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**NSW Police Force**

19 May 2023

Mr Enzo Camporeale  
Director, Legal  
Special Commission of Inquiry into LGBTIQ hate crimes  
GPO Box 5341  
SYDNEY NSW 2001

By email: [enzo.camporeale@specialcommission.nsw.gov.au](mailto:enzo.camporeale@specialcommission.nsw.gov.au)

Dear Mr Camporeale

### **Special Commission of Inquiry into LGBTIQ hate crimes – Changes to the Bias Crime Indicators Review Forms**

We refer to your letter dated 10 May 2023 requesting urgent clarification from the NSW Police Force (**NSWPF**) on various matters relating to the Bias Crime Indicators Review Forms (**BCIFs**) used in the course of Strike Force Parrabell (**SF Parrabell**).

The NSWPF's responses to the various requests in your letter are set out below, adopting the Inquiry's headings and numbering where applicable. These responses were prepared with input from various NSWPF personnel. Where possible, regard has also been had to records generated by SF Parrabell officers in relation to the use and evolution of BCIFs. However, as is explained further below, notwithstanding that considerable time has been spent in answering the Inquiry's requests in as comprehensive a manner as possible, it has not been possible to provide definitive answers to some of the requests in your letter.

In an effort to assist the Inquiry, substantial efforts have been made to ensure that the responses provided below are as accurate as possible. Nevertheless, these responses should not be regarded as a substitute for the evidence available to the Inquiry.

Furthermore, the below comments are provided in advance of Counsel Assisting's submissions in relation to the SF Parrabell issues considered in Public Hearing 2. That being so, they should be regarded as a preliminary statement of the NSWPF's position in respect of the issues; the Commissioner of Police and the officers we represent reserve their right to make further submissions in respect of the relevant issues following receipt of Counsel Assisting's final submissions.

### **Background to document management by SF Parrabell**

As the Inquiry is aware, SF Parrabell commenced in 2015 and concluded in 2018, some 5 years ago. While template BCIFs were maintained (and updated as described below) on a local share drive in the NSWPF computer system, accessible to members of SF Parrabell for use by officers in generating case-specific BCIFs, the template BCIFs were not created or stored on a single document management system, such as [e@agle.i](mailto:e@agle.i). This means NSWPF does not have access to the kind of version history and other information in relation to the creation and updating of the

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BCIFs that would typically be retained automatically when documents are created or edited on a large document management system.

It follows that the NSWPF is not easily able to conduct an audit of activity and access of the BCIF templates in order to confirm with precision the dates on which various versions of the BCIFs were created, accessed or retired.

The amendments to the BCIF resulted from ongoing reviews of the template by senior officers of SF Parrabell and consultation with officers within the wider NSWPF, including the Bias Crimes Unit. On each occasion the BCIF was updated, the purpose of the updates was to ensure that the BCIF offered the best possible guidance to the investigating officers of SF Parrabell to execute its objectives in accordance with its Terms of Reference.

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

We do not understand this section of your letter to request a specific response from the NSWPF. As noted above, the Commissioner of Police reserves her right to make further submissions in relation to issues relating to the BCIF following receipt of Counsel Assisting's final submissions.

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

We do not understand this section of your letter to request a specific response from the NSWPF. As noted above, the Commissioner of Police reserves her right to make further submissions in relation to issues relating to the BCIF following receipt of Counsel Assisting's final submissions.

**C. The evidence of AC Crandell**

The use of BCIFs by SF Parrabell was one element of a larger collaborative process through which officers from SF Parrabell applied an intuitive synthesis methodology in assessing each case. While BCIFs were an important tool in this process, they were only one element of it.

Investigators in SF Parrabell conducted a thorough review of the materials held by NSWPF, applied police methodology (as applicable at the time of SF Parrabell) and then formed a view regarding the existence (or otherwise) of bias crimes by reference to the BCIF template. Any conclusions reached by an investigator were subject to assessment by senior officers before a final conclusion was reached.

As described by AC Crandell in his oral evidence and set out in this letter (in particular, in Section D), the changes in the BCIF templates (and constituent documents) were the result of an evolutionary process where the senior officers of SF Parrabell assessed the adequacy of the tools being used by the investigation team with the result that the BCIF template and the strike force's constituent documents were subject to change to reflect improvements in review methodology. When there were material amendments to the BCIF, cases were revisited by the investigation team in accordance with the approach detailed above, and reassessed to ensure SF Parrabell had properly executed its objectives.

