The Special Commission of Inquiry
into LGBTIQ Hate Crimes

# PUBLIC HEARING 2

## Concerning Strike Force Parrabell and related topics

### Submissions on behalf of the Commissioner of Police

## Contents

## Introduction

1. These submissions are filed on behalf of the Commissioner of the New South Wales Police Force (**NSWPF**) in response to the written submissions of Counsel Assisting in relation to Public Hearing 2, dated 7 June 2023 (**CA**). They summarise the response of the Commissioner of Police to the submissions Counsel Assisting makes in relation to various aspects of Strike Force Parrabell (**SF Parrabell**), Strike Force Macnamir (**SF Macnamir**) and Strike Force Neiwand (**SF Neiwand**).

## Part A: Background and Overview

2. At CA, [9] – [192], Counsel Assisting provides a broad overview of a range of matters relevant to the Inquiry's consideration of SF Parrabell, SF Neiwand and SF Macnamir. The substance of Counsel Assisting's submissions in respect of each of those Strike Forces will be addressed at Parts B – I of these submissions.

3. The LGBTIQ community has long been the victim of discrimination, intolerance, and violence driven by prejudice. Well into the 1980s, the NSWPF was an important cog in a society that enabled prejudicial attitudes towards LGBTIQ persons, condoned violence against members of the LGBTIQ community, and failed to respond to it appropriately.

4. Adverse experiences throughout the 1950s, 60s, 70s and 80s led members of the LGBTIQ community to be reluctant to report incidents of violence to police.[1] As a consequence, many incidents of violence against LGBTIQ persons were not adequately responded to. As noted in evidence by Assistant Commissioner (**AC**) Crandell, the AIDS Council of New South Wales (**ACON**) had gathered records of up to 20 reports per day of bashings of gay men in the late 1980s.[2]

5. In recent years, the NSWPF has repeatedly acknowledged the violence and discrimination suffered by members of the LGBTIQ community, and its role in perpetuating both. As noted in AC Crandell's evidence before the NSW Parliament's *Standing Committee on Social Issues* on 9 November 2018:[3]

---

[1] Transcript, T597.33.
[2] Transcript, T599.1.
[3] Exhibit 6, Tab 235 (SCOI.82089), p. 2.

*Within the period under review, social attitudes towards beats created dangerous environments where men were identified as legitimate targets of violence, unlikely to ever seek police assistance. Strike Force Parrabell is not commentary upon the level of violence directed against LGBTIQ communities. The NSW Police Force is acutely aware of and acknowledges without qualification the shocking violence directed at the LGBTIQ communities during the seventies, eighties and nineties. It is clear that the level of violence inflicted outside of Strike Force Parrabell's charter because of the victims' survival, was elevated, extreme and brutal. It is equally clear that many of these cases were not properly investigated and that victims were let down. The NSW Police Force accepted a culture and society that marginalised people who happened to be sexually or gender diverse. Since 1984-85 the NSW Police Force has made slow but steady progress through strong community partnerships, an active engagement agenda, and a glowing network of LGBTIQ champions across the force that, as at 4.00 p.m. today, will increase to 233 officers, with 29 graduations."*

6. These observations echoed the terms of the Parrabell Report itself:[4]

*The NSW Police Force is acutely aware of and acknowledges without qualification both its and society's acceptance of gay bashings and shocking violence directed at gay men, and the LGBTIQ community between 1976 and 2000. This is an important point, because the review of these 88 deaths by Strike Force Parrabell is not designed as commentary upon the level of violence directed towards the LGBTIQ community during these times. It is clear and beyond question that levels of violence inflicted upon gay men in particular were elevated, extreme and often brutal. The victims of these crimes fell outside the scope of Strike Force Parrabell due to their survival. Many of these people were fortunate to live.*

*The Gay and Lesbian Rights Lobby and later, the AIDS Council of NSW (now ACON) kept records, usually comprising self-reported incidents of gay-hate violence, that on several occasions amounted to more than 20 entries per day.*

---

[4] See also, Transcript, T596.6.

> *Unfortunately, fear associated with antigay attitudes of officers within the NSW Police Force at the time prevented these reports being formally recorded, which in turn meant that crimes were not investigated. This inherent lack of consequences or accountability meant that perpetrators were given a kind of 'social license' to continue inflicting violence upon members of the gay community. This phenomenon has been associated with what some perpetrators believed was their moral obligation, driven by poor societal expectations. The Bondi incidents together with similar disappearances and deaths of men in and around beats attracted heightened levels of violence and were often associated with a victim's sexuality or perceived sexuality."*

7. Homosexuality was only removed as a disorder from the American Psychiatric Association's Diagnostic and Statistical Manual in 1973. Lamentably, broader society took considerably longer to accept it as a healthy expression of human sexuality. Male homosexual activity was not decriminalised in NSW until 1984. It was not decriminalised in all Australian states and territories until 1997. The age of consent for anal intercourse, however, was not brought into line with that for other sexual activity until 2003 in NSW (and until 2016 in Queensland).

8. In 2004, the Commonwealth Parliament amended the *Marriage Act 1961* to expressly exclude homosexual marriage, and gay marriage was not legislated until 2017, following the conduct of a divisive plebiscite, during which abhorrently discriminatory refrains continued to issue forth from various quarters.

9. The NSWPF acknowledges that it is not merely a product of society, but plays an important, culture-shaping role within it. From the mid-1980s onwards, it has increasingly recognised the need for it to take real steps to promote the development of an inclusive society in which all members of the community are able to express their sexuality without fear of violence or persecution and feel comfortable reporting hate-driven incidents.

10. As noted by Counsel Assisting (CA, [23]), the NSWPF established an informal gay-liaison capacity in 1985,[5] the year after the legislature decriminalised sexual relations between members of the same sex. The NSWPF appointed its first Gay and Lesbian Liaison Officer

---

[5] Exhibit 1, Tab 3 (SCOI.02290), [3.57].

(**GLLO**) in 1988 and set up a special taskforce in the early 1990s to combat violence occurring around Oxford and Flinders streets.[6]

11. Since that time, the NSWPF has continued to make significant efforts to mend relationships with the LGBTIQ community, and combat violence against its members, including by:

a) the continued development and enhancement of the GLLO network, which was, as noted by Counsel Assisting, the first of its kind in Australia (CA, [174]);

b) the assignation of the Sexuality, Gender Diversity and Intersex (**SGDI**) portfolio to a Corporate Sponsorship, held at an Assistant Commissioner level;

c) the development and implementation of a state-wide Sexuality, Gender Diversity and Intersex Action Plan which sets out the specific actions to be taken and areas of focus of the SGDI portfolio;

d) the implementation of guidelines to ensure less adversarial approaches to the policing of beats;

e) improvements to 'on the ground' community policing measures;

f) various policing operations in the vicinity of Oxford Street and Taylor Square to provide assistance to members of the LGBTIQ community;

g) significant engagement in community events such as the Mardi Gras parade, and ACON's "Welcome Here" project; and

h) a multitude of improvements to the training afforded to police, both in respect of GLLOs but also in the implementation of mandatory LGBTIQ training for every NSWPF officer at Training Academy as part of their induction to the force.[7]

12. Those initiatives have had a number of very positive outcomes; the NSWPF is now an organisation in which members of the LGBTIQ community openly serve, officers march in in the annual Mardi Gras parade in uniform, and strive to eliminate violence against historically

---

[6] See Exhibit 2, Tab 1 (SCOI.77300), p. 23 [128-129].
[7] See Exhibit 2, Tab 1 (SCOI.77300), p. 23 [129]; Exhibit 2, Tab 7 (SCOI.77306), p. 5 [37]; Transcript, T272.8-18; Transcript, T272.20-23.

marginalised communities. As AC Crandell observed in evidence before the Parliamentary Standing Committee, there is still work to be done.[8] But it is well underway.

13. In that respect, it must be noted that research into responses to hate crimes is in a relatively nascent state. The NSWPF was the first policing organisation in Australia, and one of the first in the world, to institute a dedicated hate-crimes capability.

14. SF Parrabell was, as far as can be discerned, the first exercise of its kind conducted anywhere in the world, just as this Special Commission of Inquiry is a world-first. While not without flaws, SF Parrabell was a well-intentioned exercise genuinely designed to improve the relationship between the LGBTIQ community and the NSWPF, and to demonstrate to LGBTIQ community members that their concerns about historical violence and the investigations thereof were being taken seriously by the NSWPF. In the course of SF Parrabell, the NSWPF commendably opened itself to scrutiny by a team of external academics.

15. Nevertheless, Counsel Assisting the Inquiry advance an extraordinary submission that SF Parrabell was, in essence, a scheme designed to minimise acknowledgement of the incidence of hate crimes (see, for example, CA, [817]). Similar submissions are put in connection with SF Macnamir and SF Neiwand at Parts C and D of Counsel Assisting's submissions. Indeed, Counsel Assisting submits that there was a conspiratorial coordination between those three Strike Forces, aimed at discrediting suggestions that there had been a significant number of gay-hate murders (see CA, [638] – [641], for example).

16. As will be considered further in Parts C, D, E and F, such submissions are devoid of a proper factual foundation. The charge Counsel Assisting levels is an extremely serious one. Despite this, and despite the extensive investigations of the Inquiry, including thousands of pages of oral evidence, and the review of tens of thousands of documents, these submissions are not supported by a proper evidentiary foundation. Rather, they are advanced on the basis of speculative inferences and, in some instances, pure supposition.

17. Moreover, and equally extraordinarily, many of the submissions made by Counsel Assisting are put in the absence of evidence from those most able to respond to it, and in circumstances where persons subject to its most vehement criticisms have not been afforded the opportunity to be represented or heard.

---

[8] Exhibit 6, Tab 235 (SCOI.82089), p. 13.

18. While couched in a variety of language that obfuscates the true implication of some of the submissions, Counsel Assisting is, in effect, telling the Inquiry that a number of police and academic witnesses have lied to the Inquiry under oath, having engaged in an elaborate conspiracy over a lengthy period to underplay the incidence of LGBTIQ hate crime. The relevant police in the three Strike Forces, at varying levels of rank and experience, and the academics associated with one of them, are said to have engaged in such nefarious "coordination" despite the total absence of any benefit that either the individuals or the NSWPF as an organisation would have gained from it.

19. As will be explored in detail below, these assertions must be rejected in unequivocal terms.

## Part B: Responses of NSWPF to hate crime / bias crime

## Introduction

20. The NSWPF, together with the Metropolitan Police Service in London and the New York Police Department, was among the world leaders in the development of policing responses specifically targeting hate crimes.[9]

21. The following section responds to a number of criticisms made by Counsel Assisting as to the response of NSWPF to hate crimes over time. Undoubtedly, the effective identification, investigation and prosecution of hate crimes has presented a number of challenges for police forces the world over. Those challenges persist to this day. The area is complex, sensitive, politicised and, as with any branch of policing, must make do with limited resources to both respond to current circumstances and pursue improvements in a changing environment.

22. Nevertheless, as recorded by Professor Nicole Asquith, an expert briefed to assist the Inquiry, "NSWPF continues to lead in Australia on the policing of hate crime, and their willingness to be subject to a series of internal and external reviews is laudable".[10] NSWPF remains committed not only to the identification and investigation of hate crimes, but to the continued development of a relationship of trust and respect with the LGBTIQ community.[11] Any review of perceived shortcomings of NSWPF's response to hate crimes should not lose sight of this history of continued development, and in particular the significant improvements and initiatives of the last ten years. Many of these improvements and initiatives took place under the leadership of AC Crandell while he was the Corporate Sponsor for Sexuality, Gender Diversity and Intersex.

### *Resourcing of Operation Parrabell and the Bias Crimes Unit*

Resourcing constraints

*Resources available and resources required*

23. The Commissioner of Police acknowledges that adequate resourcing has often been, and remains, a challenge for NSWPF. As with all public-sector organisations, there are limited funds available to meet very significant and competing demands for police services.

---

[9] Exhibit 6, Tab 255 (SCOI82368), [135].
[10] Ibid, [137].
[11] Exhibit 6, Tab 235 (SCOI.82089), p. 1.

24. Securing sufficient resources for the policing of bias crimes was no different. As acknowledged by AC Crandell, resourcing was "absolutely" the reason that Operation Parrabell was on permanent hold as and from October 2014.[12] Its scope, which extended to include various investigative steps including the interview of witnesses and persons of interest rather than a review,[13] was "almost impossible to achieve" with the resources available.[14]

25. AC Crandell considered Sergeant Geoffrey Steer to have been "on the right path" with Operation Parrabell if he had "unlimited resources" to enable reinvestigation of those of the 88 cases that required it.[15] However, he frankly accepted that Sergeant Steer "didn't really have the resources and he didn't really have the standing in the organisation to organise those resources, whereas I did".[16]

26. But on a review of the task confronting NSWPF, it became apparent to AC Crandell that it would not be possible to secure sufficient resources to enable a reinvestigation of 88 cases within a reasonable timeframe. As he observed:[17]

> *And then, when Craig Middleton received all the documentation, he quickly came to a view that the parameters were too broad and did not believe that we could deliver any sort of a reinvestigation.*
>
> *I was asking those questions because I wanted reinvestigation as well, if I could get it – if I could get reinvestigation. But at the end of the day, there simply wasn't the resources to do a complete reinvestigation.*
>
> *And even when I think Sergeant Steer talks about a five-year time frame with him doing it alone, I don't believe that he would be able to do that in five years. So to me, that wasn't – that time frame was never going to be acceptable to the community, and so that's when I went to Craig Middleton and said, "Well, then, tell me what can be done with resources, and I'll go to bat for the resources."*

27. AC Crandell also gave evidence that this resourcing issue, and the consequent shift from further investigations to a review, led to the distinction being drawn between "Operation Parrabell" and

---

[12] Transcript, T653.17-35.
[13] Exhibit 6, Tab 6 (SCOI.82080), [34]; Exhibit 6, Tab 12 (SCOI.75072), pp. 2 - 3.
[14] Transcript, T1187.3-13.
[15] Transcript, T633.16-17.
[16] Transcript, T632.45-T633.22.
[17] Transcript, T658.27-44.

what became "SF Parrabell".[18] The creation of SF Parrabell and its parameters are addressed in section E of these submissions. But it is submitted that the criticisms made by Counsel Assisting and Sergeant Geoffrey Steer of the resourcing of Operation Parrabell and the Bias Crimes Unit must be considered in the above context (CA, [235]-[239], [241], [243]-[244]).

