



Special Commission of Inquiry into LGBTIQ hate crimes

10 August 2023

Katherine Garaty
 Director, Crime Disruption and Special Inquiries Law
 Office of the General Counsel, NSW Police Force
 Locked Bag 5102
 PARRAMATTA NSW 2124

By email: [REDACTED]

Dear Ms Garaty

Special Commission of Inquiry into LGBTIQ hate crimes: Public Hearing 2 Witnesses

1. I refer to the above Inquiry and to the submissions of the NSW Police Force (**the NSWPF**) dated 28 June 2023, in relation to Public Hearing 2.
2. In my letter to you of 29 June 2023, I noted that the submissions of the NSWPF identified some 25 individuals, or categories of individuals, who were not called by Counsel Assisting to give evidence at Public Hearing 2. The NSWPF argues that the consequence of these persons not having been called is that there is insufficient evidence for the Commissioner to make certain findings, and also that some or all of those persons have not been afforded procedural fairness, such that the Commissioner is precluded from making findings adverse to their interests.
3. In this letter, I will for the most part address the first of those two contentions, and the steps that the Inquiry proposes to take in response to it. I will also make some initial observations in relation to the procedural fairness submission.
4. As set out in my earlier letter of today, the Inquiry has been informed that the Commissioner's request for an extension of time to 15 December 2023 will be approved. The timing of various future steps referred to later in this letter has been decided upon in the light of that indication. Until it received that indication, the Inquiry was not in a position to determine the most appropriate way forward in relation to these issues.

Purposes of a commission of inquiry

5. It is convenient to begin by considering the purposes of a commission of inquiry more generally. It is trite that a commission of inquiry is not a court. It is not exercising judicial power to resolve an adversarial dispute between parties as to their rights, liabilities or interests. It is an inquisitorial body, established by Letters Patent, exercising executive power to "inquire into and report and make recommendations" to the Governor on the matters specified in the Terms of Reference.

Special Commission of Inquiry into LGBTIQ hate crimes

6. In *Royal Commissions and Permanent Commissions of Inquiry*, Dr Stephen Donaghue identifies various purposes served by Royal Commissions and other commissions of inquiry:
- “The reasons most commonly advanced for the use of commissions to investigate crime are that they are independent of the executive, that existing law enforcement mechanisms are inadequate, that commissions can suppress crime, and that they are useful for exposing criminal activity or revealing the truth.”¹
7. Each of these reasons is relevant to the work of the Inquiry, in particular, in the context of Public Hearing 2, the need to reveal the truth. The importance of commissions of inquiry in revealing the truth has been frequently observed. In the Fitzgerald Commission of Inquiry, Commissioner Fitzgerald argued that it was vital “that whatever steps are available be taken to maximise the prospect that the truth is told”.² In the Costigan Royal Commission, Commissioner Costigan said:
- “My task is quite different [from that of a court]. It is to inquire into multitudinous factual situations so as to discover the truth. For this purpose I am granted under my Commission ‘full power and authority to call before me such person or persons as I shall judge likely to afford me any information upon the subject of my Commission.’³
8. In *Ferguson v Cole* [2002] FCA 141; 121 FCR 402 at [74], Branson J noted:
- “Where the Executive Government has a need for information it has the option of seeking to obtain that information by one or more of various means. The establishment of a Royal Commission is one way in which the Executive Government may obtain information.”
9. The NSWPF has an important role in this Inquiry to assist the Commissioner to discover the truth in relation to matters which he considers to fall within the Terms of Reference.
10. The NSWPF has provided significant assistance to date in this respect. The affidavit of Natalie Marsic of 26 June 2023 outlines the work that has been required of the NSWPF in responding to the Inquiry. Ms Marsic also outlines the significant resources that the NSWPF has now committed to undertake that work, including:
- a. Three homicide officers within the Unsolved Homicide Team;
 - b. Three lawyers within the Office of General Counsel;
 - c. One senior counsel and three junior counsel from the independent bar;
 - d. An external law firm which currently has a team of 16 lawyers, as well as paralegals and legal technology staff
11. The Inquiry does not underestimate that work and is grateful to the officers and legal representatives of the NSWPF who have endeavoured to assist the Inquiry. The Inquiry is likewise grateful to the NSWPF for its several public statements of support, including in the affidavit of Ms Marsic and at the conclusion of its 28 June 2023 submissions.

