



Special Commission of Inquiry into LGBTIQ hate crimes

10 May 2023

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By email: [REDACTED]

Dear Mr Hodgetts

Changes to the Bias Crime Indicators Review Forms

I refer to our previous correspondence in relation to Strike Force Parrabell (“SF Parrabell”).

The Inquiry requires urgent clarification from the NSW Police Force (“NSWPF”) about the several different versions of the Bias Crime Indicators Review Forms (“BCIFs”) used in the course of SF Parrabell.

I set out in this letter the Inquiry’s present view as to what is established by the evidence relating to these matters.

Your response is required, by no later than Wednesday 17 May 2023, making clear whether, and if so to what extent and on what basis, the NSWPF takes any different view. That timeframe is essential, bearing in mind that the evidence in Public Hearing 2 will conclude on 15 May 2023 (with the remainder of Mr Willing’s evidence), and that the submissions of Counsel Assisting will accordingly be due by 6 June 2023.

A. References to the BCIFs in the SF Parrabell Final Report (Exhibit 1, Tab 2)

The SF Parrabell Final Report (“Parrabell Report”) asserts, at p. 67, that the BCIF used by the SF Parrabell officers was the document being Appendix B to the Parrabell Report (at pp. 121-131).

Assistant Commissioner (“AC”) Anthony Crandell initially confirmed this assertion in his statement to the Inquiry: Exhibit 6, Volume 1, Tab 4, at [62].

That version of the BCIF, being Appendix B to the Parrabell Report, required the SF Parrabell officers to assess each of the ten indicators as falling within one or other of four possible categories or “findings”, expressed as follows:

- *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.*
- *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.*

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- *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.*
- *Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victims and/or witnesses.*

B. References to the BCIFs in other constituent documents for SF Parrabell

The “**Coordinating Instructions**” for SF Parrabell (Exhibit 6, Volume 1, Tab 15, pp. 4ff) contained, embedded within that document, a slightly different version of the BCIFs. As to the four categories or “findings” in respect of the presence or absence of bias, that version was the same as the version at Appendix B set out above, with two exceptions namely:

- (1) The first category was described as “*Bias Crime*” rather than “*Evidence of Bias Crime*”
- (2) The third category was described as “*Not Bias Crime*” rather than “*No Evidence of Bias Crime*”

The “**Investigation Plan**” for SF Parrabell (Exhibit 6, Volume 1, Tab 15, p. 3) 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:

- *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*

The “**Induction Package**” for SF Parrabell (Exhibit 6, Volume 2, Tab 59, pp. 3ff) – which bore a notation “Published 2016” – was different again, in two significant respects.

First, in the body of the document, at the foot of p. 2, it was stated that: “*For each indicator, the following 4 findings are available*”. The four “findings” then set out were in the same terms as in the Investigation Plan noted above – being different both from the Parrabell Report Appendix B, and from the Coordinating Instructions.

Second, however, the Induction Package also contained, embedded within it at pp. 4-10, another, different, version of the BCIF itself. In that version, only three categories, not four, were listed, namely:

- *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*
- *There is no evidence that sexuality or other bias was involved in the death*

The “*It appears unlikely ...*” category, as found both in the Investigation Plan and in the body of the Induction Package itself, was omitted.

C. The evidence of AC Crandell

In his oral evidence, AC Crandell initially said that the Investigation Plan would have been in existence by 25 May 2015, and the Coordinating Instructions by 30 August 2015: see T668-669.

A little later, at T702, he said that both the Investigation Plan and the Coordinating Instructions (and the BCIF forming part of the latter) must have been in existence by 30 August 2015.

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However, he subsequently accepted (at T838-845) that the actual position, as apparent from various emails and other documents then shown to him, was different. He accepted, *inter alia*, that:

- (1) The Investigation Plan (see above) was in existence by some time prior to 30 August 2015;
- (2) Up to at least 9 June 2016, the SF Parrabell officers were using the four categories as found within the Investigation Plan;¹
- (3) Then in June 2016, Sergeant Geoffrey Steer had given a presentation in relation to bias crime, which included the terms of five possible findings as to the presence or otherwise of bias crime;²
- (4) On 29 June 2016, Detective Senior Constable Bignell informed Detective Chief Inspector Middleton that SF Parrabell was henceforth going to use four (out of the five) categories from Sgt Steer's presentation – **instead of** those found in the version embedded within the Investigation Plan;³
- (5) Thus the version of the BCIF as found in the Coordinating Instructions (which adopted those four categories) did not come into existence until at least 29 June 2016;
- (6) Prior to 29 June 2016, the SF Parrabell officers had been using a different version of the BCIF, containing the four (differently-expressed) categories as found in the version embedded within the Investigation Plan;⁴
- (7) The SF Parrabell officers had by that time used that earlier version of the BCIF to review at least 28 of the 88 cases.⁵

Later still, at T845-6, AC Crandell also accepted that, on or about 19 January 2017, there had been further changes to two of the four categories in the BCIF,⁶ namely:

- (a) From 'Bias Crime' to 'Evidence of a bias crime'
- (b) From 'Not Bias Crime' to 'No evidence of a bias crime'

Those changes constitute the differences between the categories as they appear in the Coordinating Instructions, and the categories as they appear in Appendix B to the Parrabell Report: see above.