28. As at February 2014, it was estimated that it would take Operation Parrabell between 4-6 years to undertake the further investigations of the matters contemplated.[19] AC Crandell had serious doubts that this could occur even over a five-year time period, in circumstances where Sergeant Geoffrey Steer had considered one matter in four months.[20] In any event, and as noted above, he considered that such timeframes would be unacceptable to the community. As observed at [456] of Part E of these submissions, a full reinvestigation of all the SF Parrabell matters would very likely have taken considerably more than five years. Rather than a reflection of any apathy or lack of "institutional focus" on the part of NSWPF towards the identification and investigation of bias crime, it is submitted the evidence demonstrates NSWPF simply did not have the available resources to conduct an exercise of the type initially contemplated by Operation Parrabell (cf CA, [285], [293]).

29. In their consideration of the resourcing of Operation Parrabell, Counsel Assisting makes reference to the raw number of police officers in NSW (i.e. approximately 16,000) (CA, [238]). That number is meaningless in isolation. The NSWPF is responsible for supporting a population of more than 8 million people, dispersed over a geographic area more than three times the size of the United Kingdom. There is fewer than one police officer for every 500 people. The Inquiry has no evidence before it that would allow it to make findings in relation to the availability of resources, and the appropriate distribution of them among the various competing priorities of the NSWPF.

*The views of Sergeant Geoffrey Steer*

30. Sergeant Steer made a number of serious allegations about the reasons for the restructuring of the Bias Crimes Unit.

31. However, Sergeant Steer's strongly-held opinions must be viewed in light of his obvious disgruntlement. He was someone who – accurately or otherwise – perceived he had been "forced

---

[18] Transcript, T682.40-T683.11.
[19] Exhibit 6, Tab 52 (SCOI.74083).
[20] Transcript, T658.33-42; Exhibit 6, Tab 55 (SCOI.74110).

out"[21] of the Bias Crimes Unit, clearly considered he should have had a more significant degree of involvement in SF Parrabell, and had moved to general duties policing at Hawksbury Local Area Command – where he had no ongoing oversight or involvement in the activities or direction of the unit itself.

32. The degree of resentment harboured by Sergeant Steer towards NSWPF about these issues is patent in an email he sent to AC Crandell on 9 June 2018. There he says, among other things:[22]

> *I took the umpire's decision when I was forced out of the BCU (yes I was forced out, it was confirmed by multiple sources at different levels of government, not just the NSWPF). despite ongoing attacks and harassment by the NSWPF with respect to my work in the hate crimes field. I have tried to move on only to have my work attacked constantly by those who do not understand the subject and want to make it personal.*
>
> …
>
> *I am the NSWPF subject matter expert, even after leaving…it would be fair to say that my knowledge and expertise is the most complete in the NSWPF.*
>
> …
>
> *After 7 years of trying to get the NSWPF to take hate crimes seriously and to give the resources to upskill police it was met by the destruction of the NSWPF capability and attacks of the work done. It is with all respect when I ask this question sir, but how well do you understand the SOPS and the processes that were developed? Is your knowledge limited to the 10 indicators (which seem to cop the brunt of the attacks) or have you examined the SOPS in details [sic] and understand the process clearly?*
>
> …
>
> *It has been nearly 12 months since I was forced out and NSWPF has done nothing with bias crimes… I can only hope that you recall the conversations that I had with you…that Parrabell cut out the organisational experts from the process…*

---

[21] Transcript, T1127.41-44.
[22] Exhibit 6, Tab 126 (SCOI.74679).

*I will not be scapegoated by an organisation that spent more time fighting the concept than taking the time to understand and objectively assessing its impact.*

33. AC Crandell gave evidence that the tone and content of the email was such that upon receipt, he contacted Sergeant Steer's commander to check in on him as he was concerned for his welfare.[23]

34. No evidence was called by Counsel Assisting to determine 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. AC Crandell, at the time an acting Assistant Commissioner and Commander of the Education and Training Command, confirmed he had no oversight or understanding of the circumstances in which Sergeant Steer left or the relocation of the unit, other than that it was part of a broader restructure directed under the new Commissioner, Mick Fuller.[24] AC Crandell indicated that this restructure would have likely been within the remit of Deputy Commissioner Kaldas.[25] Shobha Sharma, when asked to speculate as to whether the relocation indicated that the importance attributed to hate crimes by police had receded gave evidence that at most it communicated an intention to treat the subject matter differently by putting it in a different place, but that the location of the portfolio had long been a vexed issue because it was not a neat fit anywhere.[26]

35. As to Sergeant Steer's more general proposition that the whole NSWPF suffered from what he referred to as "organisational cognitive dissonance"– or in essence that it didn't want to hear or do anything about hate crimes "to avoid conflict with core belief systems"[27] – AC Crandell, at least from his perspective in respect of the LGBTIQ portfolio, categorically rejected it.[28] Counsel Assisting submits that the evidence available to the Inquiry is not such so as to enable Sergeant Steer's views, that such "internal politics" and "organisational cognitive dissonance" were the reason behind the events described above, to be discounted (CA, [289]). It is submitted, however, that no reliable conclusions could be drawn by the Inquiry on this point; Sergeant Steer's assertion certainly does not provide an adequate grounding for findings in this respect.

---

[23] Transcript, T627.18-33.
[24] Transcript, T619.1-11.
[25] Transcript, T622.41-623.8.
[26] Transcript, T1183.19-T1184.40.
[27] Exhibit 6, Tab 126 (SCOI.74679).
[28] Transcript, T631.29-31.

36. It is of significant concern that Counsel Assisting fails to acknowledge in making this submission that Sergeant Steer's objectivity, and thus his opinions, may in any way be compromised. Further, the failure of Counsel Assisting to call evidence from those actually responsible for the 2017 restructure to such evidence has left a lacuna that impedes a proper consideration of the true position. In the Commissioner of Police's submission, there is insufficient evidence for the Inquiry to make any findings as to the reasons for Sergeant Steer's departure from, or the restructuring of the Bias Crimes Unit in 2017. Similarly, and noting Counsel Assisting has not explained the basis on which Ms Sharma and AC Crandell's evidence on this point should be rejected, a finding that there was any "lack of any sustained institutional focus" or "institutional reluctance to bring some aspects of bias crime investigation into mainstream policing practice" (CA, [285], [292]) is untenable.

***Establishment of the Engagement Hate Crime Unit and its work***

Training and experience of Hate Crimes Coordinator

37. It is acknowledged that the position of Hate Crime Coordinator within the Bias Crimes Unit experienced a period of relative instability between the end of 2018 and July 2020, with three different officers holding the position during this time. Such transitive periods can happen in any organisation; particularly with one with as many moving parts as the NSWPF. However, in December 2019, the Bias Crimes Unit was amalgamated with the Engagement and Intervention Unit as the Engagement and Hate Crime Unit (**EHCU**), and by August 2020, Sergeant Ismail Kirgiz was appointed to the position of Hate Crimes Coordinator and has remained in that role since that time.[29] It is submitted that it is quite clear from his evidence that Sergeant Kirgiz has deep and abiding commitment to his responsibilities.

38. Counsel Assisting seeks to question the appropriateness of Sergeant Kirgiz's qualifications and experience for the role of Hate Crimes Coordinator (CA, [257], [290]). In referencing Sergeant Kirgiz's experience in dignitary protection, Counsel Assisting fails to recognise that Sergeant Kirgiz:

    a) has been a serving police officer for 29 years;

[29] Exhibit 6, Tab 003 (SCOI.82035), [6].

b) commenced in general duties for two years, before spending a further two years in an anti-theft squad;

c) has extensive experience in intelligence analysis, including in relation to issue-motivated groups and risk management;

d) holds a number of tertiary qualifications, including a Juris Doctor from the University of Technology; and

e) has completed a number of internal training courses including in investigation, undercover operatives, Islamic Extremism and Nationalist Racist Violence Extremism.[30]

39. In light of the above, Counsel Assisting's criticisms of Sergeant Kirgiz's qualifications are inapt. They also fail to reflect the practical reality of the resourcing constraints facing NSWPF and, as has been made clear throughout the course of the Inquiry, the relatively limited number of individuals, even in academia, with direct experience in hate or bias crimes. Sergeant Kirgiz impressed as a thoughtful, intelligent, and diligent officer. He should be recognised as such.

40. Counsel Assisting also seeks to place great weight on Sergeant Kirgiz's formal role description to submit that "on its face that the focus of the Hate Crimes Coordinator is increasingly on 'radicalisation', 'terrorism' and 'politically motivated' hate crimes", and to discount Sergeant Kirgiz's evidence as to what his role involves in practice (CA, [258]-[259], [291]).

41. Sergeant Kirgiz specifically rejected Senior Counsel Assisting's proposition that bringing hate crime under the "umbrella" of counter terrorism somehow saw it "moulded to fit the counter terrorism focus". To the contrary, he gave evidence that "the procedures of counter terrorism were changed to accommodate and fully support the hate crime focus".[31] Further, the bringing of hate crime under this broader umbrella enabled the hate crimes area to have additional operational capability in support, allowing the team to have "at our disposal the full resources and capabilities of the [Counter Terrorism (**CT**)] Command" and the Terrorism Security Intelligence Unit.[32]

42. There is no basis upon which to reject Sergeant Kirgiz's evidence on this point and the Commissioner of Police submits it should be accepted. Furthermore, while the Inquiry has not

---

[30] Exhibit 6, Tab 003 (SCOI.82035) at [2]-[4]; T1253-1254.
[31] Transcript, T1271.26-35.
[32] Transcript, T1271.37-1272.9.

called evidence as to the basis for the restructure, its logic is readily comprehensible; not only for practical reasons given the intelligence capabilities of the CT Command, but also in subject matter terms given the overlap between the likely perpetrators of bias crimes and terrorism offences; white supremacists, for example, are well known to be virulently anti-LGBTIQ communities,[33] and Islamic extremists are equally well known to condone violence towards 'apostates', including persons of various other religious backgrounds.[34]

Bias crime identification "tool"

43. Counsel Assisting is critical of NSWPF for not developing a "bias crime identification tool", submitting that "recommendation 3 of the Parrabell Report has not yet been acted upon" (CA, [293]).

44. The starting point is that rather than any express reference to the requirement for a "tool", Recommendation 3 in the Parrabell Report refers to a "revised system applicable to the early identification of bias crimes requires development with guidance from academic resources".[35]

45. Contrary to Counsel Assisting's submission that the recommendation was "never acted upon", in October 2018, three months after the release of the Parrabell Report, AC Crandell commissioned Associate Professor Philip Birch of University of Technology Sydney to conduct a research study specifically for the purpose of researching and recommending a "better, more streamlined bias crime classification criteria for the NSWPF".[36]

46. Following the preparation of a preliminary report and the conduct of additional research, in 2022 Dr Birch's final report noted that his research had "highlighted the need for a structured risk assessment tool, which can be utilised by Police officers in identifying likely perpetrators of hate crime".[37] Dr Birch did not propose a particular tool or criteria.

47. It is not clear from the face of the report why this was so. In 2019, AC Crandell had handed over the sponsorship of the Sexuality and Gender Diversity Portfolio to his successor. Counsel Assisting did not call Dr Birch or seek a statement from him. However, it is submitted that the

---

[33] See, for example, https://www.nbcnews.com/feature/nbc-out/why-are-so-many-white-nationalists-virulently-anti-lgbt-n794466.
[34] https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations/islamic-state.
[35] Exhibit 1, Tab 2 (SCOI.02632), p. 39.
[36] Exhibit 6, Tab 4 (SCOI.76961), [11].
[37] Exhibit 6, Tab 140 (SCOI.82042), p. 2.

evidence obtained in the course of the Inquiry establishes that any such tool would have been the first of its kind. Sergeant Kirgiz gave evidence that he is "not aware that any such tool actually exists or is in use by any of the police forces that we've ever had contact with".[38] No such tool emerged from any of the evidence given before the Inquiry, including that of the Inquiry's own experts.[39] As considered further at [606] – [610] of Part F, it would appear that the development of a universally-acceptable tool has evaded the efforts of many police forces around the world.

48. Dr Birch did emphasise in his final report that the results of his research suggested that it was important for Police to receive access to "evidence based-training, and continuous professional development opportunities, and supervision is crucial in ensuring that Police officers have the necessary skills and support to effectively recognise and respond to hate crime".[40] Sergeant Kirgiz gave evidence that accordingly, both education and supervision have been key areas of focus for the EHCU:

a) "we focussed our attention on putting as many educational tools in play and make that – in play and making those available to frontline policing and actively marketing them to frontline police";[41]

b) Hate Crime Guidelines were developed following further research and collaboration with the Victorian Police Force, Tasmanian Police Force and New Zealand Police, which provide officers with an understanding of hate crime legislation, policy and procedures, and are actively promoted to frontline officers;[42]

c) a Hate Crime Awareness training package aimed at testing frontline officers' knowledge has been rolled out;[43]

d) face-to-face presentations are delivered by EHCU to frontline officers during mandatory training days and to specialist commands and areas including GLLOs, with an average of two presentations per week;[44]

---

[38] Transcript, T1263.24-26.
[39] Transcript, T2806.37-2810.20; Transcript, T2877.19-2885.15.
[40] Exhibit 6, Tab 140 (SCOI.82042), p. 33.
[41] Transcript, T1264.23-26.
[42] Exhibit 6, Tab 4 (SCOI.76961), [27]-[28](i).
[43] Ibid, [28](ii).
[44] Ibid, [28](iii).