The calling of witnesses generally

12. One of the ways in which the Inquiry has sought the assistance of the NSWPF has been in relation to the evidence of its current and former officers.
13. The power to summons witnesses is reposed in the Commissioner: *Special Commissions of Inquiry Act 1983 (NSW) (SCOI Act)* s. 14. The *SCOI Act* does not confer a right on interested parties to call

¹ *Royal Commissions and Permanent Commissions of Inquiry* (2001, Butterworths) 16.

² *Ibid*, 22.

³ See *Ross v Costigan* (1972) 41 ALR 319 at 326.

Special Commission of Inquiry into LGBTIQ hate crimes

witnesses of their own. Consistent with the treatment of witnesses under the *SCOI Act*, Practice Guideline 1 relevantly provides:

20. All witnesses at a public hearing will be called by Counsel Assisting.
 21. Any person authorised to appear at a hearing who wishes to have evidence of a witness or witnesses placed before the Commission is to notify Counsel Assisting of the names of such witnesses, and is to provide a signed statement of their expected evidence (if possible in the form of a statutory declaration) as soon as practicable. (Emphasis added)
 22. If considered necessary or desirable, Counsel Assisting and/or Commission staff may interview such witnesses and take or request further statements from such witnesses. It is not necessary that any such interviews or obtaining of additional statements or information occur in the presence of the person, or legal representatives thereof, who sought to have the evidence of such witnesses placed before the Commission
 23. Counsel Assisting will determine whether or not to call the witness. An application may be made directly to the Commissioner to call the witness only after the above procedure has been completed and Counsel Assisting has indicated that the witness will not be called.
14. The provisions of the *SCOI Act* and Practice Guideline 1 reflect a standard practice for commissions of inquiry in Australia.⁴ Dr Donaghue notes that “Commission legislation does not confer a right on interested persons to call witnesses to give further evidence to a commission. This is not surprising, as if such a right existed a hearing ‘might become so protracted as to render it practically futile’.”⁵
 15. However, the difficulties associated with identifying those persons who are appropriate or necessary witnesses is another common feature of commissions of inquiry in Australia.⁶ Hence in the present Inquiry, although the NSWPF has no power to call witnesses, the Commissioner and Counsel Assisting are well aware that it may often be the NSWPF which has the best ability to identify appropriate witnesses to give evidence in relation to specific issues, given the size of the NSWPF, its close involvement with these issues over many years, and its access to its own records.
 16. The Inquiry has therefore sought the assistance of the NSWPF both in identifying such witnesses and in preparing written statements from those witnesses. The Inquiry has done so in a variety of contexts, including: in relation to issues arising in some of the cases that have proceeded to documentary tender; in relation to the Investigative Practices Hearing; and, relevantly for present purposes, in relation to Public Hearing 2.

Witnesses for Public Hearing 2

17. On 20 September 2022, the Inquiry wrote to the NSWPF to request witness statements in relation to the public hearing that became Public Hearing 2. In that letter it was indicated that the tentative commencement date (subsequently confirmed) for that hearing was 5 December 2012. The Inquiry requested statements from the following individuals:
 - a. Assistant Commissioner (AC) Tony Crandell, in relation to various topics including Strike Force Parrabell;

⁴ Donaghue, above n 1, 191.

⁵ *Ibid*, 190

⁶ *Ibid*, 191.