Please let me know, **by no later than 17 May**, whether (and if so on what basis) the NSWPF contends for any different assessment of the evidence than as set out above.

D. At least four different versions of the BCIF

In the light of the evidence referred to above, the Inquiry has again reviewed the various documents produced to the Inquiry by the NSWPF, including in response to summons NSWPF12.

Based on that evidence, and that review, it is the understanding of the Inquiry that at least **four** successive versions of the BCIF were used between mid-2015 and mid-2018 (when the Parrabell Report was published).

The matters forming the basis for that understanding on the part of the Inquiry are set out below. Again, **you are required to inform the Inquiry, by no later than 17 May 2023**, whether the NSWPF contends that any of these matters, or that understanding, is incorrect in any way, and if so, the basis for any such contention.

(1) Original version of BCIF – from 2015 to at least February 2016 (“Version 1”)

In an email of 12 February 2016 to AC Crandell and others, DCI Middleton provided an “update” as to SF Parrabell (Exhibit 6, Tab 58). The full content of the BCIF then in use is not set out in, or attached to, that

¹ T844; Exhibit 6, Tab 63.

² Exhibit 6, Tabs 64 and 64A.

³ Exhibit 6, Tabs 64 and 64A.

⁴ T843-4.

⁵ T843-4; Exhibit 6, Tab 63.

⁶ Exhibit 6, Tab 83.

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email. However, in describing the “2nd review” of 2 February 2016, DCI Middleton reported that 15 reviews of cases had been completed, with the results being (underlining added):

1 x case identified as involving a Gender or other Bias in the Crime

9 x cases identified as Likely to involve a Gender or other Bias in the Crime

3 x cases identified as Unlikely to involve a Gender or other Bias in the Crime

2 x cases identified as Not involving a Gender or other Bias in the Crime

Evidently, until at least February 2016, the four categories from which the SF Parrabell officers were being asked to choose were those set out above (as underlined). Evidently a version of the BCIF, incorporating such categories, was in use at that time (**Form 1**).

Those four categories are 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 categories found in any of those documents.

(2) Second version of BCIF – from about February 2016 to late June 2016 (“Form 2”)

On 9 June 2016, as noted above, DCI Middleton informed AC Crandell and others by email that 28 cases had been reviewed, by reference to four categories which he set out in that email (Exhibit 6, Volume 3, Tab 63). Those four categories correspond to the four in the Investigation Plan.

Evidently a version of the BCIF, as found in the Investigation Plan, was in use by that time (**Form 2**).

The Inquiry’s own review of all the completed BCIF forms produced by the NSWPF suggests that in fact Form 2 was used up until around late July 2016, to review 49 cases. Please include in your response whether the NSWPF accepts that that is so. If not, please specify what different position is contended for, and on what basis.

Further, as noted above, AC Crandell said in his oral evidence that the Investigation Plan had come into existence by some time prior to 30 August 2015. Yet as also noted above, DCI Middleton’s email of 12 February 2016 (Exhibit 6, Tab 58) stated that 15 reviews of cases had been completed, by 12 February 2016, using the four categories found in Form 1 (**not** the four categories in the Investigation Plan).

Please state whether the NSWPF contends that the oral evidence of AC Crandell (that the Investigation Plan had come into existence by some time prior to 30 August 2015) is correct, and if so on what basis.

(3) Third version – late June 2016 to December 2016 / January 2017 (“Form 3”)

The third version of the BCIF, corresponding to the one set out in the Coordinating Instructions, appears to have been implemented from on or after 29 June 2016 (Exhibit 6, Volume 3, Tab 64).

The Inquiry’s own review of all the completed BCIF forms produced by the NSWPF suggests that this third version, Form 3, was used until around December 2016, to review 21 cases. Please include in your response whether the NSWPF accepts that that is so. If not, please specify what different position is contended for, and on what basis.

(4) Fourth version – 19 January 2017 onwards (“Form 4”)

The fourth version of the BCIF is the one which appears as Appendix B in the Parrabell Report. On the evidence, it was implemented following a meeting between the SF Parrabell team and the Bias Crimes Unit on 19 January 2017 (see the minutes of that meeting at Exhibit 6, Volume 3, Tab 83, third page).

