



New South Wales

## Special Commission of Inquiry into LGBTIQ hate crimes

### Statement of Stephen John Page

16 February 2023

#### INTRODUCTION

1. This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give to the Special Commission of Inquiry into LGBTIQ Hate Crimes (**Inquiry**) as a witness. The statement is true to the best of my knowledge and belief.

#### BACKGROUND AND PROFESSIONAL QUALIFICATIONS

2. My name is Stephen John Page.
3. I hold a Diploma in Policing from Charles Sturt University and a Bachelor of Policing (Investigations) from Charles Sturt University. I have also completed various training courses during my time as a member of the NSW Police Force (NSWPF) including the Detectives Training Course and the Homicide Investigators Course.
4. I am a former Detective Sergeant in the NSWPF. I commenced my career in 1986 and I left in 2004. During my time in the NSWPF I held various senior positions where I was involved with the investigation of crimes, including homicides. These positions include Chief of Detectives at Frenchs Forest Police Station and Investigations Manager at Rose Bay Local Area Command (as it was then known). I have also performed investigative duties in various commands including the Major Crime Squad, the Task Force Group, the State Major Incident Group, and Crime Agencies.
5. Since leaving NSWPF in 2004, I have worked in the private sector in the field of safety and security.
6. Based on my experience in the NSWPF from 1986 to 2004, including my experience in specialist squads, I am familiar with the formation, conduct and execution of major crime investigations during that period. My familiarity with major crime investigations includes knowledge of how the NSWPF would (at least as at 2004) develop and execute a strategy for a major crime

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investigation, how it would create an investigation plan, how it would gather information and engage in “fact finding”, and how case management systems are used.

7. In the course of preparing this statement, I have seen various documents including a statement of Detective Sergeant Steven Morgan dated 31 October 2022 (**Morgan Statement**) (SCOI.76962) and a statement of Michael John Willing dated 30 January 2023 (**Willing Statement**) (SCOI.82369.00001).
8. Annexures 4, 5 and 6 to the Morgan Statement are three documents (together, the **Neiwand Summaries**), each described as a “Summary of investigation” by Strike Force Neiwand (**Neiwand**), in relation to:
  - a. the disappearance and presumed death of Gilles Mattaini (**Mattaini Summary**, or **MS**) (SCOI.76962.00004);
  - b. the disappearance and presumed death of Ross Warren (**Warren Summary** or **WS**) (SCOI.76962.00006); and
  - c. the death of John Russell (**Russell Summary**, or **RS**) (SCOI.76962.00005).
9. I note that each of the Neiwand Summaries is said to have been created by Detective Senior Constable (**DSC**) Michael Chebl, and reviewed by Detective Sergeant (**DS**) Steven Morgan, on 27 December 2017 (as to Mattaini) and 8 January 2018 (as to Warren and Russell).

## OPERATION TARADALE

10. In June 2001 I was appointed the commander of an investigation known as Operation Taradale (**Taradale**). Taradale was initially formed to review the disappearance and suspected death of Mr Warren, the death of Mr Russell, and an assault upon David McMahan.
11. In about August 2002, Taradale was expanded to include the disappearance and suspected death of Mr Mattaini.
12. The approach that the investigative team took in Taradale was to adopt a “bottom-up” approach, by which I mean that the team went in with an open mind in an attempt to gather and understand the information that was “out there” relating to what happened to Mr Warren, Mr Russell and (later) Mr Mattaini. We had no preconceptions about what happened to them and nor were we trying to prove or disprove a particular theory. In the course of the investigation, Taradale sought to explore all possible lines of inquiry in each case, including suicide, misadventure or foul play.