49. The Commissioner of Police therefore disagrees that Recommendation 3 of the Parrabell Report has "not yet been acted upon" (cf CA, [293]). Rather, NSWPF has taken numerous steps in relation to this recommendation, which are consistent with the research and advice of Dr Birch. No "tool" available for use by frontline officers has been identified in the evidence nor proposed by Counsel Assisting. Counsel Assisting has not been able to identify any other jurisdiction within or outside Australia in which such a tool has been successfully developed and applied.

Assessment of bias crime by EHCU

50. In relation to the process employed by EHCU to categorise the incidents flagged as possible hate crimes by frontline police officers, Counsel Assisting emphasises that this is very similar to the 2015 SOPs and includes nine of the ten indicators used by SF Parrabell (CA, [275]-[278], [293]). Counsel Assisting also draws attention to evidence given by Sergeant Kirgiz in response to a line of questioning by the Commissioner to the effect that ultimately, as Hate Crimes Coordinator, he is required to "take a holistic view of all the factors" and "then come to a conclusion about it" (CA, [283]).

51. In this regard, the Commissioner of Police makes the following submissions:

a) While the indicators in the Hate Crime Guidelines are very similar to the indicators included in the Bias Crimes Indicators Review Form (**BCIF**), and ultimately a conclusion has to be reached as to an appropriate categorisation, as identified by Sergeant Kirgiz, the process of responding to potential hate crimes is "extraordinarily different in the fact that we now have a Hate Incident Review Committee".[45] The HIRC is comprised of the Anti-Terrorism & Security Group Commander (chair, Superintendent rank), the EHCU manager and each member of the Hate Crimes Team, and meets fortnightly to monitor all hate crimes and hate incidents.[46] This level of senior oversight means first, that the categorisation of a matter is not simply a result of the decision of the Hate Crimes Coordinator, and secondly, that if further resourcing or investigation is required, either to properly categorise the matter or to assist it to proceed to a successful prosecution, this can be facilitated at an early stage.

---

[45] Transcript, T1266.47-1267.4.
[46] Exhibit 6, Tab 4 (SCOI.76961), [16]-[18].

b) In relation to Sergeant Kirgiz's oral evidence that the Hate Crime Guidelines were approved by five different academics in three different countries (the veracity of which Counsel Assisting now seeks to challenge, despite not suggesting to Sergeant Kirgiz that his evidence was inaccurate), this evidence is supported by an issues paper entitled "Request for approval of the Hate Crime Guidelines and Policy Statement" dated 3 February 2022, produced to the Inquiry in response to NSWPF summons no. 18 but not tendered by Counsel Assisting. Documents detailing the identity of those academics and the nature of their consideration and feedback on the Hate Crime Guidelines were not sought by the Inquiry by way of summons.[47]

c) While such indicators are undoubtedly imperfect and Counsel Assisting has been highly critical of NSWPF's use of them in the context of SF Parrabell, it is significant that:

(i) none of the experts briefed by the Inquiry could either identify an appropriate tool themselves, or point to a tool in use for this purpose anywhere in the world;

(ii) Counsel Assisting has not suggested which, if any, of the indicators are not relevant to the task of identifying potential hate motivations;

(iii) Counsel Assisting has relied on a number of similar features in formulating views as to whether or not the various matters addressed in the "tender bundle hearings" might have featured anti-LGBTIQ bias (this is considered further in Part F); and

(iv) Counsel Assisting has not, in the course of conducting and presenting submissions in respect of the "tender bundle" cases, identified any such classification tool and has ultimately made the very "call" of which they are critical of Sergeant Kirgiz making. As is apparent from Counsel Assisting's approach to the tender bundle cases, there is no presently-available mechanism for the assessment of bias crimes that does not rely upon an "intuitive" judgment, made by reference to potentially relevant features or "indicators".

52. Finally, Counsel Assisting submits that the EHCU only has three staff, two of whom focus on hate speech legislation (CA, [291]). This is incorrect. There are four staff assigned to the Hate Crimes Team within the EHCU.[48] While the roles of Intelligence Coordinator and

---

[47] Transcript, T1279.21-1280.14.
[48] Exhibit 6, tab 4 (SCOI.76961), at [10](iv).

Project Coordinator had their origins in promoting awareness of hate speech legislation (s. 93Z of the *Crimes Act 1900* (NSW)) (***Crimes Act***), Sergeant Kirgiz's evidence establishes that now "both positions are an integral part of the Hate Crime Team and contribute to all its functions".[49] This is unsurprising given the breadth of the offence created by the relevant "hate speech legislation" (i.e. s. 93Z of the *Crimes Act*). That provision makes it an offence to intentionally or recklessly threaten or incite violence on the basis of race, religious belief, sexual orientation, gender identity, the status of another person as an intersex person and/or the HIV-status of another person.

***Findings submitted by Counsel Assisting unavailable***

53. The Commissioner of Police does not dispute that early initiatives to identify and record bias crime proceeded slowly, particularly in the 1990s. While the NSWPF was ahead of the great majority of policing organisations (both in Australia and internationally) in responding to hate crimes, it is accepted that this was nevertheless unsatisfactory.

54. However, the Commissioner of Police categorically rejects the assertion by Counsel Assisting that there is a "distinct lack of any sustained institutional focus on the investigation and impact of bias crimes such as those against the LGBTIQ community" (CA, [285]), or an "institutional reluctance to bring some aspects of bias crime investigation into mainstreaming policing practice" (CA, [292]).

55. Such an assertion appears to rely on an inference drawn from the following three factors:

    a) limited resources applied to the Hate Crimes Team or its predecessors;

    b) the views of Sergeant Steer; and

    c) the movement of the Hate Crimes Team or its predecessors between departments within NSWPF.

56. In respect of the first, adequate resourcing across NSWPF was and continues to be a real issue. Paragraphs [23] – [29] above highlight the difficulty in finding and allocating resources, even at Superintendent level. In the absence of any evidence to suggest the inability to allocate resources to this area was in some way linked to apathy or lack of concern about bias crimes against the LGBTIQ community, resourcing difficulties cannot properly be used to support the

[49] Ibid, at [11].

finding sought by Counsel Assisting. This is particularly so in the absence of any evidence as to the resourcing decisions made at senior levels of police or evidence to indicate that other jurisdictions have maintained better resources in this area.

57. In respect of the second, for the reasons outlined above at paragraph [30] – [36] the views of Sergeant Steer should be treated with caution in circumstances in which he does not have oversight of the work of the Hate Crimes Team and has not since 2017, there is a real risk his objectivity is compromised, and no evidence has been adduced in support of his unsubstantiated assertions.

58. In respect of the third, as noted by Ms Sharma, the placement of the hate crimes portfolio has long been a difficult issue as it does not fit neatly in any particular area. However, Sergeant Kirgiz gave evidence that its current location within the Counter-Terrorism Unit has significantly extended the team's capabilities in the ways outlined at paragraph [41] above.

59. For these reasons, the evidence does not support Counsel Assisting's assertions at [285] and [292]. Such a finding, based on consideration of one unit within NSWPF in isolation but purporting to be reflective of NSWPF's attitude and initiatives in relation to the identification and investigation of anti-LGBTIQ crime generally, also ignores all the other evidence before the Inquiry as to the significant developments by NSWPF in the *investigation* (not merely the identification) of anti-LGBTIQ motivated crimes, and the initiatives taken to substantially improve the relationship between the NSWPF and the LGBTIQ community. This is the subject of a 24-page statement of AC Anthony Cooke dated 14 June 2023, the current Corporate Sponsor.

## Part C: Strike Force Macnamir

***Overview of investigations into the death of Scott Johnson***

60. Scott Johnson's body was found at the bottom of a cliff at Blue Fish Point near North Head, Sydney on 10 December 1988. On autopsy, Dr Johan Duflou concluded that Mr Johnson had died as a result of "multiple injuries".[50] Mr Johnson's body had been found naked, with his clothes in a neatly folded pile at the top of the cliff.[51]

61. A number of investigations have been conducted into Mr Johnson's death. A brief history of these investigations is set out below.

1989 inquest

62. An inquest was conducted on 16 March 1989 by Deputy State Coroner Hand, which found that between 8 and 10 December 1988 at North Head, Manly, north of Blue Fish Point, Mr Johnson:[52]

> *…died of the effects of multiple injury [sic] sustained then and there when he jumped from the top to the rocks below with the intention of taking his own life.*

63. The finding of suicide by Deputy State Coroner Hand was primarily based on the absence of any evidence of a struggle, or of anyone else being present at the relevant time, evidence from Mr Johnson's partner that he had previously mentioned attempting suicide, and Deputy State Coroner Hand's conclusion that Mr Johnson's reserved and introverted personality was consistent with the type of person who would commit suicide.[53]

2012 inquest

64. In 2012, a second inquest into Mr Johnson's death was held before Deputy State Coroner Forbes. As recorded by Deputy State Coroner Forbes, since the first inquest in 1989:[54]

> *…further information has come to light about a culture of violence against the gay community in Sydney in the late 1980's. In 2005 a police operation named*

---

[50] Exhibit 6, Tab 232 (SCOI.11064.00018), [199].
[51] Exhibit 6, Tab 232 (SCOI.11064.00018).
[52] Exhibit 6, Tab 232 (SCOI.11064.00018), [9].
[53] Ibid, [10].
[54] Exhibit 6, Tab 317 (SCOI.11115.00128).

> *"Taradale" uncovered that the deaths of three homosexual men in Bondi in 1989 were as a result of them being forced to their deaths from cliffs at a "gay beat".*
>
> *Mr Johnson was homosexual. It is now known that the North Head of Manly near Blue Fish Point where Mr Johnson's body was found was a "gay beat".*

65. At the second inquest, Deputy State Coroner Forbes heard evidence as to a review conducted by the NSWPF which identified similarities between Mr Johnson's death and the deaths the subject of the Taradale Inquest. Ultimately, her Honour determined this "has not taken the case any further", but:[55]

> *The information about the deaths at Bondi has however, sown a seed of doubt as to the positive finding of suicide… In this case the possibilities that Mr Johnson was the victim of a "gay hate" crime similar to those that occurred in Bondi or that he fell are also available explanations as to the circumstances that surrounded his death.*

66. In those circumstances, Deputy State Coroner Forbes returned an open finding and referred the matter to Police "Cold Cases" for "further investigation in accordance with police procedures and protocols".[56]

67. The events which transpired following the 2012 inquest are the subject of submissions below.

SF Macnamir and 2017 inquest

68. SF Macnamir was established in February 2013:[57]

> *To review and re-investigate the circumstances of the death of Scott Johnson whose body was found at North Head, Manly, on the 10 December 1988.*

69. Detective Chief Inspector Pamela Young was appointed the Investigation Supervisor, and DS Penelope Brown the Officer in Charge (**OIC**).[58]

70. The circumstances surrounding the establishment of SF Macnamir, and its investigations, are addressed below.

---

[55] Ibid.
[56] Ibid.
[57] Exhibit 6, Tab 8 (SCOI.75758).
[58] Ibid.

71. In October 2013, then Superintendent Mr Michael Willing (**Mr Willing**), Commander of the Homicide Squad, requested the New South Wales Crime Commission (**NSWCC**) conduct an independent review of the SF Macnamir investigation.[59]

72. By February 2014, the NSWCC had completed its review, finding, *inter alia*:[60]

> *The Commission considers that investigations have been comprehensive and thorough and has not identified any line of inquiry not already undertaken. The Commission considers that specifically the issues raised by Steve Johnson have been fully explored and resolved to the extent now possible. Similarly, it is considered that there is no scope for the Commission to exercise its statutory powers in a way which would assist the investigation any further.*

73. In March 2014, following the conclusion of SF Macnamir's investigations, Mr Willing wrote to State Coroner Barnes to seek a further examination of the circumstances surrounding Mr Johnson's death.[61]

74. At a directions hearing in April 2015, State Coroner Barnes determined a further inquest should be held. In November 2017 at the conclusion of the third inquest, State Coroner Barnes made the following finding:[62]

> *Mr Johnson fell from the cliff top as a result of actual or threatened violence by unidentified persons who attacked him because they perceived him to be homosexual.*

75. In doing so, State Coroner Barnes noted that he considered the evidence established that at the relevant time there were gangs of men who went to various locations, including the Manly area, to find homosexual men with a view to assaulting them, and that in some cases the assaults resulted in the death of the victims and/or the victims were robbed (in circumstances where Mr Johnson's wallet had never been found).[63]

---

[59] Exhibit 6, Tab 350A (NPL.3000.0014.0195), p. 3.
[60] Ibid.
[61] Exhibit 6, Tab 252C (SCOI.82369.00004).
[62] Exhibit 6, Tab 232 (SCOI.11064.00018),[285].
[63] Ibid, [259]-[267].