We are instructed that AC Crandell considers that his oral evidence is an accurate reflection of his recollections. The Inquiry's summation of the oral evidence of AC Crandell in Section C for subparagraphs (1) to (7) is broadly accurate. AC Crandell and the Commissioner of Police again reserve their right to make submissions in response to Counsel Assisting in relation to these subjects.

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#### **D. The different versions of the BCIF**

While the NSWPF accepts that there were a number of versions of the BCIF used during the life of SF Parrabell, it does not accept your letter's pejorative characterisation of the evidence given by AC Crandell at [T1035.20].

Such a characterisation of AC Crandell's answer to this question unfairly ignores the relevant context in which the BCIFs were prepared and used by SF Parrabell personnel. Quite properly, AC Crandell and other senior officers looked for and acted on opportunities to improve the BCIF over the three-year period during which SF Parrabell was conducted.

In particular, at all material times, members of SF Parrabell used a BCIF in a substantively similar way, notwithstanding the form itself was adapted and improved over the life of SF Parrabell. The use of the BCIF was informed by discussions between members of SF Parrabell and regular exchanges between junior and senior members of the team.

Importantly, and as explained in more detail below, by the time of the SF Parrabell Report, all cases considered by SF Parrabell had been assessed using either Form 3 or Form 4 (which both relied upon the same criteria, notwithstanding differences in labelling). All cases were ultimately transitioned to BCIF Form 4 such that each were recorded on the same BCIF.

##### ***Form 1***

We note that some your letter appears to suggest that the Inquiry has actually reviewed four different versions of completed BCIFs.<sup>1</sup> The conclusions expressed in respect of "Form 1" in your letter under the heading *Original version of BCIF – from 2015 to at least February 2016*, however, appear to be derived from inferences drawn from the terms of Superintendent Middleton's email of 12 February 2016 rather than the terms of a particular BCIF.

We would be grateful if you could provide a copy of one of each of the four versions of BCIFs contemplated by the terms of [1] and [2] of p. 4 of your letter. It may be that relevant officers are able to provide further assistance subsequent to the review of those BCIFs.

Our present understanding is that the categories used by Superintendent Middleton in his email on 12 February 2016 (**SCOI.7415**) were in different terms to those which appeared in the BCIF which was used by SF Parrabell members at the outset. Our current understanding is that the BCIF used at the commencement of SF Parrabell was attached to the Investigation Plan and that the four categories used at the commencement of SF Parrabell were found in the Investigation Plan.

Superintendent Middleton cannot now recall why his email update of 12 February 2016 did not adopt the precise categories used in the relevant form. In particular, we are instructed that Superintendent Middleton cannot now recall why he used the word "gender" in his description, which did not form part of the description of the four categories used in the Investigation Plan, Induction Package, Coordinating Instructions, or Appendix B to the Parrabell Report.

In any event, as explained below, after the introduction of Form 3, the decision was made to review and reassess any matters that had previously been completed using Form 1 and Form 2 to ensure that all BCIFs addressed all the criteria required by Form 3.

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<sup>1</sup> See p. 4 of the Inquiry's letter of 4 May 2023.



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**Form 2**

The NSWPF agrees that what is described by the Inquiry as **Form 2** of the BCIF was in effect by 9 June 2016, and that Form 2 used the four categories set out in Superintendent Middleton's email of the same day, and that those four categories were the same as those appearing in the Investigation Plan for SF Parrabell.

In the time provided for the NSWPF to respond to the Inquiry, and noting the inevitable difficulties associated with seeking the recollections of SF Parrabell members as to the contents of documents they worked on between five and eight years ago, as well as the limitations of the document management system available to the members of SF Parrabell, it has not been possible to confirm definitively that Form 2 was used in the specified timeframe suggested by the Inquiry (beyond agreement that it was in existence by at least 9 June 2016), and whether a total of 49 cases were reviewed in accordance with Form 2.

In any event, as explained below, after the introduction of Form 3, the decision was made to review and reassess any matters that had previously been reviewed to ensure that each of the cases was considered by reference to the criteria required by Form 3.

As noted above, AC Crandell confirms that his oral evidence is an accurate reflection of his recollections for SF Parrabell and as contended in his evidence, the Investigation Plan was in effect by 30 August 2015.

**Form 3**

The NSWPF confirms that **Form 3** was used by SF Parrabell from on or around 29 June 2016. As the Inquiry has noted, Form 3 corresponds to the bias crime indicators referred to in the Coordinating Instructions.