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13. As part of its investigation, Taradale conducted a thorough analysis of the general location (Bondi/Tamarama) in which Mr Russell died and Mr Warren and Mr Mattaini were last seen. In my experience, a basic requirement of an investigation is conducting a canvass of the relevant location. For example, if I were investigating a break and enter offence, I would knock on neighbouring houses and ask if they had information that could assist. For offences possibly involving violence at beats, I would speak with victims of similar assaults, among others, to build my understanding of the local landscape and context in which the offence took place.
14. Accordingly, as part of Taradale we did a search of all known or reported assaults perpetrated in the relevant local area, being all around Bondi and Tamarama (not just assaults that occurred in Marks Park) and interviewed many victims of possible gay hate violence. This strategy led to useful intelligence being provided by a number of victims of assaults. Taradale also sought to obtain intelligence in other ways including by issuing media releases, canvassing members of the community and through covert surveillance. This intelligence was turned into evidence where possible.
15. As part of its investigation, Taradale sought to learn about and understand the personal background of each of Mr Russell, Mr Warren and Mr Mattaini, through locating and speaking to their relatives and associates, reviewing their financial and medical background and any criminal history, and generally seeking to gain an understanding of their lifestyle and relationships.
16. In my role as commander of Taradale, I prepared the brief of evidence for the coronial inquests ultimately heard by Deputy State Coroner Milledge (Taradale Inquests). The Taradale Inquests examined the suspicious disappearances and/or deaths of Mr Mattaini (in September 1985), Mr Warren (in July 1989), and Mr Russell (in November 1989). The Taradale brief of evidence, as eventually assembled, included two statements by me:
  - (1) a 287-page statement (annexing some 264 exhibits), dated 25 July 2002, in relation to the disappearance and suspected death of Ross Warren and the death of John Russell (Russell/Warren Statement) (SCOI.02744.00023); and
  - (2) a 7-page statement dated 28 August 2002, in relation to the disappearance and suspected death of Gilles Mattaini (Mattaini Statement) (SCOI.02744.00024).
17. The scope of Taradale was very substantial, as is apparent from the length of the Russell/Warren Statement and the number of exhibits. Later in this statement, I respond briefly to some of the criticisms of Taradale in the Neiwand Summaries. However, I wish to make it clear that this

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statement is not put forward as a complete or comprehensive response to the Neiwand Summaries. I had not seen those Summaries, and nor was I aware of the existence of Neiwand, until late 2022. A full response to Neiwand would require much more time, and much more opportunity to refamiliarise myself with the detail of Taradale.

## TARADALE INQUESTS

18. The hearings in the Taradale Inquests were held between 31 March and 10 September 2003, and oral submissions were heard on 23 December 2004.
19. On 9 March 2005, Deputy State Coroner Milledge delivered her findings (SCOI.02751.00021). Her Honour's findings included:
  - (a) as to Mr Warren, that he died in Sydney on or about 22 July 1989, and that "[w]hilst the cause and manner of death are unknown, I am satisfied that the deceased was a victim of homicide perpetrated by a person or persons unknown";
  - (b) as to Mr Russell, that he died at Marks Park between 22 and 23 November 1989, and that "[t]he cause of death is multiple injuries sustained when he was thrown from a cliff onto rocks, by a person or persons unknown"; and
  - (c) as to Mr Mattaini, that he died on or about 15 September 1985 in Sydney, but that "the cause and manner of his death remain undetermined as the evidence before me does not enable me to say". Her Honour added, however, that there was "a strong possibility" that he died in similar circumstances to the other two men" (i.e., at the hands of "gay hate assailants").

## THE DEATH OF SCOTT JOHNSON, and STRIKE FORCE MACNAMIR

20. Scott Johnson was an American student completing his PhD in Australia when his body was found at the bottom of a cliff at North Head near Manly on 10 December 1988. An inquest in 1989 resulted in a finding of suicide.
21. After the Taradale findings were delivered in March 2005, I came into contact with the family of Scott Johnson. A journalist contacted me following the publication of an article on the deaths of gay men in Marks Park and Bondi, and arranged an introduction to Steve Johnson, the brother of Scott Johnson.
22. In early 2006 Steve Johnson told me that he had noticed certain parallels or similarities between the NSWPF and coronial findings in relation to the Taradale cases and the death of his brother.

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I could also see similarities between the cases and considered that the case of Scott Johnson warranted re-investigation on that basis.

