



## Special Commission of Inquiry into LGBTIQ hate crimes

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### JUDGMENT

24 May 2023

#### Introduction

1. An application is made to the Special Commission of Inquiry into LGBTIQ Hate Crimes (**the Inquiry**) by the Commissioner of NSW Police (**NSW Police**) for pseudonym and non-publication orders in the matter of Walter John Bedser.
2. The process adopted was to invite NSW Police and the solicitors assisting the Inquiry to engage in detailed discussions by way of exchange of submissions in writing. As a result of those discussions, Counsel Assisting and NSW Police have agreed on the scope of a significant number of pseudonym and non-publication orders in this matter. I am satisfied that the proposed orders in relation to the agreed matters are appropriate.
3. One matter not agreed to concerns the redactions proposed by NSW Police in relation to specific descriptive details of the murder weapons which are not publicly available, namely:
  - a. The brand of knife appearing in documents SCOI.82204, SCOI.10058.00103 and SCOI.02913; and
  - b. The description of the handle appearing in SCOI.10058.00018 and SCOI.10058.00103 (together, "**Weapon Details**").
4. The written submissions of Counsel Assisting and NSW Police in relation to the disputed redactions are set out in a document entitled, 'Schedule of Proposed Redactions to Bedser Tender Bundle.' That document indicates that:
  - a. On 14 March 2023, NSW Police provided written submissions in support of the application;
  - b. On 27 March 2023, Counsel Assisting provided written submissions in response; and
  - c. On 18 May 2023, NSW Police provided further written submissions updating its position following further correspondence between NSW Police and the Inquiry.

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5. The application was supported by two affidavits of Detective Inspector Nigel Warren, dated 29 November 2022 and 9 December 2022 respectively.

### Submissions of NSW Police

6. NSW Police makes the following submissions in support of the application. First, NSW Police notes that the Weapon Details were not disclosed to the public at the time of the incident. It is submitted that the design and features of the knife's handle are unique and synonymous with the brand of Mundial. In this way, it is said that the brand and the handle are inextricably linked in identifying the knife.
7. Secondly, NSW Police say that the Weapon Details constitute highly specific information that could only be known to an offender or a legitimate witness. It is claimed that this type of information is precisely the type of information that is likely to be of value to investigators to test the veracity of witness and suspect accounts if not publicly disclosed: see Detective Inspector Warren's affidavits of 29 November 2022 (at [8]) and 9 December 2022 (at [12(a)]).
8. Thirdly, given the historic nature of this matter, it is unlikely that further detailed information will become available for use by NSW Police, making the information currently available particularly valuable and effectively a "finite resource".
9. Fourthly, it is significant that the Weapon Details directly relate to the murder weapon (as opposed to another exhibit). This is significant because: first, details about the weapon are more likely to have been remembered by relevant witnesses or suspects even after a significant length of time; and secondly, any information provided in connection with it by witnesses or suspects is likely to be more useful to investigators because that information may be directly connected with the actions leading to Mr Bedser's death.
10. NSW Police provide a hypothetical example to support this submission. It is claimed that it is possible that an individual watching the Inquiry proceedings may decide to contact Crime Stoppers for the purpose of indicating that they have additional information. If that person was able to provide any of the specific details about the knife in circumstances where the Weapons Details have not been made public, that account would be a credible one.
11. Conversely, if the Weapon Details are made public, NSW Police would then be in a position of having to investigate the information and test the veracity of the account provided. In that case, NSW Police would be forced to rely solely on the admission provided by the person, which may carry less forensic

weight as a result. NSW Police stress that not all individuals who “come forward” provide legitimate information (for example, some individuals in custody may seek a reduction in classification for assistance provided) and it follows that such statements cannot be taken at face value. An inability to verify the accuracy of such a statement or admission would severely limit the value of such evidence, particularly in the context of a criminal trial.

12. Fifthly, it is submitted by NSW Police that the sworn evidence of an experienced homicide detective such as Detective Inspector Warren regarding the use to which this type of information may be put should be preferred over the opinion of Counsel Assisting that the prospect of the information being used in this way is “extremely remote”.
13. Finally, NSW Police draw the Inquiry’s attention to the Inquiry’s Terms of Reference, and note that pursuant to Section E, the Inquiry is required to operate in a manner that avoids prejudice to criminal investigations, criminal prosecutions, and any other contemporaneous inquiries. NSW Police also submit that there is no clear public benefit served by the Inquiry disclosing the Weapon Details.