Special Commission of Inquiry into LGBTIQ hate crimes

- b. Professor Willem de Lint, **and/or** Professor Derek Dalton, of Flinders University, in relation to Strike Force Parrabell and the academic review thereof;
 - c. Sergeant Geoff Steer **and/or** the appropriate other officer, in relation to various topics including the position of Bias Crime Coordinator and the Bias Crime Unit;
 - d. Detective Sergeant (**DS**) Steve Morgan **and/or** Detective Senior Constable (**DSC**) Michael Chebl, in relation to Strike Force Neiwand.
18. The Inquiry sought these statements because, as far as it was aware, these individuals would be best placed to give evidence in relation to the matters outlined in that letter. The Inquiry offered the NSWPF choices as to the appropriate individual(s) to provide statements. It did so because it recognised that the NSWPF would be likely to be best able to determine which individual/s could best assist the Inquiry.
19. Each of the requests for a statement from officers of the NSWPF (including AC Crandell) expressly noted that:
 - a. If a topic fell outside the knowledge of the officer, the NSWPF should provide a statement from the appropriate officer to address that topic; and
 - b. If officers considered that other topics were relevant and should be addressed, they should do so.
20. The NSWPF duly provided statements from:
 - a. AC Crandell, dated 31 October 2022, in relation to all topics required (including Strike Force Parrabell), with the exception of some topics relating to Bias Crime which were to be addressed by others;
 - b. Shobha Sharma dated 28 October 2022 and Sergeant Ismail Kirgiz dated 28 November 2022, in relation to some of the Bias Crime topics outlined in respect of Sergeant Steer and AC Crandell;
 - c. Dr de Lint and Dr Dalton, in a joint statement dated 28 October 2022, in relation to Strike Force Parrabell and the academic review;
 - d. DS Morgan dated 31 October 2022, in relation to Strike Force Neiwand.
21. In relation to Strike Force Neiwand, the NSWPF chose not to provide a statement from DS Chebl, but only from DS Morgan.
22. A statement from Sergeant Steer had been created by 11 October 2022, but the NSWPF advised the Inquiry by letter dated 3 November 2022 that there was “potential for a conflict” between the interests of the Commissioner of Police and those of Sergeant Steer. Accordingly, the statement (ultimately dated 18 November 2022) was in fact provided by solicitors separately representing Sergeant Steer, rather than by the NSWPF.
23. On 22 December 2022, I wrote to you requesting a statement from former Deputy Commissioner Michael Willing in relation to a variety of topics, including Strike Force Macnamir and Strike Force Neiwand. The NSWPF duly provided a statement from Mr Willing (who was no longer a police officer) which dealt with those topics, dated 30 January 2023.
24. With the exception of some discrete topics related to Bias Crime on which AC Crandell (along with Sergeant Steer) had been requested to provide a statement, as to which the NSWPF advised that Sergeant Kirgiz and another person (Ms Sharma, as it eventuated) would provide evidence, no

Special Commission of Inquiry into LGBTIQ hate crimes

suggestion was made by NSWPF that the persons nominated were not in a position to address all the topics raised, or that statements should also be obtained from other persons.

25. However, in its submissions of 28 June 2023, the NSWPF now argues that in relation to numerous aspects of Public Hearing 2, there is insufficient evidence for the Commissioner to make certain findings and that numerous witnesses ought to have been called to give evidence. It advances such arguments, for the first time at this late stage, despite the requests by the Inquiry that statements be provided from all appropriate individuals, and despite the provisions of Practice Guideline 1 extracted above.

Strike Force Parrabell

26. The topics on which evidence was sought in relation to Strike Force Parrabell, either from AC Crandell or from other appropriate officers if a particular topic fell outside the knowledge of AC Crandell, included (*inter alia*):

- “12 The origins and history of the selection, creation and use, by the NSWPF, of the Bias Crime Indicators Review Form (BCIF)
- 28 The methodology, protocols and arrangements pursuant to which
- (a) the Strike Force Parrabell personnel
- (b) the Flinders University academic team
- were to, and/or did, carry out their respective tasks.”

27. Thus it was plain from 20 September 2022 that the Inquiry was seeking evidence, from AC Crandell or other appropriate officer/s, as to the way in which the various Strike Force Parrabell personnel were meant to, and did in fact, carry out their respective tasks.
28. The Inquiry understood AC Crandell to be the officer best placed to give evidence in relation to these and other aspects of Strike Force Parrabell, because he made the decision to establish the Strike Force, because he was the Commander of the Strike Force throughout its existence, and because he was the author of the part of the Report of Strike Force Parrabell that was prepared by the NSWPF.
29. A statement was duly provided from AC Crandell, dated 31 October 2022, as noted above. No indication was given to the Inquiry that in any respect AC Crandell was unable to address the topics listed in the Inquiry’s 20 September letter in relation to Strike Force Parrabell.
30. As noted above, the 5 December commencement date for Public Hearing 2 was initially notified in the Inquiry’s letter of 20 September 2022, and most of the statements produced by the NSWPF were provided by late October 2022.
31. On 2 December 2022 (one working day before the hearing was to commence), the NSWPF advanced written submissions, supplemented on 5 December 2022 by oral submissions, to the effect that several of the topics which AC Crandell had been asked to address (and had addressed), including the creation of Strike Force Parrabell and its methodology, were outside the Inquiry’s Terms of Reference. In a judgment delivered on 6 December 2022, the Commissioner rejected those submissions.
32. In the circumstances summarised above, it could not have been more obvious that the methodology of Strike Force Parrabell, both as proposed and as implemented, was a matter which the Inquiry was considering and on which it sought and required evidence from the appropriate NSWPF officers.
33. Yet the NSWPF now contends, in its submissions of 28 June 2023, that AC Crandell was not able to address the methodology of Strike Force Parrabell. It is now said, for the first time, that evidence was