23. On 16 March 2006, Steve Johnson and I attended Manly Police Station where we requested a review of the death of Scott Johnson. However, my understanding, based on subsequent conversations with Steve Johnson, is that the NSWPF declined to carry out a full re-investigation of the case at that time.
24. After this meeting, I continued to assist the Johnson family and the investigative journalist Dan Glick, who had been hired by the Johnson family, with information gathering. Ultimately, there was a second inquest into the death of Scott Johnson before Deputy State Coroner Forbes (**Second Johnson Inquest**).
25. For the Second Johnson Inquest, I provided a Report (**First Consultant Report**), which included material based on my experience as the commander of Taradale and my knowledge of violence perpetrated against gay men at beats in Sydney around the time of Scott Johnson's death in late 1988.
26. The Second Johnson Inquest resulted in an open finding by Deputy State Coroner Forbes, on 27 June 2012, overturning the earlier finding of suicide, and a referral to "Cold Cases" for "further investigation in accordance with police procedures and protocols".
27. That outcome led to the creation of Strike Force Macnamir (**Macnamir**) in early 2013. The original Officer in Charge (OIC) of Macnamir was then Detective Chief Inspector (**DCI**) Pamela Young. She was succeeded in that OIC role by Detective Sergeant (**DS**) Penelope Brown.
28. Between 2015 and 2017, a third coronial inquiry into the death of Scott Johnson was conducted by State Coroner Barnes (**Third Johnson Inquest**).
29. For the Third Johnson Inquest, I provided another Report (**Second Consultant Report**). The Second Consultant Report was again based in part on my experience as the commander of Taradale. It also included, among other things, observations about what I regarded as the failure of Macnamir to pursue all possible lines of inquiry, including the failure to robustly investigate other assaults in the Manly area which could be suspected of being gay hate related. In my experience, interviewing victims of similar crimes in the broader area is an essential investigative step as it may lead to new intelligence or witnesses. If intelligence of relevantly similar crimes in the area is not adequately pursued, or is disregarded, this can shut down possible avenues of inquiry.

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30. On 30 November 2017, State Coroner Barnes handed down his findings in the Third Johnson Inquest. He concluded that Scott Johnson died “as a result of a gay hate attack” carried out by unknown perpetrators.

## **STRIKE FORCE NEIWAND**

### *Formation of Neiwand*

31. Neiwand appears to have commenced in around October 2015 (see Annexure 1 to the Morgan Statement) (SCOI.76962.00001), and to have concluded in late 2017 (see the Neiwand Summaries) (SCOI.76962.00004; SCOI.76962.00005; SCOI.76962.00006).
32. Neiwand and Macnamir were both conducted by the same police unit, the Unsolved Homicide Team (UHT). It appears to me, based on my review of the Morgan Statement and my knowledge of Macnamir, that there was also considerable overlap of personnel between Macnamir and Neiwand.
33. In my experience, the terms “Operation”, “Task Force” and “Strike Force” were largely interchangeable and there was little functional difference between investigations that used one of these terms over another; they were general terms used for major police investigations. I recall that the move from using the term “Task Force” to the term “Strike Force” occurred when regional Major Crime Squads were disbanded in 1997, and centralised Crime Agencies were formed. Crime Agencies were later rebranded as State Crime Commands.
34. The names of each Operation, Task Force or Strike Force were allocated centrally and, as I understand it, were assigned “cab rank” style from a list of names. Investigations commenced under Operations, Task Forces and Strike Forces had common features such as terms of reference, an investigation plan, use of systems such as e@glei, and requirements around the reporting of results. In my experience, an Operation, Task Force or Strike Force is only created with the authorisation of senior members of the NSWPF.
35. Like all Operations, Task Forces and Strike Forces, Neiwand had terms of reference (see Annexures 1 and 2 to the Morgan Statement) (SCOI.76962.00001; SCOI.76962.00002). The first terms of reference were “accepted” on 26 October 2015 by DCI John Lehmann as Investigation Supervisor, and on 7 December 2015 by DS Brown as OIC. The second terms of reference, in identical terms, were signed in 2016 by Detective Chief Superintendent John Kerlatec, by DS Morgan as Investigation Supervisor and by DSC Chebl as OIC.