Sergeant Geoffrey Steer of the Bias Crimes Unit delivered a presentation to senior officers of SF Parrabell regarding bias crimes on or around 28 June 2016 (**SCOI.77319**). Following the presentation, senior officers of SF Parrabell came to a decision to amend Form 2 with four of the five bias crime indicator classifications set out in Detective Senior Constable Bignell's email to Superintendent Middleton on 29 June 2016 (**SCOI.74246**). We understand that senior officers considered the indicators as drafted for Form 2 to be too broad and that they did not adequately align with SF Parrabell's Terms of Reference. Specifically, the words "other bias" went beyond the scope of SF Parrabell, which was tasked with identifying the existence of an anti-gay bias crime. The transition to Form 3 was considered necessary to assist SF Parrabell to properly discharge its objectives.

We are instructed that the senior officers of SF Parrabell considered that the amendments to the bias crime classifications between Form 2 and Form 3 were such that it was appropriate for officers of SF Parrabell to revisit cases that had been assessed. Specifically, for each case that had been previously assessed, the case was returned to the investigation team, and the investigation team was required to re-review and reassess the case in accordance with Form 3.

In the time provided for the NSWPF to respond to the Inquiry, and noting the limitations described above, it is not possible to confirm definitively the timeframe for the use of Form 3 (beyond a broad agreement that Form 3 was in effect from at least 29 June 2016) and/or that 21 cases for SF Parrabell were reviewed for the first time using Form 3.

In any event, as noted above, because all previously-considered cases were re-assessed using Form 3, ultimately *all* matters assessed up until December 2016 were assessed using Form 3.

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**Form 4**

The NSWPF confirms its present understanding is that following a meeting on 19 January 2017 between SF Parrabell and the Bias Crimes Unit, including Assistant Commissioner Crandell, Detective Chief Inspector Middleton and Sergeant Geoffrey Steer, two of the four bias crime categories used in the BCIF were further amended, with the resulting BCIF being described in the Inquiry's letter as **Form 4**.

Specifically, two categories were amended from "No Bias Crime" to "No evidence of a bias crime"; and from "Bias Crime" to "Evidence of a bias crime". These changes did not change the underlying definition and, in turn, did not materially affect the outcome of the reviews (see T847.12).

The reasons for the amendments are reflected in the meeting minutes (**SCOI.74429**). As recorded therein, the amendment was designed to reflect the fact that the absence of evidence that a case was, in fact, a bias crime might not conclusively rule out the possibility. In particular, the amendments sought to recognise the possibility:

- a) first, that a modern investigation of the same case may have involved a different approach being taken such that further evidence relevant to the possibility of bias might have been uncovered; and
- b) second, that new evidence may be provided to the NSWPF (or otherwise identified via further investigations), such that a different conclusion would be reached.

The NSWPF also confirms its understanding that the bias crime indicators referenced in Form 4 are the same as those found in Appendix B to the Parrabell Report.

In the time provided for the NSWPF to respond to the Inquiry, and noting the limitations described above, it has not been possible to confirm definitively that 13 cases for SF Parrabell were reviewed for the first time using Form 4.

As noted above, our understanding is that all cases assessed prior to the advent of Form 3 were re-assessed under Form 3 following its introduction.

The completed BCIFs were transferred over to Form 4 in preparation for the SF Parrabell Report. It was the assessment of the senior officers of SF Parrabell that the transition from Form 3 to Form 4 did not require a further review of cases previously assessed using Form 3, as the amendments made to Form 4 were limited to changes to the title of the indicator (as distinct from the underlying definition) and therefore would not materially affect the findings made in cases in which Form 3 had been utilised.

**E. Additional clarification sought**

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;***

The inquiries we have made in response to your letter have not produced any other versions of the BCIF drafted or used by SF Parrabell beyond the versions identified by the Inquiry and detailed in this letter.

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**2. When precisely and why the versions of the form were changed;**

See the responses above.

**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?**

See the responses above.

**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**

As detailed above, any reviews completed prior to the advent of Form 3 were reassessed following its introduction in late June 2016.

We are instructed that the Flinders Academic Team would have received the first tranche of completed BCIF forms in around November 2016 (as noted by the Inquiry). The reassessment of matters previously assessed was complete by this time.

Our understanding is that the Flinders Academic Team would have received Form 3 initially, before receiving Form 4 when it was introduced as detailed above.

We reiterate that it was the position of senior officers of SF Parrabell that the changes between Form 3 and Form 4 did not affect the findings in any cases reviewed in accordance with Form 3.

**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.**

The NSWPF has not been able, in the time available, to conclusively answer this question. We are instructed that it given the changes between Form 3 and Form 4 did not result in a change in criteria, or impact upon the ultimate conclusion reached, it is unlikely that the academic team would have received a Form 4 in cases that had previously been reviewed using Form 3.