Special Commission of Inquiry into LGBTIQ hate crimes

needed from Detective Chief Inspector (DCI) Middleton, DS Grace or DSC Bignell about such matters: see for example those submissions at [508], [510], [513], [520] and [542]-[547].

34. If AC Crandell was not able to give comprehensive evidence about Strike Force Parrabell and in particular its proposed and actual methodology, notwithstanding that he was at all times the Commander of the Strike Force, then the NSWPF ought to have promptly informed the Inquiry of that fact in response to the letter of 20 September 2022, and should have provided statements, from any or all of DCI Middleton, DS Grace and DSC Bignell, and/or from any other officer whose evidence was considered necessary, at the same time as providing that of AC Crandell.
35. The questioning of AC Crandell in December 2022, by Senior Counsel Assisting (and the Commissioner), made even more clear that the proposed and actual methodology of Strike Force Parrabell, including the form of, changes to, and use of the BCIF, was being closely examined by the Inquiry. Senior counsel for the NSWPF also questioned AC Crandell at some length at that time, including about such matters. No submission or suggestion was made to the Commissioner that other officers should also give evidence about them.
36. Given the stance now being adopted in the submissions on behalf of the NSWPF, it is most unfortunate that the NSWPF did not comply with either the requirements of the Guideline or the terms of the Inquiry's letter.

Bias Crime, Bias Crime Coordinator and Bias Crimes Unit

37. The topics on which evidence was sought in relation to Bias Crime, from AC Crandell and Sergeant Steer and/or from other appropriate officers if a particular topic fell outside the knowledge of those officers, included (*inter alia*):
 - "The functions and responsibilities of the Bias Crime Unit, from its inception to the present, including
 - (a) The unit or other organisational arm of the NSWPF in which the Bias Crime Unit has been placed,
 - (b) The numbers and seniority of staff attached to the Unit,
 - (c) The procedures and protocols, including reporting lines, relating to interaction between that Unit and other arms of the NSWPF including the Homicide Squad and the Unsolved Homicide Team,
 - (d) Any changes to any of (a) – (c) since the inception of the Bias Crime Unit, including by reference to the Unit's relocation to the Fixated Persons Investigation Unit, and the reasons for those changes."
38. In his statement of 31 October 2022, at [12] and [13], AC Crandell indicated that he had "no particular knowledge" about matters relating to the Bias Crime Unit (and the Engagement and Hate Crime Unit), and was "not in a position to address" such matters, and that he understood that other members of the NSWPF would do so.
39. As noted above, the NSWPF did provide two other statements dealing with these matters, namely those of Shobha Sharma dated 28 October 2022 and Sergeant Ismail Kirgiz dated 28 November 2022.
40. As also noted above, the statement of Sergeant Steer was provided to the Inquiry on or about 18 November 2022 by solicitors acting separately for Sergeant Steer. However, the statement had been completed by Sergeant Steer (with the assistance of the NSWPF) by 11 October 2022, prior to the decision of the NSWPF to arrange for separate representation for him because of the "potential for conflict".