Strike Force Welsford and subsequent conviction of Scott White

76. AC Crandell was briefly asked in oral evidence about Strike Force Welsford (**SF Welsford**), which he confirmed was a further reinvestigation into the death of Mr Johnson conducted primarily between 2018-2020 and led by DCI Peter Yeomans, who was subject to AC Crandell's supervision.[64]

77. No evidence was tendered before the Inquiry as to the investigations conducted in the context of SF Wellsford. While Mr Willing agreed with Senior Counsel Assisting that it was his understanding that SF Welsford was to investigate the line of inquiry that flowed from the findings of the 2017 inquest, namely, that Mr Johnson died as a result of gay hate violence,[65] it is important to note that by November 2017, Mr Willing was no longer the Commander of Homicide as he had attained the rank of Assistant Commissioner and became Commander of the Counter Terrorism and Special Tactics Command.[66]

78. Having been charged in 2020 with Mr Johnson's murder, and initially pleading guilty but successfully having that plea vacated,[67] Mr Scott White pleaded guilty to a charge of manslaughter in February 2023. On 8 June 2023 (after Counsel Assisting's submissions, served on 7 June 2023), Mr White was sentenced to a term of imprisonment of 9 years, with a non-parole period of 6 years.[68] Mr White admitted to a witness to having had a few drinks with Mr Johnson before they went to North Head. There, they had a fight, Mr White "punched him… He went backwards and I tried to grab him… And he fell."[69] Mr White is himself gay.[70] The sentencing judge, Beech-Jones CJ at Common Law, declined to make a finding that Mr White's actions were motivated by gay hate.[71] The effect of these developments on the criticisms by Counsel Assisting of SF Macnamir is considered below at [188] – [194].

***Matter of Scott Johnson falls outside the Inquiry's Terms of Reference***

79. The next section of these submissions responds to the submissions of Counsel Assisting in relation to the investigations into Mr Johnson's death, including the activities of SF Macnamir

---

[64] Transcript, T1042.40-T1043.27.
[65] Transcript, T1708.45-T1709.10.
[66] Exhibit 6, Tab 252 (SCOI.82369.00001), [9].
[67] *White v R* [2022] NSWCCA 241.
[68] *R v White* [2023] NSWSC 611.
[69] Ibid, [19] and [21].
[70] Ibid [14].
[71] Ibid [31].

and what became known during the course of Public Hearing 2 in the Inquiry as the 'Lateline Issue'.

80. However, before such matters are considered, a fundamental point must be addressed: in the submission of the Commissioner of Police, Mr Johnson's death and SF Macnamir fell, and continues to fall, outside the scope of the Inquiry's Terms of Reference such that it is not properly the subject of inquiry. As a consequence, it is submitted that any findings made by the Inquiry in respect of these issues would be *ultra vires*.

81. By its Terms of Reference dated 19 April 2022, the Inquiry is authorised via Letters Patent issued by the Governor of New South Wales to inquire into, report, and make recommendations on:

a) the manner and cause of death in all cases that remain unsolved from the 88 deaths or suspected deaths of men potentially motivated by gay hate bias that were considered by SF Parrabell (cl. A); and

b) the manner and cause of death in all unsolved suspected hate crime deaths in New South Wales that occurred between 1970 and 2010 where the victim was a member of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community, and the death was the subject of a previous investigation by the NSW Police Force (cl. B).

82. In so inquiring, reporting and making recommendations, the Commissioner is to have regard to the findings of previous inquiries and reports (cl. C).

83. The Commissioner is not required to inquire, or to continue to inquire, into a particular matter to the extent that the Commissioner is satisfied that the matter has been or will be sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding (cl. F).

84. Mr Johnson's death was the subject of consideration in the course of SF Parrabell.[72]

85. However, it is submitted that at no point following the issue of the Inquiry's Terms of Reference was the Johnson matter "unsolved" within the ordinary meaning of that word, such that the matter fell to be considered by cl. A:

a) As at the establishment of the Inquiry in April 2022, Mr White had entered a plea of guilty to murder and he was sentenced shortly thereafter in May 2022.[73]

---

[72] Exhibit 1, Tab 2 (SCOI.02632), p. 7
[73] *R v White* [2023] NSWSC 611, [71].

b) In November 2022 the Court of Criminal Appeal quashed Mr White's conviction and sentence and remitted the matter back to the Supreme Court for reconsideration of his application to withdraw his guilty plea, or the setting down of the matter for trial.[74]

c) In February 2023 Mr White's application to withdraw his guilty plea to murder was granted, and he entered a plea to manslaughter.[75]

d) On 8 June 2023 Mr White was sentenced.[76]

86. Clause A of the Terms of Reference must also be read with cl. F. Clause F specifically provides that the Commissioner is **not** required to inquire, or continue to inquire, into a particular matter to the extent that the Commissioner is satisfied that the matter has been or will be sufficiently and appropriately dealt with by a criminal proceeding. It is submitted that the Commissioner should have been sufficiently satisfied at the establishment of the Inquiry that Mr Johnson's death would be dealt with sufficiently and appropriately by the criminal proceeding on foot in the Supreme Court. At the very least, there is no basis upon which the Commissioner should not have been so satisfied upon Mr White's entry of a plea to the charge of manslaughter on 23 February 2023. It is noteworthy that this occurred approximately two months before a further hearing of the Inquiry dedicated solely to aspects of SF Macnamir and the Lateline Issue in May 2023.

87. Therefore, in the submission of the Commissioner of Police, the Johnson matter, including the investigations in relation to that matter such as SF Macnamir, fell outside the scope of the Inquiry's Terms of Reference. The matter was never one which the Commissioner was authorised to inquire into, or, at the very least, was one in respect of which the Inquiry should have been sufficiently satisfied by at least February 2023 that it was going to be sufficiently and appropriately dealt with by the proceedings in the Supreme Court, such that the Inquiry was no longer required to continue its inquiries.

88. On this basis, and particularly in circumstances where the perpetrator has now been convicted and sentenced for Mr Johnson's manslaughter such that there can be absolutely no doubt that the manner and cause of Mr Johnson's death has been determined, it is submitted that any

---

[74] *White v R* [2022] NSWCCA 241, [88].
[75] *R v White* [2023] NSWSC 611, [8].
[76] *R v White* [2023] NSWSC 611.

report or recommendations purported to be made by the Inquiry in relation to the death of Mr Johnson or SF Macnamir would be *ultra vires.*

89. The only consideration by Counsel Assisting in their submissions of the Inquiry's Terms of Reference comes at CA, [1434]-[1437]. These submissions fail to grapple with the fact that at the time of the establishment of the Inquiry and at all points since, Mr Johnson's death did not fall within the Inquiry's Terms of Reference. An inquiry into police approaches in solved matters was neither sought nor authorised by the Terms of Reference.

90. In the event the Commissioner of Police's submissions as to the scope of the Inquiry's Terms of Reference are not accepted, these submissions now address Counsel Assisting's submissions in relation to the investigations into death of Mr Johnson, SF Macnamir and related issues.

***2012 UHT case screening review***

91. Mr Willing was the Commander of the Homicide Squad at NSWPF between November 2011 and April 2017,[77] and gave evidence before the Inquiry over several days.

92. Mr Willing confirmed that following the second inquest into the Johnson matter, in late 2012 a prioritised case screening review was conducted by the Unsolved Homicide Team (**UHT**)[78] in which it rated the "solvability" of the case as zero.[79]

93. Such a rating did not mean the case could never and would never be solved. A presently unsolvable case may be solved by an unexpected tip-off, as ultimately occurred in the Johnson matter. But in order to charge someone with murder or manslaughter, police require credible evidence. The Director of Public Prosecutions then needs to be satisfied there are reasonable prospects of conviction.

94. Mr Willing gave evidence that he was not involved in the review of the Johnson matter.[80] This is unsurprising, given:

---

[77] Between April and November 2017, Mr Willing was assigned to work on the Lindt Café investigation and his responsibilities in respect of the Homicide Command were given to an Acting Homicide Commander, Exhibit 6, Tab 252 (SCOI.82369.00001), [78].
[78] Mr Willing gave evidence that "Cold Cases" was the UHT, Transcript, T1646.3-10.
[79] Exhibit 6, Tab 252 (SCOI.82369.00001), [31].
[80] Ibid.

a) such reviews were conducted regularly, as part of the normal business practices of the UHT;[81]

b) Mr Willing gave unchallenged evidence that as Commander of the Homicide Squad, the teams for which he had responsibility had carriage of 60-80 active investigations, with over 700 unsolved cases on the UHT database;[82] and

c) Mr Willing's role was that of an overarching supervisor, and involved ensuring adequate resourcing of strike forces, that investigators were adequately supported, and generally reviewing the progress of investigations in accordance with internal reporting processes and protocols.[83]

95. Mr Willing recalled being made aware of the rating accorded to the Johnson matter in the case screening in January 2013 during the course of a phone call from Detective Acting Superintendent Chris Olen, who was acting in Mr Willing's position while he was on leave.[84]

96. The case screening form in the Johnson matter was not tendered before the Inquiry. The author of the case screening form, confirmed by Mr Willing to be DSC Alicia Taylor,[85] was not called to give evidence. No evidence was adduced from Mr Willing (or any other witness) as to the particular factors which in fact resulted in a "solvability" rating of zero in the Johnson matter.

97. Notwithstanding these significant gaps in the evidence, Counsel Assisting sought to obtain Mr Willing's agreement that "in light of everything that has transpired since late 2012… the assessment of zero solvability seems to have been incorrect".[86] This appears to have been in reference to the finding at a third inquest by State Coroner Barnes, and the conviction of Mr White for manslaughter in 2023.

98. Mr Willing accepted that appeared to be the case "on the face of it", but understandably noted that the solvability rating had to be understood in the context of the reviewer assessing what was available at the time of the review in 2012.[87]

---

[81] Ibid.
[82] Ibid [45].
[83] Ibid [46].
[84] Ibid [33] – [34]; Transcript, T1647.2-12.
[85] Transcript, T1647.16-17.
[86] Transcript, T1647.19-25.
[87] Transcript, T1647.24-37.

99. Mr Willing gave evidence that the likely availability of fresh forensic evidence is something that would weigh heavily on the assessment of solvability.[88] It is clear from Mr Willing's written statement tendered before the Inquiry that such availability in turn usually depends on the availability of *physical exhibits* which could be the subject of such further forensic examination.[89] The following exchange between Counsel Assisting and Mr Willing, and in particular Mr Willing's answer as to the factors that could have been reinvestigated as at 2012 (CA, [315]), must be understood in this context (emphasis added):

> Q. *Apart from future developments in technology, unknown in 2012, most if not all of those factors could have been investigated in 2012, couldn't they?*
>
> A. *Yes, except, you know, the availability of fresh forensic evidence would be something that would weigh heavily on an assessment, so whether exhibits –*
>
> Q. *But how would it become available unless you went out and tried to get it?*
>
> A. *If it wasn't available, therefore, it would impact on the assessment rating.*
>
> Q. *You mean if they didn't then immediately have it, they would assess it as unsolvable without trying to get it?*
>
> A. *Well, what is it that you are trying to get I guess is my point, Mr Gray? The assessment is conducted in that aspect* ***on the availability of exhibits and what was there and whether or not fresh forensic testing would adduce more evidence****. So the assessment is made on what was available at the time.*[90]

100. That is, Mr Willing's evidence was that one of the key factors in a screening assessment was the availability of physical exhibits which could then be the subject of further testing in the hope of identifying fresh forensic evidence. Contrary to Counsel Assisting's submissions (CA, [317]), Mr Willing's evidence does not suggest it is likely the "zero" rating derived from the unavailability

---

[88] Transcript, T1647.39-44.
[89] Exhibit 6, Tab 252 (SCOI.82369.00001), [67].
[90] Transcript, T1647.39-T1648.11.

of fresh evidence (which Counsel Assisting then asserts police failed to look for), but rather from the unavailability of physical exhibits which would then have impeded further investigations. It is for this reason that Counsel Assisting's submission (CA, [317]) that "no investigative or other steps appear to have been taken in 2012 in order to ascertain whether forensic evidence was indeed "available"" is misconceived.

101. The suggestion that there were investigatory steps that should have been taken by NSWPF in 2012 in connection with the Johnson matter but these were not put to Mr Willing, or indeed any other witness. Nor has Counsel Assisting articulated what steps they say could and should have been taken. In these circumstances, an adverse finding in line with Counsel Assisting's submissions is simply not open to the Inquiry.

102. Counsel Assisting also submits (CA, [318]) that Mr Willing's evidence that the 2012 UHT review was correct "at the time" should be rejected on the basis:

> *…there is no suggestion in the materials before the Inquiry that any of the evidence acquired in 2019 was in the nature of "forensic evidence", much less that it was forensic evidence which was unavailable to police in 2012 and only recoverable in 2019 due to the advent of some new investigative method or technology. (CA, [316])*

103. As set out above, no documentary records have been tendered in the Inquiry as to the nature of the evidence obtained in the context of the SF Welsford investigation in 2019, or the circumstances which led to the ultimate charging and conviction of Scott White in 2023 for manslaughter. No oral evidence was called.