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36. I note that the investigation plan for Neiwand was still outstanding in July 2016 (see Annexure 8 to the Morgan Statement, Progress Report 1) (SCOI.82054).
37. According to its terms of reference, Neiwand was established to “re-investigate the suspicious disappearance and death of Giles [sic] MATTAINI from Bondi on 15/09/1985; the suspicious disappearance and death of Ross Bradley WARREN from Bondi on 22/07/1989 and the suspected murder of John RUSSELL at Bondi on 23/11/1989”.
38. However, the Neiwand Summaries appear to indicate that the objectives of Neiwand were somewhat narrower than this. 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”;
  - 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;
  - the Mattaini Summary, at [59], again repeated verbatim those words quoted from [152] of the Russell Summary;
  - all three Summaries provided a definition of “confirmation bias” which appears to have been cut and pasted from the abstract of a paper published in 2006 entitled, “Confirmation Bias in Criminal Investigations” authored by Barbara O’Brien from Michigan State University and Phoebe C. Ellsworth from Michigan Law School, which I easily found after doing an online search for “confirmation bias”; and
  - the Mattaini Summary then went even further. At [60], the Mattaini Summary accuses me of “fail[ing] to outline prior suicidal ideation despite MUSY raising it with [me]”, and alleges that “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 MATTAINI’s disappearance”.
39. As outlined later in this statement, I reject these and other accusations made against Taradale and myself in the Neiwand Summaries.

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40. Although it is not surprising that Neiwand reviewed the investigation conducted by Taradale as part of its own investigation, in my experience, it is not usual for the NSWPF or the UHT to “reinvestigate” a cold case (or cases) in order to ascertain whether it or they were previously investigated “thoroughly”, and/or to deliberately make no attempt (as with Neiwand) to investigate further the potential persons of interest previously identified.
41. In my time at the NSWPF, an investigation into a death was always designated a “status”. If a case was “current”, it meant that the case was being actively worked by the NSWPF. A “cleared” case meant the case was going through, or had gone through, the criminal justice or coronial system. A “cold” case was a case where the investigation had reached practical completion, or it had gone through the coronial system where an open finding or finding of homicide was returned and where there is no real possibility for further action without new information.
42. During my time in the NSWPF, and in the ordinary course, cold cases were managed in an ongoing cyclical manner whereby they were given a ranking or grading based on their “solvability”. The solvability of a case drives the way in which the UHT manages and prioritises how it deals with the many hundreds of unsolved homicides in NSW. This is referred to in the Willing Statement at [67].
43. However, whether “solvability” was the reason for the creation of Neiwand, thereby prioritising the cases of Mr Mattaini, Mr Warren and Mr Russell over the UHT’s hundreds of other cases, is not clear. Recommendations made by DSC Alicia Taylor in her 2012 UHT review in that regard (see below) were not adopted. Instead, the approach taken by Neiwand 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 Deputy State Coroner Milledge.
44. The formation of a Strike Force, in my experience, is a decision made by senior police, well above the level of constables and sergeants. A decision to “investigate” an unsolved homicide based on reasons other than solvability, and not involving any further consideration of known persons of interest is, in my experience, highly unusual and outside the framework of the normal protocols.
45. The timing of Neiwand is also unusual. Neiwand was created in late 2015, more than 10 years after Deputy State Coroner Milledge handed down her findings in the Taradale Inquests in March 2005. In 2012, a UHT review of these cases was undertaken by DSC Taylor (see Annexure 13 to the Morgan Statement) (SCOI.76962.00013). I note that DSC Taylor’s conclusions in October 2012 included:



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- that Taradale “was meticulously undertaken”;
  - that “the [Taradale] investigation team was highly motivated and every effort was made to identify the person(s) responsible for the homicides”;
  - that “the main suspects [identified by Taradale] have extensive criminal histories”; and
  - that DSC Taylor’s recommendation was that “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”.
46. Yet when Neiwand was created in late 2015, and continued during 2016 and 2017, it appears that it deliberately did not adopt that recommendation, and did not carry out further work in relation to the persons of interest, but instead took a “victimology” approach and focused on finding fault with Taradale.
47. I was not aware of Neiwand until I was informed of its existence by the Inquiry in late 2022. Until then I had no knowledge that any such “re-investigation” of the three Taradale cases had occurred. No contact was made by Neiwand with me.
48. By contrast, I was contacted, albeit briefly by telephone, in 2012, in relation to the UHT’s review of the Taradale cases under DSC Taylor. In my view, making contact with the previous investigation team is a logical step in an investigation. For example, it is entirely possible a previous investigation team can inform a subsequent investigation team about steps that could be taken given advances in technology. It may also be the case that a previous investigation team did not get to pursue a particular matter that the new investigation team might wish to pursue.
49. As far as I am aware, Neiwand was not mentioned by the NSWPF in the Parliamentary Inquiry conducted between 2018 and 2020 by the Standing Committee on Social Issues into Gay and Transgender hate crimes between 1970 and 2010 (*Parliamentary Inquiry*).