Special Commission of Inquiry into LGBTIQ hate crimes

41. That statement of Sergeant Steer directly addressed the problem of under-resourcing of the Bias Crime Coordinator and the Bias Crime Unit: see for example at [12], [16]; see also [39]. Although the contents of Sergeant Steer's statement, including those paragraphs, were known to the NSWPF by 11 October 2022, the NSWPF chose not to provide statements from witnesses capable of giving evidence about the availability of, or priorities relating to, resources.
42. Sergeant Steer's statement did not deal directly with the effective abolition of the Bias Crime Unit in 2017, or his view that he was forced out at that time. However, those matters were squarely raised in numerous documents included in the Tender Bundle – which was provided to the NSWPF a week before the start of Public Hearing 2 – and were also the subject of oral evidence from both AC Crandell and Sergeant Steer, in particular, in December 2022.
43. In the submissions of 28 June 2023, the NSWPF now submits, for the first time, that the Inquiry should have called evidence from witnesses (not identified by name) about matters such as the following, and that the Inquiry therefore may not make any findings about such matters:
 - a. the availability of resources, and the appropriate distribution of them among the various competing priorities of the NSWPF: see [29];
 - b. the objectivity of Sergeant Steer, and the accuracy of his opinions in relation to the restructuring of the Bias Crimes Unit in 2017 and his being “forced out” of the Bias Crimes Unit at that time: see [34];
 - c. the reasons for the 2017 restructure, from the perspective of “those actually responsible for it”: see [36].
44. If the NSWPF considered that there was a need for witnesses other than AC Crandell, Ms Sharma and Sergeant Kirgiz to give evidence about such matters, as the NSWPF now appears to submit, then the NSWPF ought to have promptly informed the Inquiry of that fact, having regard to both the letter of 20 September 2022 and the terms of Practice Guideline 1, and should have provided statements, from any officer whose evidence was considered necessary.
45. The questioning of AC Crandell and Sergeant Steer by Senior Counsel Assisting, in December 2022, made amply clear that these matters were being closely examined by the Inquiry. Again, senior counsel for the NSWPF also questioned AC Crandell and Sergeant Steer at that time, including about those matters. The Commissioner also asked questions on those topics. No suggestion was made, until 28 June 2023, that other officers should also give evidence about them.
46. Again, it is most unfortunate that the NSWPF did not comply with either the requirements of the Guideline or the terms of the Inquiry's letter.

Strike Force Neiwand

47. The topics on which evidence was sought by the Inquiry in relation to Strike Force Neiwand, in its letter of 20 September 2022, included (*inter alia*):
 - “2. The reasons for the establishment of Strike Force Neiwand.
 4. An outline of the work of Strike Force Neiwand from its inception to the present.
 5. The creation and dates of any interim or final report or reports by Strike Force Neiwand, and to whom and by what means, and when, such reports were published or disseminated.”
48. In its 20 September 2022 letter, the Inquiry requested a statement addressing those topics (among others) from DS Morgan (the Investigation Supervisor) **and/or** DSC Chebl (the Officer in Charge).

Special Commission of Inquiry into LGBTIQ hate crimes

49. The NSWPF chose to provide only a statement from DS Morgan (dated 31 October 2022), and not to provide a statement from DSC Chebl (either instead or as well). The Inquiry accordingly proceeded on the basis that in the view of the NSWPF, DS Morgan was the appropriate person to give comprehensive evidence about the work of Strike Force Neiwand, including “any interim or final reports” (which, as the evidence revealed, comprised in particular the nine Progress Reports, the three Neiwand Summaries and the Post Operative Assessment).
50. No indication was given, either in correspondence or in the statement of DS Morgan itself, that DS Morgan was in any respect unable to address the topics listed in the Inquiry’s 20 September 2022 letter, or that his recollections or views were or might be in any way different from those of DSC Chebl.
51. Subsequently, on 22 December 2022, having regard *inter alia* to various aspects of the contents of DS Morgan’s statement, as well as the oral evidence of AC Crandell in December, a statement was also requested from Mr Willing about a number of topics including Strike Force Neiwand.
52. The questioning of DS Morgan (and Mr Willing) by Senior Counsel Assisting, in February 2023, made it very clear that the work and methods of Strike Force Neiwand, including the content of the Neiwand Summaries (drafted by DSC Chebl but reviewed and accepted by DS Morgan), were being closely examined by the Inquiry and were likely to be the subject of criticism by Counsel Assisting in submissions.
53. However, the NSWPF has only now, in its submissions of 28 June 2023, advanced the contention (repeatedly) that DSC Chebl should have been called to give evidence, and that in the absence of evidence from him, various findings cannot be made and procedural fairness has not been accorded to him.
54. If at any time the NSWPF considered that a statement should be obtained from DSC Chebl or anyone else, the NSWPF should have so advised the Inquiry and should have provided the requisite statement or statements. Once again, I refer to the Inquiry’s letter of 30 September 2022 and to Practice Guideline 1.
55. Again, it is most unfortunate that the NSWPF did not comply with either the requirements of Practice Guideline 1 or the terms of the Inquiry’s letter.