**Total number of BCIFs completed**

Noting the limitations described above, and the urgent nature of the request by the Inquiry the NSWPF has done its best to respond to the following queries. In relation to the Inquiry's assertions regarding the discrepancies in the evidence before the Inquiry as to the number of BCIFs completed by SF Parrabell, and the matters identified by the Inquiry as being possibly relevant to any discrepancies, we are instructed that:

- a. On review of the records available to the NSWPF, it was discovered that the murder of Brian Travers occurred in Tasmania and therefore was outside of the jurisdiction and Terms of Reference for SF Parrabell. Subsequently, the case was not reviewed and a BCIF was not completed.



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- b. The case of Kenneth Brennan was initially not reviewed by SF Parrabell as the matter was under active investigation by the Unsolved Homicide Team (**UHT**). However, in March 2018, at the direction of AC Crandell and with permission from UHT, the case was reviewed by SF Parrabell. This review was completed after the Flinders Academic Team had completed their review and therefore, a BCIF was not provided to the Flinders Academic Team.
- c. The case of Scott Johnson was not initially reviewed as it was an active matter with UHT and subject to a third coronial inquest. In March 2018, at the direction of AC Crandell and with permission from UHT, the case was reviewed by SF Parrabell. The review was completed after the Flinders Academic Team had completed their review and therefore, a BCIF was not provided to the Flinders Academic Team.
- d. The list supplied by Sue Thompson records 87 cases to be investigated (as recorded in the Investigation Plan) which combined the cases of Ali Mokdad and Jamie Creighton due to the nature of their relationships and deaths. There were discussions within SF Parrabell as to whether each death would be reviewed individually. Ultimately, however, given the related nature of the deaths, only one BCIF was used for both cases but each case was recorded separately on the list in the SF Parrabell Report to reflect the two separate deaths.
- e. No records could be located by SF Parrabell for the case of David Williams and therefore, only the covering page for the BCIF was completed for this case. The case remained on the final list recorded in the SF Parrabell Report. We are instructed that the Flinders Academic Team received this case, being the covering page only, in the course of their review.

**6. How many of the 88 cases were the subject of a BCIF?**

As noted above, our present understanding is that 86 cases were the subject of a BCIF. The cases of Ali Mokdad and Jamie Creighton were subject to the same BCIF (but recorded on the list as two separate individuals). The cases of Scott Johnson and Kenneth Brennan had a BCIF completed after the conclusion of SF Parrabell and the completion of the academic review.

The case of Brian Travers was not the subject of a BCIF as the murder occurred outside of the jurisdiction. The case of David Williams had only a covering page (and not the complete form).

**7. Which of the 88 cases were not the subject of a BCIF?**

As outlined above, our present understanding is that the cases of Brian Travers and David Williams were not the subject of a completed BCIF.

**8. For how many cases were BCIFs provided to the Flinders academic team?**

The NSWPF agrees with the evidence of Associate Professor Derek Dalton at [T2379.38] that the Flinders Academic Team received 85 BCIFs.

**9. Which of the four versions of the BCIF was provided to the Flinders academic team for each of those cases, and when?**

The NSWPF does not have a compiled bundle of the BCIF forms in the form they were provided to the Flinders Academic Team. It has therefore not been possible in the time available to answer this question.

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**10. For which of the 88 cases was no BCIF provided to the Flinders academic team?**

We are instructed that the Flinders Academic Team would not have received any BCIFs for the cases of Brian Travers.

A BCIF was completed for the cases of Kenneth Brennan and Scott Johnson at the direction of AC Crandell in March 2018 *after* the conclusion of SF Parrabell and the Flinders Academic Team review. The academic team would not have received the BCIFs for these cases.

**11. For which of the 88 cases was no BCIF included in the final SF Parrabell e@glei brief produced to the Inquiry?**

This question would require a former member of SF Parrabell to physically reconcile the e@gle.i holdings of the SF Parrabell BCIFs and any holdings retained in the local share drive of NSWPF systems against the documents produced to the Inquiry.

The NSWPF is not in a position to complete this exercise in the limited time provided to respond to your letter.

**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"?**

This question would require a former member of SF Parrabell to physically reconcile the e@gle.i holdings of the SF Parrabell BCIFs against any holdings retained in the local share drive of NSWPF systems to determine which cases may not have had a BCIF included in their e@gle.i holdings.

The NSWPF is not in a position to complete this exercise in the limited time provided to respond to the Inquiry.

Yours sincerely



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