*Methodology of Neiwand - generally*

50. The methodology employed by Neiwand is apparent from the Neiwand Summaries. I regard that methodology as flawed in significant and obvious respects, some of which are outlined below.

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51. **First**, Neiwand did not pursue all open avenues of inquiry.
52. Investigations into a death require an open mind which is free of bias and allows for all potential lines of inquiry (suicide, misadventure, or foul play) to be openly explored. Some deaths will require more effort to investigate than others, particularly if more than one cause of death is a possibility and where the area where the death occurred is rich in information and intelligence. As an investigation progresses, possible causes can be established or excluded, with both the cause and manner of the death being a primary focus. The role of the investigator is to be the fact finder.
53. Instead of pursuing all available lines of inquiry, Neiwand adopted an approach predominantly focused on disproving, or at least downplaying the likelihood of, foul play in relation to each of the three deaths. Among other features of Neiwand’s approach:
- no canvassing appears to have been conducted in the area where these deaths occurred;
  - no attempt was made to investigate the “spate” of assaults against men perceived to be gay at around the time these deaths occurred (even though the reality of such a “spate” of assaults was acknowledged);
  - no attempt was made to contact investigators involved in Taradale, some of whom were still police officers; and
  - there also appears to have been no attempt to contact the Bias Crimes Unit (BCU).
54. Such an approach pre-emptively excluded possible persons of interest and jeopardised the potential for a successful investigation and prosecution/s. For example, Sean Cushman was identified by at least two different individuals as having participated in gay hate violence at or near Marks Park. He is known to have lived at the southern end of Bondi in 1989 and to have frequented the Bondi area generally. Given the close proximity of Marks Park to Bondi Beach (approximately 1.2 km), in my view Mr Cushman could not on any reasonable basis be excluded from the Neiwand re-investigation. In my view, this was an extraordinary and totally arbitrary approach for Neiwand to adopt. In contrast, Taradale searched for all assaults in the entire Bondi area, not just limited to Marks Park, and interviewed all victims that we could identify. This approach gave us very useful intelligence and insights in relation to the perpetrators of violence at and around beats and the types of offences that occur at beats.
55. **Secondly**, Neiwand draws a number of conclusions that I consider to be unsupported by, if not contrary to, the available evidence.

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56. For example, the Warren Summary states at [266] that “several” witnesses who attended the beat at McKenzie’s Point (i.e., Marks Park) did not witness or encounter any violence there, and were not aware that bashings happened there. In the next sentence, the Warren Summary states: “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”.
57. The Russell Summary contains substantially similar statements at [113]-[115].
58. Such statements not only mis-state the evidence relied upon, but the purported “confirmation” also defies a wealth of other evidence tendered during the Taradale Inquests and known to Neiwand.
59. As to the mis-statement of evidence, I note that:
- Neiwand actually relies on only two witnesses, not “several”, as having attended the Marks Park beat and been unaware of violence there. Those two witnesses are nominated as Messrs Ellis and [198] (see WS [201], [266]; RS [113]-[115]);
  - as to Ellis, my recollection is that in a statement provided to Taradale, Ellis said that he was aware of at least one assault on a gay man as a result of homophobia in Marks Park in the 1980s; and
  - as to [198] Neiwand fails to take into account, when stating its “confirmation” at [266], what [198] had also said about Marks Park, as recorded in WS [201], namely: “[198] recalled noticing that if something wasn’t right, he would see numerous men walking away from Marks Park. He interpreted this to be ‘not right to be there’.”
60. As to defying a wealth of other evidence, I note that the Neiwand Summaries themselves include lengthy references to what is described in those Summaries as “the spate of assaults/robberies/murders committed against gay men in the Eastern Suburbs of Sydney around the period of Warren’s disappearance/Russell’s death” (WS [62], RS [46]). I refer in particular to the material set out
- in the Warren Summary at [63]-[71], [77]-[84] and [152]-[164], and
  - in the Russell Summary at [43]-[44], [47]-[55], [58]-[65] and [77]-[91].
61. In addition, in my Russell/Warren Statement for Taradale (which Neiwand had), I referred to several other examples of assaults on gay men in the Bondi/Marks Park area in the late 1980s and early 1990s, including the attacks, by multiple assailants, on [130] in October 1987,

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[191] on 12 November 1989 (11 days before the death of John Russell), [1131] in January 1990 and [134] in February 1990.