Strike Force Macnamir

56. By its letter of 22 December 2022, the Inquiry requested a statement from Mr Willing in relation to a number of topics including Strike Force Macnamir. The topics which Mr Willing was asked to address, in relation to Strike Force Macnamir, included:
 - “6. The background to and reasons for the establishment of Strike Force Macnamir.
 7. Mr Willing’s role in connection with the establishment of Strike Force Macnamir.
 8. Mr Willing’s involvement in any way with Strike Force Macnamir at any time thereafter.
 11. A summary of the work of Strike Force Macnamir from its inception to its conclusion.”
57. By December 2022 the Inquiry was aware, among other things: that Mr Willing was Commander, Homicide from 2011 to 2017; that Strike Force Macnamir began in February 2013; that the original Investigation Supervisor for Strike Force Macnamir, DCI Young, was removed from that role in April 2015; and that the Strike Force continued until November 2017 (when the findings of the third inquest into the death of Scott Johnson were delivered).

Special Commission of Inquiry into LGBTIQ hate crimes

58. It seemed to the Inquiry that Mr Willing would be likely to have sufficient knowledge of and involvement in Strike Force Macnamir to address the issues on which evidence was sought in relation to that Strike Force. That assumption was reinforced by parts of Mr Willing's statement, such as paragraphs [47] and [48].
59. The questioning of Mr Willing by Senior Counsel Assisting, in February 2023, made it very clear that the approach adopted by Strike Force Macnamir to the reinvestigation of the death of Scott Johnson, between February 2013 and November 2017, including whether the Strike Force was committed to favouring the suicide theory, was being closely examined by the Inquiry and was likely to be the subject of submissions by Counsel Assisting.
60. However, a recurring theme in the NSWPF submissions is that the Inquiry did not call evidence in relation to Strike Force Macnamir from:
- a. DCI Stewart Leggat;
 - b. DCI Pamela Young;
 - c. DS Penelope Brown; and
 - d. DSC Paul Rullo.
61. If at any time the NSWPF considered that evidence should have been obtained from any of these individuals, the NSWPF should have so advised the Inquiry, and should have provided the requisite statement or statements. Once again, I refer to the process set out in Practice Guideline 1.
62. Again, it is most unfortunate that the NSWPF did not comply with the requirements of Practice Guideline 1.

2013 Issue Paper

63. In September 2013, DCI Lehmann and DCI Young wrote an Issue Paper on 30 'unsolved' cases identified by Sue Thompson as possible hate crimes. That Issue Paper was in the Tender Bundle from the outset of Public Hearing 2 in December 2022: Exhibit 6, Tab 47. No submission has been made by Counsel Assisting that the views expressed by those officers in that Issue Paper were not genuinely held.
64. However, the NSWPF now submits that there is insufficient evidence to draw conclusions in respect of the Issue Paper in the absence of evidence from DCI Lehmann or DCI Young. If the NSWPF at any time had the view that these officers should have been called to give evidence in relation to the Issue Paper, the NSWPF should have so advised the Inquiry, and should have provided the requisite statement or statements. Once again I refer to the process set out in Practice Guideline 1.

Procedural fairness

65. The submissions on behalf of the NSWPF also make various allegations about procedural fairness. Counsel Assisting and the Commissioner will address the substance of those allegations at the appropriate time.
66. However, in the meantime I make these practical observations.
67. Nearly all the individuals in respect of whom the NSWPF now submits either that they should have been called as witnesses, or that they should be given notice of possible findings which may be "adverse to their interests", are serving or former police officers, or other members of staff of the NSWPF. Given the submissions now made by the NSWPF, the Inquiry assumes that the NSWPF has provided to all such persons the submissions of Counsel Assisting dated 7 June 2023, and has

Special Commission of Inquiry into LGBTIQ hate crimes

informed them of the views of the NSWPF as to procedural fairness in relation to each of them. Would you please, within seven days (no later than **17 August 2023**):

- a. confirm that that is so; and
 - b. advise me of the names of those to whom, and the dates on which, those submissions and those views have been provided.
68. If the Inquiry's assumption in that regard is not correct, and the NSWPF has not provided the submissions of Counsel Assisting to such persons, would you please, within seven days (no later than **17 August 2023**):
- a. advise why that has not been done; and
 - b. provide me with the names and contact details of all such persons, so that the Inquiry can engage in any appropriate correspondence itself with any such persons.