### Submissions of Counsel Assisting

14. Counsel Assisting opposes the application by NSW Police to redact the Weapon Details. Counsel Assisting maintains that they are not persuaded that disclosure of the Weapon Details will prejudice future investigations for the following reasons.
15. First, Counsel Assisting notes that the description of the weapon as a “long-bladed sheath knife”, “sharp sheath knife”, a “hunting knife” or a “long-bladed hunting knife” appears in media articles from the period.<sup>1</sup> That the knife was bought at a sports shop in the arcade the same day was also published in media articles<sup>2</sup> and discussed at the inquest into the death of Mr Bedser.<sup>3</sup> In those circumstances, Counsel Assisting is of the view that the redactions now sought by NSW Police appear inconsistent with the view of investigating police officers as to the confidentiality of that information at the relevant time.
16. Secondly, Counsel Assisting note that the only information that does not appear to already be public is the brand of the knife (described in SCOI.82204 as a “Sheriff” knife and in SCOI.10058.00103 and SCOI.02913 as a “Mundial” Sheriff’s knife) and the description of the handle as being black with

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<sup>1</sup> See, for example, SCOI.10064.00004, SCOI.10064.00008, SCOI.10064.00006, SCOI.10064.00002.

<sup>2</sup> See, for example, SCOI.10064.00007, Tab 126 SCOI.10064.00006, Tab 127 SCOI.10064.00002.

<sup>3</sup> Tab 8 SCOI.0008.00139 at p. 3.

coloured cords or rings (SCOI.10058.00018 and SCOI.10058.00103). Given that the knife was apparently purchased by the offender only a few hours before the attack, which itself occurred more than 40 years ago, Counsel Assisting regards the notion of that level of detail being able to be reliably used to test the veracity of a suspect's account as remote.

### Consideration

17. I have set out the general principles in relation to non-publication orders at paragraphs 5-19 of the Judgment I handed down on 8 February 2023 (**8 February Judgment**). These principles are not repeated here, save for paragraph 19(c), which is relevant to the matter before me.

18. Paragraph 19(c) states that a non-publication order may be necessary on the basis that publication of the relevant information would:

“cause harm to ongoing and future investigations. Relevantly, Section E of the Terms of Reference requires me “to operate in a way that avoids prejudice to criminal investigations, any current or future criminal prosecutions, and any other contemporaneous inquires.” For example, the courts have made non-publication orders in relation to specific techniques utilised in covert police operations: see, for instance, *R v Fesus (No 2)* (unreported, 15 August 2017, cited in *R v Fesus (No 8)* [2017] NSWSC 1423 at [9]). In my view, in considering whether publication should not occur on the basis that it might cause harm to an investigation, evidence must be presented to the Inquiry that demonstrates an investigation is either active or actively being considered. A future investigation will justify the making of non-publication orders only if it is a realistic prospect. If no such evidence is available, it is difficult to see how the test of “necessity” could be satisfied [...].”

19. As I stated in the 8 February Judgment, a future investigation will justify the making of non-publication orders only if it is a realistic prospect. If no evidence is available that a future investigation is a realistic prospect, the test of “necessity” cannot be satisfied. In this case, there is no evidence that NSW Police are actively considering the reinvestigation of Mr Bedser's death. That is the first reason why I consider that it is not appropriate to redact the Weapon Details.

20. Secondly, although I accept that certain evidence may be used for the purposes outlined in Detective Inspector Warren's affidavits of 29 November 2022 (at [8]) and 9 December 2022 (at [12(a)]), I do not consider that the Weapons Details evidence is useful for these purposes in this case. I am not satisfied that the Weapon Details will have genuine utility for the purpose of testing the veracity of witness and suspect accounts in any future investigation.

21. In this matter, it is almost certain that the knife was purchased in the arcade the morning of the attack. Many of the witnesses involved in this matter are now deceased. There is no evidence anyone saw the knife, apart from a woman who, it is assumed, sold the knife to the offender and who in turn could not give a sufficiently clear description of anyone to enable an arrest or even a person to be interviewed.
22. It must also be kept in mind that Mr Bedser's death occurred more than 40 years ago. As noted above at [16], the only detail that appears not to already be in the public domain is the brand of the knife (described in SCOI.82204 as a "Sheriff" knife and in SCOI.10058.00103 as a "Mundial" Sheriff's knife) and the description of the handle as being black with coloured cords or rings (SCOI.10058.00018 and SCOI.10058.00103). Given that the knife was apparently purchased by the offender only a few hours before the attack, I agree with the assessment of Counsel Assisting that there is only a remote possibility that the Weapon Details will be reliably used to test the veracity of a suspect or witness account.
23. It should also be noted that in this case, the murder weapon and other crime scene exhibits have been lost. It is therefore now not possible to subject them to modern forensic analysis. It is clear that NSW Police ought to have taken steps to ensure that the knife and other exhibits were retained and preserved, including for the purpose of future reinvestigation or forensic testing.
24. Indeed, there may in fact be a public benefit in disclosing the Weapon Details in case the information causes any person observing the proceedings to recall further details about the case.

### Conclusion

25. It follows that I do not consider that the redactions proposed by NSW Police should be made.

The Commissioner

The Honourable Justice John Sackar