62. As to the material referred to at [59] above, I note in particular Neiwand’s awareness of the statement of Sergeant Adrian Ingleby dated 26 February 1990 and the two statements of DS Stephen McCann dated 15 April 1991 and 10 August 1991.
63. Yet on the question of whether the beat near Marks Park was, and was known to be, a place where violent anti-gay attacks occurred, Neiwand chooses to ignore, or at least to place no weight on, such evidence.
64. As to Sergeant Ingleby, I also note that although DS Morgan met with him on 31 October 2016, he does not appear to have discussed his 26 February 1990 statement, which had described the high rates of assaults against gay men in and around Bondi in the mid to late 1980s and early 1990s (see the Morgan Statement at [62] and Annexure 20) (SCOI.76962.00020). Arranging a meeting with Sergeant Ingleby and not discussing his knowledge of targeted violence against gay men in the area at the time is difficult to understand unless Neiwand did not want to consider evidence that supported the conclusions reached by Taradale.
65. The Neiwand Summaries seek to restrict the area in which the “Bondi Boys” used to hang out, confining it to the immediate Bondi Beach area, apparently so as to suggest that the Bondi Boys would not have ventured as far afield as Notts Avenue, or the cliff walkway, or Marks Park (see WS [185], RS [129]-[131]).
66. Thirdly, in each of the three cases, in particular those of Mr Warren and Mr Russell, Neiwand in its conclusions essentially contradicts the findings and reasoning of Deputy State Coroner Milledge in the Taradale Inquests. Each of the Neiwand Summaries then finishes by recommending only “that this investigation be listed as inactive”. In my experience it is highly unusual for a Strike Force to contradict the findings of a Coroner without new and compelling evidence. As I read the Neiwand Summaries, it does not appear that such evidence was found.
67. Fourthly, Neiwand does not appear to have communicated its contradictory conclusions either to the Coroner or to the families of the deceased. In my experience and understanding, that is highly unusual.
68. Fifthly, Neiwand criticises Taradale for supposedly failing to have sufficient regard for “victimology” (see, for example, Russell Summary at [144]). Such a criticism of Taradale (which involves criticism of Deputy State Coroner Milledge as well as of the Taradale police officers) is unjustified.

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69. Victimology, in an investigation into a death, involves the study of the deceased including their relationships, finances, medical history (including psychological history), and lifestyle. All of these matters can in some cases assist in arriving at the likely manner and cause of death of the deceased.
70. Mr Mattaini, Mr Warren and Mr Russell were all gay men, and they all disappeared or died at or near clifftop locations which were, or were close to, beats. In each case, the disappearance or death occurred in a period when there was known bias against gay men, and there was a spate of attacks on men perceived to be gay at such locations among others.
71. Taradale's approach involved a number of aspects of victimology, including (among others):
- conducting interviews with family members and associates of the victims;
  - analysing their finances and criminal history (if any); and
  - undertaking enquiries with various government departments including Medicare, the Department of Immigration and the (then) Roads and Traffic Authority.
72. However, the investigative approach in Taradale did not only focus on victimology. In my view, it would be inappropriate to make victimology the primary focus of an investigation into a case that was a suspected gay bias crime, and where there were no witnesses to the relevant events. Due to the anonymous nature of these crimes – where the victim is often unknown to the offender – victimology will rarely provide an indication of the possible offender. It would be like making victimology the primary focus of an armed robbery. The victim (a cashier) and an offender (the robber) will likely have no prior relationship. In these types of cases, I consider that a “helicopter view” is both more objective and useful; that is, an approach that examines both victimology and also the criminal environment in all its complexity.
73. In the Post Operational Assessment (POA) for Neiwand (see Annexure 7 to the Morgan Statement) (SCOI.76962.00007), Detective Inspector Legatt states that “Strike Force Neiwand Investigators focused on victimology, associates and the last known movements of the three males”. By using almost exclusively a victimology approach, Neiwand largely disregards the violence that was occurring, and known to be occurring, at the relevant time and in the relevant area. That is, violence was essentially not a potential hypothesis explored by Neiwand at all. To solely focus on victimology is, based on my experience, a flawed investigative approach. It limits possible avenues of inquiry, is unlikely to lead to information about possible offenders, and tends to minimise the possibility of foul play being found to be the manner of death.