Strike Forces Macnamir, Parrabell and Neiwand

69. In oral address on 30 June 2023, at transcript page 4775, senior counsel for the NSWPF contended that it was not until the receipt of the submissions of Counsel Assisting on 7 June 2023 that the NSWPF realised that there was a suggestion of:

“three individual areas in which it is suggested that the Inquiry could come to the conclusion that there was an attempt by a team of police officers to understate the incidence of gay hate crimes, but also that those three areas could be accumulated together to come to the conclusion that, in effect, there was what I would loosely categorise as a grand conspiracy on the part of a very large number of police officers to do the same.”

70. In response to that contention, at this stage, three points are made:

71. First, nowhere in the submissions of Counsel Assisting is there any contention of any such “conspiracy”. The only submissions referring to any such “conspiracy” are those of the NSWPF and Mr Willing.

72. Secondly, on 15 November 2022, summons NSWPF35 required production of documents including, at paragraph 6:

“6. Any correspondence, file notes and/or minutes of meetings, in the period between 1 October 2015 and 30 March 2018 inclusive, between:

- (a) Members of the Strike Force Neiwand team ...;
- (b) Members of the Strike Force Parrabell team ...; and/or
- (c) Members of the Strike Force Macnamir team ...,

in relation to the investigations being conducted by Strike Force Neiwand and/or Strike Force Parrabell and/or Strike Force Macnamir.”

Special Commission of Inquiry into LGBTIQ hate crimes

73. Thirdly, in my letter to you of 22 December 2022, among the topics on which the evidence of Mr Willing was sought was:
- “24 Mr Willing’s involvement in, and/or knowledge of, communications or co-operation between or among Strike Force Neiwand, Strike Force Macnamir and Strike Force Parrabell between October 2015 and June 2018, including but not limited to: ...
- (c) the provision of information and/or findings and/or interim or final conclusions by one Strike Force to the other, including the reasons for doing so and the dates and details thereof.”
74. Fourthly, each of AC Crandell, Mr Willing and DS Morgan was questioned at some length by Senior Counsel Assisting about possible links and confluences between and/or among Strike Forces Macnamir, Neiwand and Parrabell. The Commissioner also asked questions on those topics.
75. Any suggestion that the NSWPF was not squarely on notice, at least from the 15 November 2022 summons, the 22 December 2022 letter, and the nature and extent of the questioning of those witnesses in December and February, that those matters were likely to be the subject of submissions by Counsel Assisting, is difficult to understand.
76. However, for the moment I turn again to address practicalities.

Request for witness statements

77. If the evidence presently before the Inquiry is insufficient for the Commissioner to make certain findings, as the submissions on behalf of the NSWPF assert, that is a result of the actions of the NSWPF, for the reasons outlined above. That is a very unsatisfactory situation.
78. I do not in this letter express any view as to the correctness of the NSWPF submissions as to the sufficiency or otherwise of the evidence. However, as noted above, a key purpose of this Inquiry is to discover the truth in relation to matters which fall within the Terms of Reference. It would be inconsistent with that purpose for the Commissioner to make findings on the basis of insufficient evidence. It would be equally inconsistent with that purpose for the Commissioner to decline to make findings if any such insufficiency (if it exists) could be addressed by supplementary evidence.
79. The Inquiry requests that the NSWPF provide statements from each of the following individuals by no later than 5:00pm on **1 September 2023**. As in my letter of 29 June 2023, I have identified the first paragraph in which the NSWPF makes submissions to this effect in relation to each individual:
- a. A witness or witnesses able to speak to “the accuracy or otherwise of Sergeant Steer’s claims that he was ‘forced out’ of the Bias Crimes Unit, or the circumstances in which the Bias Crimes Unit was restructured such that it was moved to a position within the Fixated Persons Unit” – [34];
 - b. DCI Stewart Leggat - [130(c)];
 - c. DCI John Lehmann - [113];
 - d. DCI Pamela Young - [136];
 - e. DS Penelope Brown – [130];
 - f. DSC Paul Rullo – [130(d)];
 - g. DSC Michael Chebl – [130(d)];
 - h. DCI Craig Middleton – [486];
 - i. DS Paul Grace – [486]; and