104. Some insight into the events that led to Mr White's conviction can be gleaned from the public record of the remarks on sentence on the two occasions on which Mr White was subsequently sentenced.[91] In particular, it appears Ms Helen White, Mr White's ex-wife, saw two newspaper articles relating to Mr Johnson's death, one in approximately 1998 and one in approximately 2007-2008. On each occasion, she said she had conversations with her then-husband in which he made various comments about Mr Johnson's death.[92] Ms White did not bring any of this to

---

[91] Mr White's application to vacate his guilty plea was unsuccessful at first instance: *R v White* [2022] NSWSC 11. This led to Wilson J sentencing Mr White for murder: *R v White* [2022] NSWSC 525, prior to his successful appeal to vacate that plea: *White v R* [2022] NSWCCA 241. Accordingly, he was resentenced by Beech-Jones CJ at common law following the entry of his plea to manslaughter: *R v White* [2023] NSWSC 611.
[92] *R v White* [2022] NSWSC 525 at [14] – [15].

the attention of police until 2019.[93] As to why she took this course in 2019, Wilson J observed "Although the evidence is not entirely clear on the subject, it seems that Ms White had seen a television programme about gay hate crimes, and that prompted her to conduct an internet search which led her to the name of DCI Yeomans."[94] Ms White's disclosure appears to have been followed by Police engaging in covert operations, including the recording of some of Mr White's conversations in which he implicated himself in Mr Johnson's death.[95] Neither Wilson J nor Beech-Jones CJ at CL considered it could be found on the evidence that Mr White's actions were motivated by gay hate.[96]

105. Mr Willing gave evidence that he had had no involvement in the SF Welsford investigation in 2019, which had been set up after he was no longer the Commander of Homicide.[97] In response to questioning from Senior Counsel for the NSWPF, he agreed that dynamic and cogent new evidence had become available in 2019 that was in no way available to police as at 2012.[98] His evidence on this point was not challenged. None of the specific matters referenced in the sentencing remarks above were put to Mr Willing. In any event, the information that can be gleaned from them are entirely consistent with his evidence: the new evidence in 2019 was dynamic and cogent, and there is nothing to suggest the NSWPF should have had any reason to suspect Mr White in 2012, or that any step taken by them would have led to his implication in Mr Johnson's death. Indeed, until Mr White's ex-wife came forward in 2019, there was no evidence that was available, or that could have become available on reasonable further investigations, to suggest *any contact at all* between Mr White and Mr Johnson.

106. The submission by Counsel Assisting (CA, [316]) that Mr Willing's evidence in this regard should be rejected on the basis of "materials before the Inquiry" that have not been identified, tendered or put to Mr Willing, and where it was not suggested to him that he was either mistaken or untruthful in his evidence, is unsustainable. The submission is particularly unfair in circumstances where Counsel Assisting sought to elicit Mr Willing's opinion of the correctness of the 2012 rating, knowing he was neither the author of the 2012 screening form, nor had any involvement in the 2019 investigations, and now, despite his evidence's consistency with the

---

[93] See also Transcript, T3439.20-22; T3440.7-14.
[94] *R v White* [2022] NSWSC 525 at [17].
[95] *R v White* [2023] NSWSC 611 at [15].
[96] *R v White* [2022] NSWSC 525 at [76]; *R v White* [2023] NSWSC 611 at [31].
[97] Transcript, T1709.7-13; Transcript, T3440.10-14.
[98] Transcript, T3439.20-27.

public record relating to the conviction of Mr White, seeks to undermine Mr Willing's credibility on the basis of undisclosed "materials."

107. An adverse finding as to Mr Willing's credibility would constitute a serious breach of procedural fairness in these circumstances. A person whose interests are likely to be affected by an exercise of power must be given the opportunity to deal with matters adverse to his interests which the repository of the power proposes to take into account in deciding upon its exercise.[99] Further, in the absence of clear evidence, the Inquiry should be slow to impugn the reputation of a man of Mr Willing's character and history of decades of exemplary public service.

***Australian Story: February 2013***

108. It is not entirely clear what is intended to be inferred from Counsel Assisting's submissions at CA, [319]-[330], which relate to an email chain between Detective Acting Superintendent Olen and DCI Young on 7 February 2013,[100] and a segment on the Johnson matter broadcast on ABC's Australian Story on 11 February 2013, in which DCI John Lehmann appeared. Indeed, it does not appear that Counsel Assisting makes any submissions in this section, and instead provides a summary of aspects of the evidence.

109. The Commissioner of Police makes the following submissions in relation to the evidence sought to be adduced from Mr Willing on this topic.

110. Senior Counsel Assisting sought to obtain Mr Willing's agreement that a statement said to have been made by DCI Lehmann on Australian Story, characterised by Detective Acting Superintendent Olen in the email chain as "the case is open and a team is working on it", was false in light of the 2012 assessment of the Johnson case as having zero solvability.[101]

111. While Mr Willing had been updated by telephone by DAS Olen as to the 2012 assessment and the Johnson family's concern about this, he was on annual leave at this time and was simply copied on the email chain relied upon by Counsel Assisting. As explained above, he had no role in the 2012 case screening process, and he gave evidence that the telephone call from DAS Olen was the first time he was made aware of it or the rating given.[102] Mr Willing also gave evidence

---

[99] *Kioa v West* (1985) 159 CLR 550 at [38], citing *Kanda v Government of Malaya* (1962) AC 322 at 337. Cited with approval in *Applicant VEAL of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 72 at [15].
[100] Exhibit 6, Tab 312 (NPL.3000.0016.0014).
[101] Transcript, T1653.14-25.
[102] Transcript, T1648.19-22; Exhibit 6, Tab 252 (SCOI.82369.00001), p. 7, [34].

that he had never seen the interview with DCI Lehmann that formed part of the Australian Story segment, and that he did not recall it.[103]

112. Notwithstanding this position, Senior Counsel Assisting pressed for, and eventually extracted, agreement from Mr Willing that if DCI Lehmann had said "the case is open and a team is working on it", that was a false statement in light of the 2012 assessment.[104] It is submitted that such a line of questioning was unfair to Mr Willing given he was not the officer who gave the interview with the Australian Story and had never seen it, he had given evidence that at the relevant time DCI Lehmann had the authority to open an investigation into the Johnson matter (such that he could have had a team working on it if he chose),[105] and Mr Willing was not the author of any of the emails in the chain relied upon.

113. If such evidence was sought to be adduced, self-evidently an author of the relevant emails, such as DAS Olen, or DCI Lehmann as the maker of the alleged statement, should have been called before the Inquiry. This is particularly so as a matter of procedural fairness to DCI Lehmann in circumstances where Senior Counsel Assisting seeks to allege that DCI Lehmann lied on national television about the status of a murder investigation.

114. Further, it is submitted that the answers given by Mr Willing in this respect are in any event wholly irrelevant, noting that when Senior Counsel Assisting later took Mr Willing to the relevant part of the Australian Story, these were *not* in fact the words spoken by DCI Lehmann. Rather, DCI Lehmann had said: "Certainly we haven't closed the books on this case, it's an open case."[106] Senior Counsel Assisting again sought Mr Willing's agreement that this statement was untrue when considered in light of the 2012 rating accorded to the Johnson matter. But Mr Willing disagreed, giving the following evidence:[107]

> Q. *Now, in any event, for Mr Lehmann to say that, whenever he said it in the course of an interview some time prior to 11 February, it wasn't true, was it, for the reasons that we went through yesterday?*

---

[103] Transcript, T1651.3-17.
[104] Transcript, T1653.23-25.
[105] Transcript, T1651.12-14.
[106] Exhibit 6, Tab 319 (SC01.82485), p. 8.
[107] Transcript, T1753.22-29; Transcript, T1753.41-44.

A. *The comment about it being on the books as an open case is quite true with Unsolved Homicide matters; they sit there and if something changes - they are never really closed.*

…

Q. *Yes. All right. So literally it's not untrue?*

A. *In the context of that paragraph and what he's saying there around it being an open case, because that's what unsolved homicides are, that's not an untrue statement.*

115. Counsel Assisting discount this evidence and instead emphasise in their submissions (CA, [329]) that Mr Willing agreed that if the statement "conveyed the impression" that the UHT were actively working on the case, "that's not right".[108] It is submitted that such an "impression" represents a strained interpretation of the words spoken by DCI Lehmann and should not be accepted. And again, as a matter of procedural fairness, the allegation that the statement made was untrue and / or conveyed a false impression to viewers of Australian Story should have been put to DCI Lehmann directly. Given evidence from DCI Lehmann has not been sought, and he had not been afforded the opportunity to respond to Counsel Assisting's assertions, no finding to this effect can properly be made.

***Establishment of SF Macnamir***

116. As set out above, SF Macnamir was established in February 2013.

117. Counsel Assisting sets out in some detail Mr Willing's evidence that he was not involved in the establishment of SF Macnamir, that he was formally notified of it following his return from annual leave and that a Strike Force could be established in his absence (CA, [334]). The intended implication from such emphasis, if any, is unclear. For completeness, the Commissioner of Police notes that Mr Willing's evidence was unchallenged in this regard, and there is nothing to suggest it was anything but an accurate and truthful reflection of what occurred.

118. Counsel Assisting also sets out the content of an email to the Inquiry from the Office of the General Counsel (**OGC**) of the NSWPF providing the names of the officers in SF Macnamir,[109]

---

[108] Transcript, T1753.46-1754.2.
[109] Exhibit 6, Tab 9 (SCOI .82018), pp. 1 – 2.

and the section of Mr Willing's statement which sets out first, the individuals who were heavily involved in the Strike Force, and secondly, other members of the UHT who were recorded on the electronic case management system, e@gle.i, as allocated to the Strike Force but who did not work on the investigation full time (CA, [335] – [339]).[110]

119. As explained by Mr Willing in oral evidence, the list provided by the OGC was a list from the e@gle.i database which included "a lot of resources on there that may not have actively played a part, but they are available, should they be required, as well."[111] Mr Willing went on:[112]

> *Those resources are a list covering virtually everyone in the Unsolved Homicide Team from my recollection, that are allocated, should they be required to conduct inquiries… it's not a point in time allocation. Those – you know, people can be added and taken off inquiries, you know, throughout the course of the conduct of those inquiries and decisions… the resourcing list can include anyone who may have reason to be involved in the strike force. They may not necessarily be….*

120. Mr Willing's evidence that there were some officers heavily involved in SF Macnamir, and others that were recorded as available resources on the e@gle.i system if required, is both entirely unsurprising in the context of the management of lengthy and evolving investigations, and consistent with his written statement tendered before the Inquiry. It is also consistent with the evidence of DS Morgan, who said that his name appeared on the list provided by the OGC because he had access to the e@gle.i system for SF Macnamir, and was a team leader within the UHT at the time, but confirmed he was never an active member of the investigation team.[113] In the circumstances, nothing of note can be drawn from the mere fact that a particular officer was formally identified in the e@gle.i system as a member of SF Macnamir.

***"Overlaps and convergences" among SF Macnamir, Neiwand and Parrabell***

121. At CA, [340]-[361] of their submissions, Counsel Assisting sets out what they assert to be "considerable overlap between and among SF Macnamir, Neiwand and Parrabell, in terms of, (*inter alia*) timing, personnel and subject matter" (CA, [340]).

---

[110] Exhibit 6, Tab 252 (SCOI.82369.00001), p. 12 – 13 [58] – [60].
[111] Transcript, T1658.5-7.
[112] Transcript, T1659.1-7; Transcript, T1659.24-26.
[113] Transcript, T1897.35-41; Transcript, T1899.36-39; Transcript, T1900.14-40; Transcript, T1901.20-32; Transcript, T1902.16-20.

122. This is said to provide the foundation for the following submissions at [362]:

a) the overlap in personnel, between SF Macnamir and SF Neiwand, at every level, meant that such "communication and/or cooperation" were inherent and ever-present;

b) the strongly expressed views of DCI Lehmann and DCI Young, in the 2013 Issues Paper, endorsed as they were in January 2014 by Mr Willing as overall Homicide Commander, cannot have failed to influence and/or reflect the views of the members of the UHT more generally; and

c) while SF Parrabell was not conducted by the UHT, the evidence has shown that (inter alia) there was considerable and ongoing communication and cooperation between the UHT and SF Parrabell, from at least as early as 14 April 2016, and that AC Crandell had seen the Lehmann/Young Issue Paper as early as April 2015.

123. These matters are addressed in turn below.

Timing

124. At CA, [341]-[342] Counsel Assisting submits that "from the second half of 2015 until the end of 2017, all three SF Macnamir, Parrabell and Neiwand were running concurrently".

125. While it is true that the findings in the third inquest in the Johnson matter were handed down by Coroner Barnes on 30 November 2017, the Johnson matter was, from 13 April 2015-30 November 2017, a matter subject to the direction and control of the State Coroner, and the legal team assisting his Honour. All activities and investigations in relation to the Johnson matter, including by SF Macnamir, were subject to the oversight and instructions of State Coroner Barnes in the context of the third inquest.

126. Counsel Assisting's submission at CA, [342] that all three Strike Forces were running concurrently is therefore apt to mislead: independent investigations by SF Macnamir had ceased by April 2015, and as at April 2015, neither SF Neiwand nor SF Parrabell had been established.

127. As to the coincidence in timing as between SF Parrabell and SF Neiwand; there is absolutely no evidence of any contact between personnel involved in the two Strike Forces.

Personnel

*"Overlap" in personnel as between Strike Forces Macnamir, Neiwand and Parrabell*

128. At CA, [343]-[344], Counsel Assisting submits there were "numerous officers in both SF Macnamir and SF Neiwand at a high level of operational responsibility".