The Inquiry’s own review of all the completed BCIF forms produced by the NSWPF indicates that 13 cases were reviewed, for the first time, by reference to this fourth version, Form 4.

The Inquiry’s review also indicates that:

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- (1) all other cases (some 70 in all) were originally reviewed by reference to one or other of Forms 1, 2 or 3; but that
- (2) at some later stage the text composed by the SF Parrabell officers in response to the prompts in those earlier versions of the BCIF, for all those 70 cases, was in some way transferred or carried over to a Form 4 version.

Please include in your response whether the NSWPF accepts that that is so. If so, please set out (by reference to the evidence) exactly how, why and when these various steps were taken. If not, please state exactly what the NSWPF contends to be the correct position, and on what basis.

In response to a question from Mr Tedeschi KC, AC Crandell asserted (at T1035.20) that “all of the police officers who were conducting the [SF Parrabell] review” used “the same BCI form”. In the light of the evidence referred to above, that assertion appears to be manifestly incorrect. Please state whether the NSWPF maintains that that assertion was correct, and if so on what basis.

E. Additional clarification sought

Please also address the following matters:

1. Were there any additional versions of the BCIF drafted or used by SF Parrabell officers, beyond the four versions identified by the Inquiry above? If so, please identify it or them in the evidence and produce any completed versions of any such forms;
2. When precisely and why the versions of the form were changed;
3. For cases already reviewed by reference to Form 1, Form 2 or Form 3, precisely what steps were taken, when, why and by whom, to transfer the text which had been created in responding to one or other of those earlier versions to a document in the form of Form 4?
4. What version or versions of the BCIF was or were provided to the Flinders University academic review team (“Flinders academic team”), and when? I note that the email at Exhibit 6, Volume 3, Tab 78 indicates that some BCIFs were posted or emailed to Associate Professor Dalton in around November 2016; and
5. Were there cases where one or more of the earlier versions of the BCIF were provided to the Flinders academic team, and subsequently a BCIF in Form 4 (in relation to the same case) was also provided to the Flinders academic team? If so, was the academic review in respect of such cases carried out by reference to the earlier or later version of the BCIF.

Total number of BCIFs completed

There are discrepancies in the evidence before the Inquiry as to the *number* of BCIFs completed by SF Parrabell officers, and as to the number provided to the Flinders academic team. For instance:

- Associate Professor Dalton’s oral evidence was that only 85 BCIFs were provided to the Flinders academic team (with the cases of Brennan, Travers and Johnson excluded);⁷
- The Investigation Plan described its function as undertaking a review of a “potential 87 cases (solved and unsolved homicides)”; and
- DCI Middleton’s email to AC Crandell on 9 June 2016 (Exhibit 6, Volume 3, Tab 63) stated that there were 83 matters to be reviewed (5 having been “re-opened by UHT post the commencement of SF Parrabell”.

⁷ T2379-80.

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I note that the following matters may be relevant to the existence of these discrepancies:

- the cases of Ali Mokdad and Jamie Creighton (no. 87 and 88) were reviewed in a single BCIF, owing to their long relationship and the overlap in the circumstances of their deaths;
- the case of Kenneth Brennan (no. 69) was only partially reviewed (using Form 3) pursuant to an arrangement with the Unsolved Homicide Team because it was under active investigation;
- the case of Brian Travers (no. 53) was not reviewed by SF Parrabell as his death occurred outside New South Wales;
- the case of Scott Johnson (no. 29) was not reviewed by SF Parrabell as the matter was before the State Coroner; and
- it appears that a BCIF was not included for every case in the final SF Parrabell e@glei brief produced to the Inquiry (for instance, the case of John Hughes).

Please clarify the following matters:

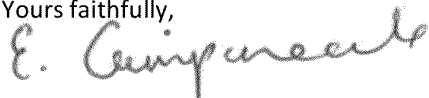
6. How many of the 88 cases were the subject of a BCIF?
7. Which of the 88 cases were not the subject of a BCIF?
8. For how many cases were BCIFs provided to the Flinders academic team?
9. Which of the four versions of the BCIF was provided to the Flinders academic team for each of those cases, and when?
10. For which of the 88 cases was no BCIF provided to the Flinders academic team?
11. For which of the 88 cases was no BCIF included in the final SF Parrabell e@glei brief produced to the Inquiry?
12. Why was a BCIF not included for all 88 cases in the NSWPF's e@glei holdings, especially for cases which were reviewed and deemed "unsolved"?

Timeframe for response

I reiterate that it is essential that your response be received by no later than **Wednesday 17 May 2023**.

Please do not hesitate to contact me on 0498 484 133 if you have any queries.

Yours faithfully,



Enzo Camporeale

Director, Legal

Solicitor Assisting the Inquiry