Special Commission of Inquiry into LGBTIQ hate crimes

- j. DSC Cameron Bignell – [486].
80. These statements should address any matters in respect of which the NSWPF has submitted there is insufficient evidence for the Commissioner to make findings, and/or that procedural fairness requires that the individuals in question be given an opportunity to provide evidence or be heard.
 81. If there is any difficulty in the provision of any of these statements by the required date, please advise the Inquiry in writing within seven days (no later than **17 August 2023**). Please also advise the reasons for any such difficulty.
 82. Once such statements have been provided or obtained, Counsel Assisting will consider whether to call any or all of these witnesses to give oral evidence. If the NSWPF considers that oral evidence should be called from particular witnesses, in addition to the evidence contained in their statements, please advise the Inquiry in writing at the time the statement is provided and explain the reasons why the NSWPF holds that view.

Additional possible witnesses

83. The NSWPF also now appears to argue (as noted in my letter of 29 June 2023) that there are various other additional individuals who also should have been called. Some of those are named (see a–h below), while others are referred to only in general terms (see i–n below):
 - a. Dr Birch – [47];
 - b. DSC Taylor – [96];
 - c. DAS Olen – [113];
 - d. DS Clancy – [185];
 - e. Ms Wells – [217];
 - f. Former DS Bowditch – [242];
 - g. Ms Braw – [650];
 - h. Dr Tyson – [730];
 - i. Officers working on SF Welsford or otherwise able to speak to the ultimate charging and conviction of Scott White – [103];
 - j. “Those assisting the State Coroner” at the third inquest in relation to the death of Scott Johnson – [199(c)];
 - k. “Others” who shared the views of DCI Young and DS Brown – [201];
 - l. “Others” in State Crime Command – [207];
 - m. “Any of the personnel actually involved in the investigations (beyond DS Morgan)” in relation to SF Neiwand – [364]; and
 - n. “More junior members of the team” that conducted SF Parrabell – [520].
84. The written submissions of Mr Willing make similar points in respect of the following further individuals:
 - a. Mr Gordon – [52];
 - b. Ms McMahon – [52];
 - c. Ms Vaughan – [52];

Special Commission of Inquiry into LGBTIQ hate crimes

- d. Mr Fuller – [94(e)] (these four being present or former NSWPF officers or staff); and
- e. Ms Alberici – [66].

85. The Inquiry does not request that the NSWPF provide statements from any of these additional individuals (whether adverted to in the submissions for the NSWPF or in those for Mr Willing). It is considered that obtaining statements from all of these witnesses might lead the Inquiry to “become so protracted as to render it practically futile.”⁷
86. However, if the NSWPF considers that any of these individuals should provide a statement to the Inquiry in relation to Public Hearing 2, either as a matter of procedural fairness or to ensure that the Commissioner has the evidence necessary to make findings on matters which have been the subject of submissions from Counsel Assisting or the other interested parties, please:
- a. notify Counsel Assisting of the names of those witnesses, and
 - b. provide signed statements of their expected evidence,
- by no later than 5:00pm on 1 September 2023: see Practice Guideline 1 at [21].

Timetable for resumption of Public Hearing 2

87. All further statements in relation to Public Hearing 2, as noted above, are to be provided by no later than 5:00pm on 1 September 2023.
88. In the event that the NSWPF does not produce a statement from a witness, or a witness declines to provide one, the Inquiry will proceed on the basis that the NSWPF does not press any submission about the absence of evidence from that witness.
89. The NSWPF should identify any non-publication orders which are sought at the time it produces the statements to the Inquiry.
90. The Commissioner proposes to reconvene Public Hearing 2, to hear oral evidence from any further witnesses whom Counsel Assisting may choose to call, in September 2023.
91. Directions about supplementary written and oral submissions will be provided to you in due course.

Please do not hesitate to contact me if you have any queries in relation to this matter.

Yours faithfully,



Enzo Camporeale
 Director, Legal
Solicitor Assisting the Inquiry

⁷ Ibid, 190. See *National Companies and Securities Commission v News Corporation Ltd* (1984) 156 CLR 296.