129. In making this submission, Counsel Assisting places heavy reliance on the email from the OGC to the Inquiry discussed above at [118] – [120] of Part C and ignores the oral evidence given by a number of witnesses as to the personnel who had active involvement in each Strike Force. As explained by Mr Willing, the list provided by OGC was a list from the e@gle.i database which included "virtually everyone in the UHT from my recollection, that are allocated, should they be required to conduct inquiries"[114] and that there were "a lot of resources on there that may not have actively played a part, but they are available, should they be required."[115]

130. In response to the submissions made by Counsel Assisting as to the specific staff said to be "involved" in both SF Neiwand and SF Macnamir "at a high level of operational responsibility":

a) In relation to CA, [343](a): it is true that DS Brown was the OIC of SF Macnamir during the period October 2015-early 2016. However, again, this was during the period when any further investigations conducted by SF Macnamir were subject to the direction of the State Coroner because the third inquest had commenced. There is, in circumstances where she was not called, very little evidence of DS Brown's activities in connection with SF Neiwand. What is clear is that, in the early stages of SF Neiwand, she compiled and circulated a list of potential persons of interest and, in turn, circulated it in an email.[116] As is submitted in Section D, DS Brown plainly intended that the investigation of SF Neiwand would extend to include a detailed consideration of the possible involvement of various persons of interest.

b) In relation to [343](b): while DS Morgan was listed as a "team leader" of SF Macnamir in the email provided by the OGC, as outlined above, Mr Willing gave evidence that there were a number of resources included on that list from e@glei that didn't necessarily play an active role in SF Macnamir and were listed simply so they could be called upon if

---

[114] Transcript T1659.1-5.
[115] Transcript T1658.6-8.
[116] Exhibit 6, Tab 306 (NPL.3000.0001.0026).

needed. Mr Willing confirmed in oral evidence that he hadn't referenced DS Morgan in his statement as he was not sure at what point DS Morgan had come up to Sydney from the Southern Region UHT.[117] Counsel Assisting also fails to mention that, importantly, DS Morgan gave evidence that he took no active part in the SF Macnamir investigations – to the point where Counsel Assisting stated "No, I know you weren't part of the investigation. You can assume that we've gleaned that. You've said that about 12 times, so I think we've got that."[118] In the circumstances, it cannot be reasonably contended that DS Morgan took any active role in SF Macnamir.

c) In relation to CA, [343](c): it is accurate that DCI Leggat was listed in the OGC email as "team leader" of SF Macnamir. However, he was not called to give evidence on the point and it appears no witness is asked directly about his involvement, if any, in that strike force. It is submitted that it seems clear from the exchange at T1657.34-T1659.34 that, as with DS Morgan, Mr Willing considered DCI Leggatt was only included on the OGC list as an additional resource. It is submitted that in the absence of any material to suggest he had any active involvement whatsoever in SF Macnamir, such a conclusion is unavailable on the evidence. The evidence that is available in relation to DCI Leggatt's involvement in SF Neiwand is limited. He has not been called to give evidence on the subject. Of some relevance, on 20 March 2017, he provided some comments on a SF Neiwand Progress Report. Those comments set out a number of tasks that were clearly directed to addressing the possibility that Mr Warren was murdered, including by requesting a summary of the investigations of Taradale into gay-hate youth gangs, a consideration of [redacted] and a consideration of persons of interests identified from Mr Warren's former associates.[119]

d) In relation to CA, [343](d) and CA, [343](e): DSC Michael Chebl and DSC Paul Rullo were listed as investigators in SF Macnamir in the OGC email and in the "other officers" list at [60] of Mr Willing's statement. Again, from the exchange at T1657.34-T1659.34, it seems that Mr Willing considers both officers were only included on the OGC list as additional resources, although he accepted he did not know how much work, if any, each did on SF Macnamir.[120] Again, neither DSC Chebl nor DSC Rullo were called by the Inquiry to

---

[117] Transcript T1658.37-47.
[118] Transcript T1918.17-19; see for example, T1897.35-38; T1899.36-39.
[119] Exhibit 6, Tab 164a, (SCOI.82054), p. 5.
[120] Transcript, T1792.35-1793.1.

give evidence about such involvement, if any. There is no evidence to suggest either had any active involvement whatsoever in SF Macnamir.

131. Accordingly, it is submitted that with the exception of DS Brown, the evidence does not establish the "overlap" in personnel, variously described in Counsel Assisting's submissions as "at a high level of operational responsibility" (CA, [343]) and "at every level" (CA, [362](a), contended for as between SF Neiwand and SF Macnamir. Even in the case of DS Brown, she was the OIC of SF Neiwand while also the OIC of SF Macnamir for brief period, and for the entire duration of this period could conduct investigations in the context of SF Macnamir only at the direction of the State Coroner. It does not appear that DS Brown's activities, as the OIC of SF Neiwand, are the subject of criticism by Counsel Assisting.

132. No evidence has been offered by Counsel Assisting as to the "communication and/or cooperation" said to have been "inherent and ever-present" as between SF Neiwand and SF Macnamir (CA, [362](a)]. This contention is entirely speculative; there is no evidence that would enable the Inquiry to satisfactorily discern the nature and extent of any such "communication and/or cooperation" or the matters to which it related. Such evidence as there is suggests that any "communication and/or cooperation" between the two Strike Forces was very limited, particularly after DS Brown ceased to act as the OIC of SF Neiwand.

*Strike Forces Neiwand and Macnamir conducted by the UHT*

133. Counsel Assisting submits that that Strike Forces Neiwand and Macnamir were both conducted by the UHT where the two senior officers were DCI Lehmann and DCI Young, who held "strong views about the extent of gay hate homicides in the 1970s, 1980s and 1990s" (CA, [345]). Counsel Assisting references an issue paper prepared by DCI Lehmann and DCI Young in 2013 (in which they concluded that following assessment, eight out of 30 cases quoted in the media as being gay hate homicides were "probable or possible" gay-hate-motivated murders) (**2013 Issue Paper**) (CA, [345]).

134. As a starting point, it is unsurprising that two reinvestigations into unsolved homicides were conducted by the UHT. Counsel Assisting does not, and could not, suggest that they should have been conducted elsewhere. The relevance of the fact that both SF Macnamir and SF Neiwand were conducted by the UHT is therefore unclear.

135. The nature of the 2013 Issue Paper is considered in more detail in Section D of these submissions. However, it is submitted that:

a) there was no attempt to minimise the extent of gay hate violence generally in the 2013 Issue Paper. In particular, the 2013 Issue Paper specifically noted that "[t]here is no doubt that anti-gay hostility, particularly in the 1980's and 1990's resulted in a number of murders and serious crime of violence in NSW;[121]

b) DCI Lehman has not been called to give evidence before the Inquiry. There is no basis to conclude that the findings he recorded in the 2013 Issue Paper were anything other than an honest record of the views he reached on the basis of a review of the material at that time and it was not unreasonable for him to conclude that the observation that there were 30 unsolved gay-hate murders was, in fact, likely to be a significant overstatement; and

c) There is no suggestion that DCI Lehmann had any involvement in the work of SF Macnamir or (or SF Parrabell).

136. Separately, it is clear that DCI Young had formed views in relation to the Johnson matter by the time of the conclusion of the independent investigations conducted by SF Macnamir in April 2015; that is, she had reached a genuine belief that Mr Johnson's death was more likely to be a suicide than a homicide. There is no suggestion that DCI Young had any involvement in the work of SF Neiwand (or SF Parrabell, both of which were established after she went off on sick leave in 2015 and later retired from NSWPF). There is no evidence as to her views about any matter other than the Johnson matter. DCI Young was not called to give evidence before the Inquiry.

137. Rather, Counsel Assisting seeks to attribute the "views" expressed in these two contexts to the work of the UHT more generally by referring to the fact that the views in the 2013 Issue paper were endorsed by Mr Willing as Homicide Commander and "cannot have failed to influence and/or reflect the views of the members of the UHT generally" (CA, [362](b)). As noted above, it is submitted that at the time the 2013 Issue Paper was prepared, the conclusions it expressed were not unreasonable. Mr Willing confirmed in oral evidence that he genuinely held the view at that time that eight of the 30 deaths were possible or probable gay hate murders.[122] However, the mere fact Mr Willing endorsed the 2013 Issue Paper provides no evidence as to any "influence" this is alleged to have had on the members of the UHT, and falls far short of what

---

[121] Exhibit 6, Tab 47 (SCOI.74906), p. 9.
[122] Transcript, T3451.20-3452.7.

seems to be the implication of Counsel Assisting's submissions that this led to a "convergence" as between three individual Strike Forces almost four years later. This is dealt with below.

Subject matter and outcomes

138. It is uncontroversial that in their focus on the death of Mr Johnson in 1988 (in respect of SF Macnamir), the deaths of Mr Mattaini in 1985, Mr Russell and Mr Warren in 1989 (in respect of SF Neiwand) and 88 deaths between 1976 and 2000 (in respect of SF Parrabell), each of the Strike Forces had at their heart a similar subject matter, being the investigation into historical deaths that were possibly motivated by anti-LGBTIQ bias. This is unsurprising given NSWPF's public acknowledgment of its role in the discrimination and violence suffered by members of the community, particularly in the 1970s and 1980s, and its commitment to change. As observed in the Parrabell Report:[123]

> *Significant angst has been felt for some time within the LGBTIQ community surrounding questions of investigative propriety and bias as well as the prospect of offenders not being brought to justice because of solvable crimes remaining otherwise outstanding. The extent of community feeling has been mentioned in NSW Parliament on more than one occasion leaving it important that the NSW Police Force acknowledge its role in historical difficulties and failings.*

139. However, Counsel Assisting's submission that "all three Strike Forces arrived at strikingly comparable conclusions" (CA, [347]; see also CA, [638] – [641]), with the implication being that they all sought to minimise findings of anti-LGBTIQ bias, is rejected.

140. As to the "conclusion" reached by SF Macnamir, CA, [347](a) is apt to mislead: as explained in detail below, at the conclusion of the third inquest in 2017, Senior Counsel for NSWPF submitted that:[124]

> *[a] positive finding could not be made in relation to any of the three case theories to the requisite standard, but that equally, none of the three case theories can be ruled out.*

---

[123] Exhibit 1, Tab 2 (SCOI.02632), p. 14.
[124] Exhibit 6, Tab 333 (SCOI.11069.0006) at [5]-[6].

*Accordingly, the Commissioner submits that the manner of Scott's death remains open.*

141. In any event, as discussed below at [188] – [194], Mr Johnson's death was not found to be motivated by anti-LGBTIQ bias.

142. Counsel Assisting's submission at CA [347](b) also inaccurately characterises the true position. SF Parrabell stated that there were 27 cases of bias, but noted that there were a further 25 cases where there was Insufficient Information to rule bias in or out. That is, there were up to 52 cases that potentially involved bias and only 34 cases were "No Evidence of Bias Crime" had been found. It is also relevant to note, as further explored at [612] – [617] of Part E, that in the "tender bundle" cases considered to this point, the conclusions of Counsel Assisting have aligned very closely with those of SF Parrabell. Moreover, the categorisations applied by SF Parrabell to the SF Neiwand cases did not adopt the SF Neiwand position. Rather, categorisations that aligned with the coronial findings were applied.[125]

143. In relation to CA, [347](c), it is correct to say that SF Neiwand concluded that Deputy State Coroner Milledge's findings should not be adopted in relation to the matters of Messrs Russell and Warren. As concerns the finding in relation to Mr Mattaini, SF Neiwand did not depart from the open finding suggested by her Honour though suggested (for readily understandable reasons) that the death "may well" have been a suicide (thereby shifting the emphasis away from her Honour's suggestion that there was a strong possibility that Mr Mattaini was the victim of a gay-hate murder). Again, however, SF Parrabell did not adopt the findings of SF Neiwand.

144. Further, and significantly, there is a very great difference between any commonality of outcome as between the Strike Forces, and the implication that such commonality is the result of a conspiracy as between the personnel of each of those Strike Forces to seek to minimise the number of deaths found to have been motivated by anti-LGBTIQ bias. Counsel Assisting observe at [360]:

*One of the issues that the Inquiry has sought to explore and clarify, in the Court of Public Hearing 2, is whether the three outcomes of the three Strike Forces, summarised above at [347], were merely coincidental, or whether there were other explanations for their overall convergence.*

---

[125] Exhibit 6, Tab 49 (SCOI.76961.00014).

145. In relation to SF Macnamir, Counsel Assisting appears to rely on text messages sent between DCI Young and Mr Willing on 14 April 2015 to evidence "the attitude of both DCI Young and Mr Willing towards the Johnson family" (CA, [354]) and that "he did share the views of DCI Young as to defeating the Johnson family by opposing and preventing a finding of homicide" (CA, [359]).

146. Why the text message exchange cannot be relied upon to make a finding that Mr Willing possessed such a view is set out in detail below at [224] – [230]. In particular, it is submitted that there is an insufficient basis on which to reject Mr Willing's evidence that:

a) his comments were an attempt to appease DCI Young, noting they are in direct response to a text message in which DCI Young expresses concern about the Johnson family criticising and humiliating her;

b) his views as to the likely cause of Mr Johnson's death changed over time and that while he ultimately thought homicide was more likely than suicide or misadventure, he couldn't rule it out; and

c) he expressly disavowed that he ever sought to "defeat" the Johnson family.[126]

147. A finding that Mr Willing sought to defeat the Johnson family by opposing and preventing a finding of homicide, effectively asserts Mr Willing sought to pervert the course of justice and cannot be made in the absence of clear evidence. The speculative inferences sought to be drawn by Counsel Assisting are simply not sufficient given the gravity of the allegation.

148. In relation to SF Neiwand, Counsel Assisting submits that both SF Neiwand and SF Macnamir sought to cast doubt on the findings of Deputy State Coroner Milledge in the Taradale Inquest (CA, [353] – [354]). DCI Young was not called to give evidence by Counsel Assisting and so this proposition was never put to her. Mr Willing, when asked about DCI Young's reference to putting the findings "to the test" in the context of the Lateline interview, said that "I think what she's saying is that she's – they've done an analysis of the findings as part and parcel of the investigation. I can't take it any higher than that."[127] Similarly, Counsel Assisting did not call the DSC Chebl, the OIC of SF Neiwand to give evidence. As considered in Part D below there is no proper basis upon which the Inquiry could conclude that SF Neiwand was part of a coordinated

---

[126] Transcript, T3727.32-3730.27.
[127] Transcript, T3768.21-27.

or deliberate attempt to undermine the suggestion that there had been a significant number of gay-hate homicides.

