below).

- 16.8. Having regard to the evidence I have received, I suggest the NSW Government consider establishing a working group to consider both the ongoing implementation of the recommendations in the *Parliamentary Inquiry Final Report*, and the recommendations in the *In Pursuit of Truth and Justice* Report. Such a working group should include or consult with members of LGBTIQ organisations, and I consider that this working group should report publicly concerning the progress made on the recommendations in the *Parliamentary Inquiry Final Report* and on whether or not, and how, the recommendations in the *In Pursuit of Truth and Justice* Report should or will be implemented.

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

- 16.9. The Inquiry received a submission on behalf of The Gender Centre and the Sex Workers Outreach Project (**SWOP**), in the form of a report entitled *Speaking Out Against Anti-Trans Violence: A Call For Justice (A Call For Justice)*. I take this opportunity to again thank all those involved in this submission, and to acknowledge the courage and generosity of those who shared their stories in *A Call For Justice*.
- 16.10. *A Call For Justice* contains a number of proposed recommendations. Most of those recommendations—and I say this without any criticism of the report—fall outside the scope of recommendations I could make having regard to the Inquiry’s Terms of Reference. The fact that I do not feel able to make a recommendation, however, is not an adjudication on the merit of that recommendation.
- 16.11. I consider that these recommendations should all receive careful consideration by the NSW Government. It may be that the working group I have referred to above could also consider these recommendations. I think it is appropriate that the outcome of that consideration be recorded publicly, so that SWOP, The Gender Centre, and all those involved in preparing *A Call For Justice* are able to see the outcome of the recommendations they have proposed.

### *An apology*

- 16.12. One of the recommendations of the *In Pursuit of Truth and Justice* Report is an “[a]cknowledgement or a formal apology by the NSW Parliament and/or the NSWPF to the LGBTI community for the inadequate or slow responses to violence throughout this period.” Having regard to the acceptance, before this Inquiry, by the NSWPF, of the inadequacies in the NSWPF’s historical responses to violence against the LGBTIQ community, I do not understand why an appropriate acknowledgement or apology would not be forthcoming.
- 16.13. I have considered whether I should recommend that the NSWPF apologise to the LGBTIQ community. I have not included an apology in my formal recommendations. However, that is not because I do not consider an apology is appropriate. In my view, an apology is not only appropriate, but the absence to date of an apology from the Commissioner of the NSWPF has been extremely difficult to understand.

- 16.14. I have not recommended an apology because I consider that an apology perceived as coming about only because I have recommended it is likely to be of limited value. However, I urge the NSWPF to consider the value of sincerely and unequivocally acknowledging the shortcomings of the past.

### The history of violence against the LGBTIQ community

- 16.15. The history that is recorded in this Report, and the broader history of bias-motivated violence in NSW, is one that should be acknowledged and recorded. There is always a risk that history such as this will fade from—or never truly enter—the broader public consciousness, and even the consciousness of members of the LGBTIQ community who did not live through this period. The history of violence against the LGBTIQ community is an ugly one, but the trauma to and resilience of the LGBTIQ community through that period should have enduring recognition.
- 16.16. Consequently, the history recorded in this Report, and the broader historical context in which it takes place, should be the subject of a comprehensive queer heritage project. When I refer to a “heritage project”, I have in mind both tangible heritage—such as objects, monuments, artifacts and archive materials—and intangible heritage, including knowledge and information visible to and accessible by the community. A heritage project can encompass a range of different elements.
- 16.17. The question of the appropriate form and outcome of such a project is beyond the scope of this Inquiry, but I would suggest that the appropriate persons within the NSW Government collaborate with a diverse range of LGBTIQ organisations, an appropriately qualified historian (or historians), and persons qualified in heritage interpretation. It may be that such a project could be most impactful with additional cooperation from relevant Local Government Areas or Councils, for example through markers or information in locations of significance, which would largely be within the jurisdiction of Local Government. It is important that such a project be driven by the needs and views of the LGBTIQ community.
- 16.18. I am aware that the City of Sydney maintains an online repository of Sydney Oral Histories, and that the Pride History Group has collected over 100 oral history interviews focussed on Sydney’s LGBTIQ history. I consider that an oral history project recording the history of bias-motivated violence against the LGBTIQ community would be of significant value. In circumstances where much of this history may not have been contemporaneously recorded, it is crucial to make resources available so that those who are willing to do so can speak of and record their lived experiences. This work may well be able to build on existing projects by LGBTIQ historians and organisations. This project could also run alongside a project devoted to locating and archiving significant historical material from this period. I am aware of the work of the Australian Queer Archives (AQA), and it may be that collaboration with the AQA would be appropriate in relation to this aspect of any project.

- 16.19. In addition, a map-based digital resource recording LGBTIQ history in Sydney, and in NSW more generally, may be a further valuable way of preserving this information. I am aware of the Queer-ways project in Victoria, which had involved the digital mapping of places of both present and historical significance to the LGBTIQ community. This type of interactive historical record, which has sought contributions from members of the LGBTIQ community, would appear to be a valuable way of mapping LGBTIQ history and allowing individuals to record stories and identify significant locations.

### Aboriginal communities

- 16.20. I have observed elsewhere that there are no known Aboriginal or Torres Strait Islander people amongst the deaths looked at by the Inquiry. I consider that this is an area where resources should be made available to ensure that a history of violence does not go unacknowledged or unexplored.
- 16.21. I observe that Dr Fernando's PhD, which he generously provided to the Inquiry, considers the use of beats by Aboriginal men in Victoria, including during the period of the Terms of Reference. Further, discussions between the Inquiry's staff and one Aboriginal community organisation suggested that violence did occur towards LGBTIQ Aboriginal people. On this basis, I exhort the NSW Government to make resources available to ensure that this history can be acknowledged and recorded. I consider that any such project should be conducted in close conjunction with appropriate community organisations.

### Culturally and linguistically diverse (CALD) communities

- 16.22. The Inquiry has also considered very few cases with CALD victims. It is not possible to make generalisation about CALD communities within NSW, and those communities are evidently not homogenous. Questions of the intersection between culture and membership of the LGBTIQ community may be complex. However, I consider equivalent steps should be taken concerning CALD communities.
- 16.23. I note that I have not, for example, received evidence concerning violence that may have been directed at members of the LGBTIQ community who were the members of some other communities the subject of marginalisation; for example, LGBTIQ people living with disabilities. It may well be that similar projects would be warranted in such circumstances. In singling out the Aboriginal community and CALD communities I should not be understood as suggesting that there are not other communities where bias-motivated violence against LGBTIQ people has not been adequately recognised and recorded to date.

## Looking to the future

- 16.24. The ability to candidly recognise past failings, and commit to a better future, is a sign of institutional strength and integrity. I urge the NSWPF to consider apologising to the LGBTIQ community in a way that does not seek to minimise or qualify the role that the NSWPF played in the harm done to the LGBTIQ community by bias motivated violence. As I explained in the Executive Summary, it is my hope that this Report will provide some solace in the form of institutional accountability and recommendations that may shape future attitudes and responses to the investigation of hate crimes against the LGBTIQ community.