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74. The problem with focusing almost exclusively on victimology is apparent from Neiwand's results in the Taradale cases. It would appear that no fresh or compelling evidence was obtained by Neiwand as a result of its increased focus on victimology. Indeed, both the Neiwand Summaries and the POA conclude by essentially acknowledging that Neiwand made no progress in any of these investigations, and by recommending in effect that they be abandoned.
75. Moreover, the evidence that appears to be principally relied on by Neiwand as deriving from victimology (such as Mr Mattaini's history of self-harm, Mr Warren's previous relationships, and Mr Russell's blood alcohol concentration at the time of his death) were all matters which had been previously discovered, produced, relied on and considered in the Taradale Inquests.
76. 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.

## THE THREE SEPARATE NEIWAND SUMMARIES

*Gilles Mattaini: 15 September 1985*

77. Taradale concluded that Mr Mattaini was suspected to be deceased and that homicide could not be excluded as the manner of his death, particularly given that Mr Mattaini had disappeared with items he usually took with him when he went for a walk, such as his keys and his headphones, and that his walking route often took him past Marks Park. Taradale also concluded that despite previous attempts at suicide, there had been a significant passage of time since those attempts and there was no evidence that Mr Mattaini was suicidal at time he went missing.
78. At the Taradale Inquests, Deputy State Coroner Milledge made a finding that Mr Mattaini was deceased, and an open finding as to the manner and cause of his death. Her Honour stated that "... I cannot make a finding that Mr Mattaini met his death at the hands of another person or persons. ...where and how he died remains unknown although there is a strong possibility that he died in similar circumstances to [Ross Warren and John Russell]". Her Honour also expressed

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the view that evidence “strongly supports the probability” that all three men met their deaths at the hands of “gay hate assailants”.

79. In contrast, 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.
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:

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- 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



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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.
- h. 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.

*Ross Warren: 22 July 1989*

88. Taradale concluded that Mr Warren was deceased, that his body likely entered the water surrounding Marks Park, and that it was likely that he met his death as a result of violence. Deputy State Coroner Milledge found that Mr Warren was a victim of homicide perpetrated by an unknown person or persons.
89. In contrast, in its final “Key Findings” section (WS [267]-[270]), Neiwand repeated the claim, made in Mattaini, 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.
90. Neiwand went on to conclude that Mr Warren’s death “could be one of several possibilities including: misadventure, suicide or homicide (individual, gang or domestic related)” and to add that “[u]nfortunately, a lack of physical evidence, credible suspects and witnesses accounts prevent this investigation from progressing”.
91. Neiwand categorised the cause and manner of Mr Warren’s death as “undetermined”, “despite the 2005 ‘homicide’ findings of the Coroner, which list it as a homicide”. As with Mr Mattaini, Neiwand recommended “that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available”.
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 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.

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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 [62], 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

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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 McMahon’s identification evidence. Mr McMahon was by no means the only victim of violent crime in and around Bondi that Taradale relied upon. Neiwand’s reference to Mr McMahon 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 McMahon 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 McMahon 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

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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 [REDACTED] (2) Mr Warren’s supposed unrequited romantic interest in Mr Chadwick 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.

*John Russell: 23 November 1989*

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.

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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 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 [12](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, Peter Redmile, who was the last person to see Mr Russell alive, described him as only appearing moderately intoxicated; second, Mr Russell’s brother, who

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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.

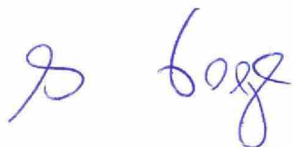
122. In 2017, Neiwand obtained an opinion from Dr Moynham (who had also given evidence at the Taradale inquests, and who by 2017 had become Professor Moynham). That 2017 opinion includes detailed observations by Professor Moynham about Mr Russell’s level of intoxication and on the typical effects of 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 Mr Redmile 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

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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, post-mortem 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.

Signature:



Name:

Stephen John Page

Date:

16 February 2023