149. In relation to SF Parrabell, Counsel Assisting asserts that "AC Crandell had seen the Issue Paper as early as April 2015" and that there was "considerable and ongoing communication and cooperation between the UHT and SF Parrabell" (CA, [362](c)). The nature of the "considerable and ongoing communication" said to have occurred between UHT and SF Parrabell is not articulated or identified. For the reasons explored further in Part D, this assertion is totally without foundation; there was very little contact at all between UHT and SF Parrabell, and no part of that communication was directed to the minimisation of findings of LGBTIQ bias. Further, that AC Crandell had seen the 2013 Issue Paper is of no real consequence. After having his attention drawn to the 2013 Issue Paper, he was asked whether that at that time, 2014, and subsequently, senior police officers, may have wanted to downplay claims about the levels of gay-hate murders and to suggest that the scale of the problem was less serious. He gave the following answer:[128]

> *I would say not necessarily downplay, but I would say certainly in the case of - in my case, I actually wanted to get some truth around - get some investigative truth around the numbers and around what was in fact thought to be gay hate and what was not.*
>
> *Now, what that outcome was did not concern me and does not concern me now, but I wanted to have some evidence that we had actually gone through a process to determine whether or not these deaths were homicides and were gay-hate related.*

150. Mr Willing was also asked whether there was any relationship between the 2013 Issue Paper and the outcome of SF Parrabell. He specifically rejected that there was any coordination as between SF Parrabell and the UHT.[129] There is no basis on which AC Crandell's and Mr Willing's evidence on this point should be rejected.

151. Ultimately, Counsel Assisting seek to link all three Strike Forces together by noting that "Mr Willing was the Homicide Commander at all of these points in time (from late 2011 to late 2017), and was aware of all of the events that were taking place" (CA, [361]).

---

[128] Transcript, T664.22-39.
[129] Transcript, T1740.7-26.

152. Mr Willing acknowledged he was aware the following "events" in relation to which he did not have "intricate"[130] knowledge "were ongoing"[131]:

a) the second inquest into the Johnson matter in June 2012, which returned an open finding;

b) the episode of Australian Story in February 2013 in relation to the Johnson matter, following which SF Macnamir was established;

c) 2013 media coverage by Rick Feneley and others about a wave of gay hate crime deaths;

d) the statement of DCI Young in 2013/2014;

e) the third inquest into the Johnson matter in April 2015, which made a finding of gay hate;

f) the ABC Lateline episode featuring DCI Young on 13 April 2015 in which she made comments about the Police Minister "kowtowing" to the Johnson family;

g) the removal of DCI Young from the SF Macnamir in April 2015;

h) the establishment of SF Macnamir in August 2015;

i) the establishment of SF Neiwand in October 2015; and

j) that from the second half of 2015 to the second half of 2017, SF Macnamir, SF Parrabell and SF Neiwand were all continuing.[132]

153. Mr Willing's awareness of such events, given his role as Homicide Commander is unremarkable. However, read holistically, Counsel Assisting's submissions across CA, [342]–[360] appear to suggest that Mr Willing sought to or in fact influenced the outcome of each of the Strike Forces, such that those NSWPF strike forces minimised the number of deaths found to have been motivated by anti-LGBTIQ bias.

154. It is submitted the Inquiry must "feel an actual persuasion of its occurrence and its existence" and reach a state of "reasonable satisfaction" before such a finding could be made by the Inquiry, in accordance with the principles in *Briginshaw v Briginshaw*.[133] The strength of the evidence necessary to establish a matter in issue will vary according to the nature of what is sought to be

---

[130] Transcript, T3433.6-38.
[131] Transcript, T1629.29-32.
[132] Transcript, T1624.4-1627.30.
[133] *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-362.

proved.[134] Here, the gravity of the allegation, both as against Mr Willing and NSWPF, and the potential consequences which may flow from a finding that the NSWPF was engaged in a coordinated attempt to refute suggestions as to the extent of gay-hate violence, are such that it is submitted the evidence must be clear and cogent before the Inquiry can reach the requisite state of satisfaction.

155. That such a conspiracy existed between the three Strike Forces was never put to Mr Willing or any other witness. That Counsel Assisting instead seek rely on the confluence of events such as that set out above, is an indication of the threadbare and speculative nature of the "evidence" relied upon to support such a submission, if indeed it is being made.

156. For the reasons set out above, and addressed further in Parts D, E and F, the Inquiry cannot be satisfied to the requisite standard that there was a coordinated attempt among SF Macnamir, SF Neiwand and SF Parrabell to refute or minimise the finding of gay-hate homicide. Any suggestion that such a finding should be made must be unequivocally rejected.

***The 'suicide hypothesis' and the objectivity of SF Macnamir***

157. No dispute is taken with the factual summary provided in Counsel Assisting's submissions at CA, [367] – [371] where it is explained that during the course of the SF Macnamir investigation:

a) DCI Young and DCI Lehmann prepared the 2013 Issue Paper in which they concluded that following assessment, eight out of 30 cases quoted in the media as being gay hate homicides were "probable or possible" gay-hate-motivated murders;[135]

b) the Johnson matter was not one of the eight, with the 2013 Issue Paper noting that at that stage of the investigation "there is no indication that the deceased was subjected to 'gay hate' motivated violence causing his death or in any case, that he was murdered";[136]

c) in January 2014, Mr Willing had signed a briefing summarising the views expressed in the 2013 Issue Paper;[137] and

---

[134] *Neat Holdings Pty Ltd v Kara and Holdings Pty Ltd* (1992) 110 ALR 449 per Mason 0, Brennan, Deane and Gaudron JJ.
[135] Exhibit 6, Tab 47 (SCOI.74906), p. 9.
[136] Ibid, p. 4.
[137] Exhibit 6, Tab 48 (NPL.0113.0001.0156).

d) DCI Young prepared a statement totalling 445 pages, outlining the investigations into Scott Johnson's death by SF Macnamir (**Young Statement**), formally signed in July 2014.[138]

158. However, at CA, [501] – [502] at the conclusion of Section C of their submissions, Counsel Assisting submit that "at least", the evidence permits findings including the following:

a) DCI Young, her successors at SF Macnamir and Mr Willing believed a third inquest was unnecessary and would not result in any different finding from the 2012 open finding; and

b) SF Macnamir did not adopt an open-minded approach to the reinvestigation of Mr Johnson's death and rather "for the whole time from the instigation of SF Macnamir in February 2013 to its conclusion on 30 November 2017, the unchanging and inflexible view held, and propounded, by SF Macnamir was that Scott Johnson's death was a suicide, and that the police objective was to combat, and prevent the acceptance, of the homicide hypothesis."

159. For the reasons which follow, the Commissioner of Police submits sweeping findings of this type are without evidential foundation and cannot be made.

<u>Mr Willing's evidence as to what was intended by DCI Young in the Young Statement</u>

160. At paragraphs CA, [372] – [381] of their submissions, Counsel Assisting set out the questioning of Mr Willing in relation to his opinion of what DCI Young's view was or what she intended to convey by the Young Statement as to the cause of Scott Johnson's death.

161. Counsel Assisting's reliance on evidence from Mr Willing as to his opinion of what Ms Young had intended, by reference to a written document the he did not author, is surprising. This evidence ought to be regarded as of no probative value at all. Such a line of questioning was only necessary due to the unexplained failure to call or obtain evidence from the author of the document, DCI Young. The absence of such evidence was particularly surprising given the Inquiry's extensive consideration of SF Macnamir, including in relation to the "Lateline Issue" (considered further below at [202] onwards). In any event, in the absence of evidence from DCI Young as to her intentions, the document must speak for itself.

---

[138] Exhibit 6, Tab 252F (SCOI.82484).

162. In these circumstances, Mr Willing's evidence as to what DCI Young did or did not intend to convey should be attributed little or no weight. He was in no better position than any other reasonably informed reader to assess and offer an opinion on the impression a reader of the Young Statement would have drawn (cf CA, [373]) and his evidence is of no assistance to the Inquiry's assessment.

DCI Young's opinion is of little ultimate consequence

163. Even assuming it is accepted by the Commissioner of the Inquiry that DCI Young did intend to convey, in the Young Statement, the view that suicide was the most likely explanation for Mr Johnson's death, and / or this is the impression a reader would have taken from the 'opinion' section of the Young Statement, for the following reasons it is submitted that this does not advance matters, nor support the findings propounded by Counsel Assisting.

*Finding of New South Wales Crime Commission of "comprehensive and thorough" investigation*

164. First, irrespective of what was advanced in the 'opinion' section of the Young Statement, it was preceded by 430 pages summarising the extensive investigations into Mr Johnson's death undertaken by SF Macnamir.

165. Whatever DCI Young's personal opinion as to the likely cause of Mr Johnson's death at the conclusion of those investigations, it cannot reasonably be concluded that this in some way curtailed or impeded those preceding investigations (cf CA, [503]). This is particularly true given the independent assessment conducted by the NSWCC in February 2014.

166. As referenced above, in October 2013, Mr Willing had sought for the NSWCC to conduct an independent review of the SF Macnamir investigation to determine whether:[139]

167. in the opinion of the NSWCC, SF Macnamir investigators could reasonably pursue any line of inquiry or information not already identified or undertaken; and

168. whether, given its legislative powers and functions, the NSWCC could assist the investigation in any way.

169. In February 2014, the NSWCC provided NSWPF with the following conclusions of its review:[140]

---

[139] Exhibit 6, Tab 350A (NPL.3000.0014.0195), p. 3; Exhibit 6, Tab 252 (SCOI.82369.00001), pp.. 10 – 11 [49].
[140] Ibid, p. 3.

> *The Commission considers that investigations have been comprehensive and thorough and has not identified any line of inquiry not already undertaken. The Commission considers that specifically the issues raised by Steve Johnson have been fully explored and resolved to the extent now possible. Similarly, it is considered that there is no scope for the Commission to exercise its statutory powers in a way which would assist the investigation any further.*

170. It is to be expected that an officer involved in conducting a complex murder investigation over an extended period might form a view at its conclusion as to the likely cause of death. However, it is clear that DCI Young's view did not in any way circumscribe what can only be described as a comprehensive and through investigation, including into all matters raised by the Johnson family. The submission advanced by Counsel Assisting at [502] that "for the whole time from the instigation of SF Macnamir" there was an "unchanging and inflexible view held" as to suicide and that the "police objective was to combat, and prevent the acceptance, of the homicide hypothesis" cannot be sustained in the face of the evidence of the depth and breadth of DCI Young's investigation and the assessment of the NSWCC. Notably, Counsel Assisting has not identified any additional steps that DCI Young ought to have taken in connection with SF Macnamir.

*Request by Mr Willing for further examination by Coroner*

171. Secondly, Mr Willing as Commander of the Homicide Squad, wrote to State Coroner Barnes to seek a further examination of the circumstances surrounding Mr Johnson's death.[141] Specifically, Mr Willing requested the following:[142]

> *I am of the view that given particular circumstances surrounding this case coupled with the interests and beliefs of the Johnson family, that a further examination of the circumstances surrounding the death of Scott Johnson in light of the comprehensive investigations conducted by the Homicide Squad Unsolved Homicide Team via Strike Force Macnamir would be in the public interest.*
>
> *Accordingly, and as per our recent discussions about the matter, I write to formally request that your office conduct a further examination of the circumstances*

---

[141] Exhibit 6, Tab 252C (SC01.82369.00004).
[142] Ibid, p. 2.

*surrounding the death of Scott Johnson following the finalisation of current investigations.*

172. Again, whatever DCI Young's personal views as to the cause of Mr Johnson's death, the approach to the State Coroner's office provided another avenue for an independent assessment of the investigation, and this independent assessment was proactively sought by Mr Willing. If SF Macnamir had been conducted ineptly or with a closed mind focussed only on suicide, and the objective was to "combat" a finding of homicide, it would be senseless to invite independent scrutiny that might well lead to a third inquest – the very result Counsel Assisting submits Mr Willing sought to avoid. Counsel Assisting provides no reason for Mr Willing to act in such an illogical way, and fails to grapple with, or even acknowledge, the inconsistency of their submission with the evidence.

173. In submissions for the Commissioner of Police at the directions hearing held on 13 April 2015 before State Coroner Barnes to determine whether a third inquest should be held, it was noted that "the Commissioner and Detective Chief Inspector Young do not consider that an inquest would result in any findings being made that would produce a different result from the open finding made by Deputy State Coroner Forbes on 26 July 2012".[143] Self-evidently, the suggestion that an open finding remained appropriate does not reflect what Counsel Assisting describes as the "unchanging" view of DCI Young and SF Macnamir that Mr Johnson died by suicide (cf CA, [502]).

174. Nor is it accepted that the submissions of the Commissioner of Police at the directions hearing support the additional finding, urged by Counsel Assisting, that "a view was held amongst those who were instructing counsel (including DCI Young and DS Brown) that a further inquest into Mr Johnson's death was unjustified and profligate" (CA, [393]).

175. In written submissions in advance of the directions hearing, while referencing the resource implications of holding a further inquest (which it is submitted, was certainly not an irrelevant consideration in the context of a possible third inquest), a third inquest was not resisted by the Commissioner of Police on this basis (or at all). Rather, it was merely submitted that in light of

---

[143] Exhibit 6, Tab 331 (SCOI.82870), p. 7.

those resource implications, it may be appropriate to *defer* the determination of whether a third inquest should be held pending receipt of detailed written submissions from the parties.[144]

176. In oral submissions at the directions hearing, Counsel for the Commissioner of Police further emphasised that a fresh inquest was not resisted:[145]

> *[T]he Commissioner would certainly not resist a fresh inquest being held nor would the Commissioner wish to be heard to speak against the holding of a fresh inquest. This is a matter for the Court on the family's application…*
>
> *It would certainly be open to the Coroner, to your Honour, to form the opinion that a fresh inquest would allay those suspicions, rumours, doubts or concerns or could serve an interest in making known to the wider public information relevant to matters of public health and safety.*

177. In light of those submissions, a finding that a further inquest was considered "amongst those who were instructing counsel (including DCI Young and DS Brown)" to be "unjustified and profligate" is not available.

178. Again, as Counsel Assisting did not call evidence from DCI Young, DS Brown, or anyone instructing counsel as to what their views were,[146] the only guidance available is contained in the submissions made on behalf of the Commissioner of Police. For the reasons set out above, those submissions do not provide a sufficient basis for the finding urged by Counsel Assisting.

*DCI Young played no further part in investigations into Johnson matter from April 2015*

179. Following the airing of the Lateline broadcast (discussed in the next section of these submissions), DCI Young did not take any further part in the investigations into Mr Johnson's death from mid-April 2015, in line with the State Coroner's direction.

180. Therefore, whatever her personal view as to the cause of Mr Johnson's death, DCI Young cannot be said to have influenced the investigations which – again, up until that point had been independently assessed by the NSWCC as "comprehensive and thorough" – took place from

---

[144] Exhibit 6, Tab 329 (SCOI.11062.00007), p. 11 [7] – [8], p. 5 [16].
[145] Exhibit 6, Tab 331 (SCOI.82870), p. 7.
[146] Mr Willing confirmed he was not present during the instructing of Counsel and had no intimate awareness of the position to be put to the Coroner, Transcript, T1698.37-1699.40.

mid-April 2015 under the direction of the State Coroner in the context of the third inquest ordered on 13 April 2015.

Events following the decision to hold a third inquest

*Investigations conducted in the context of the third inquest*

181. As noted above, investigations into Mr Johnson's death after 13 April 2015 took place under the direction of State Coroner Barnes. At no point did his Honour criticise the nature of the investigations already undertaken in the context of SF Macnamir, or the investigations subsequently conducted by DS Brown and Detective Senior Constable Rowena Clancy (again, subject to his Honour's direction). It is fair to say that given the circumstances of DCI Young's removal from the investigation in the context of the Lateline Issue that the State Coroner's mind would have been alive to any indication of impropriety. There is simply no evidence before the Inquiry to suggest the investigations between April 2015 and November 2017 were not open minded or conducted to further an "objective to combat, and prevent the acceptance, of the homicide hypothesis." Similarly, had his Honour formed the view that DCI Young's investigation was, in some respect, inadequate, close-minded or otherwise inappropriate, such a conclusion would not doubt have been recorded in his Honour's findings.

*The close of the third inquest*

182. Counsel Assisting the State Coroner in the third inquest, while acknowledging that there was sufficient evidence to support a finding that some form of foul play in Mr Johnsons death, submitted it would be "equally open for the Court to find that such evidence was insufficient… to support a positive finding in this regard."[147]

183. Senior Counsel for the Commissioner of Police submitted that:[148]

> *…on the evidence before the Court, a positive finding could not be made in relation to any of the three case theories to the requisite standard, but that equally, none of the three case theories can be ruled out.*
>
> *Accordingly, the Commissioner submits that the manner of Scott's death remains open.*

---

[147] Exhibit 6, Tab 332 (SCOI.11069.00002), [247].
[148] Exhibit 6, Tab 333 (NPL.0115.0002.8325), [5] – [6].

184. Such a position is inconsistent with what Counsel Assisting alleges to be an "unchanging and inflexible view held, and propounded" that Mr Johnson had committed suicide.

185. Counsel Assisting instead relies on an email from DCI Olen on 1 December 2017 describing DS Brown and DS Clancy as "pretty upset" following the delivery of the finding of State Coroner Barnes on 30 November 2017 to suggest an absence of open-mindedness on the part of those officers (CA, [493]).[149] The email does not explain the context in which the officers were said to be upset. DCI Olen, DS Brown and DS Clancy were not called to give evidence. In these circumstances, it is submitted that little can be inferred from the email.

186. Counsel Assisting also references a series of propositions agreed to by Mr Willing to the effect that these two officers had started from April 2015 with a view that the relevant explanation was not homicide (CA, [494]) and conducted their inquiries from this perspective. It is submitted that little weight should be accorded to this evidence given:

a) the absence of any evidence, either documentary or orally from Mr Willing, to substantiate the claims that DS Brown or DS Clancy first, held the views attributed to them, and secondly, in light of those views, failed to conduct their investigations from April 2015 thoroughly or with anything other than an open mind;

b) that an allegation of partiality in the context of a murder investigation under the purview of the Coroner is grave, and to make a finding to this effect without calling DS Brown and DS Clancy or affording them the opportunity to be represented in these proceedings would constitute a serious breach of natural justice; and

c) the fact that in the context of the third inquest, the Johnson family made submissions to the State Coroner that the case should be referred again to the NSWCC to identify the perpetrators given the Johnson family's view "that there are further inquiries that could be made and that there would be reason to doubt the impartiality of any further investigation undertaken by members of the NSWPF based on the submissions made on behalf of the Police Commissioner in this inquest".[150] This request was specifically rejected by State Coroner Barnes who found "I am confident that if promising leads come to the attention of the NSWPF they will be pursued".[151]

---

[149] Ibid.
[150] Exhibit 6, Tab 232 (SCOI.11064.00018), [281].
[151] Ibid, [284].

187. In short, the evidence does not allow a finding by the Inquiry that the investigations conducted between April 2015 and November 2017 into Mr Johnson's death were anything other than comprehensive and appropriate. The same is true, as indicated above, of the investigations conducted prior to April 2015.

*The finding in the third inquest and the effect of the 2023 conviction*

188. While Counsel Assisting submits that "the police objective was to combat, and prevent the acceptance, of the homicide hypothesis" such that an open-minded approach was not adopted (CA, [502]), the possible relevance of the location of Mr Johnson's death at a beat and his sexuality as the motivation for an attack had formed part of police of investigations since at least those conducted by police in connection with the 2012 inquest, given the emphasis placed on it by Deputy State Coroner Forbes. DCI Young's statement setting out the investigations of SF Macnamir detailed a number of lessons coming out of the Taradale Inquest's consideration of beats of possible relevance, before identifying all of the persons charged or suspected of gay-hate offences that were investigated by SF Macnamir.[152] No further lines of inquiry were identified by the NSWCC's review in 2014. It cannot possibly be suggested that the Coroner in the third inquest had closed his mind to a gay hate crime: State Coroner Barnes found Mr Johnson's death was likely to have been motivated by his sexuality. Yet the State Coroner's investigations too did not identify the ultimate perpetrator of Mr Johnson's death.

189. The inescapable conclusion following the conviction and sentence of Mr White in 2023 for manslaughter is that the finding reached in the third inquest did not accurately reflect the true series of events leading to Mr Johnson's death. Mr Johnson was not attacked by unidentified persons because they believed him to be a homosexual.[153] There was not more than one person involved.[154] There was no connection between his death and the gangs of men or soldiers housed at a nearby army barracks engaging in gay hate crimes in the area.[155]

190. No criticism can be made either of the NSWPF's investigations of Mr Johnson's death (or of the third inquest) for failing to uncover the identity of Mr White: the evidence that ultimately led to Mr White's conviction was simply not available until Ms White came forward in 2019.

---

[152] Exhibit 6, Tab 252D (SCOI.83088), [1703]ff and [1749]ff.
[153] Cf. Exhibit 6, Tab 232 (SCOI.11064.00018), [285].
[154] Ibid, [275].
[155] Ibid, [263] – [264].

191. As noted above, Ms White's evidence in this regard was that she came forward as a result of watching a television program about gay hate, while out of the State.[156] There is no evidence that she had any awareness of the existence of SF Welsford: to the contrary, Wilson J observed "Ms White's evidence was that she was living interstate at the time and had not been aware of media coverage prominent in Sydney was not challenged".[157]

192. Fundamentally, there is no evidence that any step taken after the third inquest led to Ms White coming forward.

193. There is no evidence that the NSWCC's assessment in 2014 that no further leads could be pursued was wrong. Similarly, there is no evidence that State Coroner Barnes failed to identify any such leads which may have resulted in the identification of Mr White. Nor is there any evidence that the investigating officers could ever have identified Mr White as the perpetrator if Ms White had not come forward.

194. In the Commissioner of Police's submission, there is no evidential basis for any criticism that the NSWPF failed to uncover Mr White's role in Mr Johnson's death.

Findings proposed by Counsel Assisting unavailable

195. As noted above, at CA, [501] and [502] of their written submissions, Counsel Assisting contend that two findings should be made in relation to the topic of the so-called 'suicide hypothesis' and the objectivity of SF Macnamir.

> *Finding third inquest "unnecessary" and would not result in a different finding from 2012 inquest*

196. At CA, [501], Counsel Assisting urges the following finding to be made:

> *DCI Young and her successors at SF Macnamir (as well as Mr Willing) believed that a third inquest was unnecessary and would not result in any different finding from the open finding by Coroner Forbes in 2012.*

197. It is accepted that a finding is open, in light of the submission referenced at [173] above, that DCI Young considered a third inquest would not result in a different finding from the open finding

---

[156] *R v White* [2022] NSWSC 525 at [27].
[157] Ibid, [26].

in the 2012 inquest. However, for the reasons above, the evidence does not permit the broader finding propounded by Counsel Assisting. That is:

a) given DCI Young was not called to give evidence, a finding that she considered a third inquest to be "unnecessary" is unavailable;

b) similarly, in the absence of evidence from DS Brown, a finding that she considered a third inquest to be "unnecessary" and would not result in a different finding from the open finding of the 2012 inquest is unavailable;

c) in respect of Mr Willing, his personal view was that an open finding would have been appropriate,[158] but he specifically rejected the proposition that he had direct involvement in the submissions made to State Coroner Barnes at the directions hearing about whether a third inquest should be held,[159] and confirmed his view that the Coroner should conduct a further examination of the matter and that a third inquest was important.[160] There is no basis to reject Mr Willing's evidence on this point. A finding that he considered a third inquest to be "unnecessary" and would not result in a different finding from the open finding of the 2012 inquest is therefore unavailable; and

d) in the absence of the identification by Counsel Assisting of the "successors" of DCI Young alleged to have held this view, or any evidence substantiating this proposition, a finding in relation to that / those person(s) is equally unavailable.

*Finding of lack of objectivity of SF Macnamir*

198. At CA, [502] of their submissions Counsel Assisting submits that a sweeping finding should be made that SF Macnamir did not adopt an open-minded approach to the reinvestigation of Mr Johnson's death. Specifically, Counsel Assisting asserts that (CA, [502]):

> *[F]or the whole time from the instigation of SF Macnamir in February 2013 to its conclusion on 30 November 2017, the unchanging and inflexible view held, and propounded, by Strike Force Macnamir was that Scott Johnson's death was a suicide, and that the police objective was to combat, and prevent the acceptance, of the homicide hypothesis.*

---

[158] Transcript, T1702.20-35; Transcript, T3445.47.
[159] Transcript, T1697.35-1699.41.
[160] Transcript, T1699.43-1700.2.

199. For the reasons explained above, this finding is unavailable. The Commissioner of Police also submits the following:

a) Mr Willing denied sharing any rigid view in relation to the likely cause of death of Mr Johnson and, to the contrary, emphasised that his view changed many times over the years in response to different evidential developments in the case.[161] As set out above, Mr Willing's positive steps of seeking first, the independent and objective view of the NSWCC as to the investigation conducted by SF Macnamir, and secondly, a further examination of the matter by the State Coroner following that investigation, is strong evidence that far from any objective to "combat and prevent the acceptance of the homicide hypothesis", Mr Willing sought a transparent and objective assessment of the evidence.

b) In relation to the period February 2013 to March 2015, while framed vaguely as the position of "Strike Force Macnamir", this is in reality a grave allegation of impropriety made by Counsel Assisting against DCI Young and the other officers involved in the investigation (particularly, DS Brown). As explained below, to make such a finding without giving DCI Young an opportunity to be heard would constitute a serious denial of procedural fairness and breach of natural justice.

c) Similarly, in relation to the period April 2015 to November 2017, an allegation of partiality in the context of a coronial investigation under the purview of the State Coroner is grave. To make a finding to this effect without calling the relevant witnesses, in particular DS Brown and DS Clancy (but also, potentially, those assisting the State Coroner, who are ordinarily charged with providing requisitions and taking other steps to direct investigations, on the basis of instructions from the relevant Coroner), would also constitute a serious denial of procedural fairness and breach of natural justice.

d) For the reasons set out above at [188] – [194], there is no evidence to suggest NSWPF (whether in the context of SF Macnamir or otherwise) failed to take any investigatory steps that would have led to identification of the perpetrator of Mr Johnson's death that came to light as a result of the new evidence of Ms White in 2019.

---

[161] Transcript, T3444.8-18.

200. The right to procedural fairness is not abrogated in the context of an inquiry and can only be excluded by plain words of necessary intendment.[162] The obligation to accord procedural fairness imports an obligation upon a decision maker to alert a person entitled to be heard to the questions or critical issues to be addressed.[163] Affording a reasonable opportunity to be heard in the exercise of a statutory power to conduct an inquiry requires that a person whose interest is apt to be affected be put on notice of the nature and purpose of the inquiry, the issues to be considered in conducting the inquiry, and the nature and content of information that the repository of power undertaking the inquiry might take into account as a reason for coming to a conclusion adverse to the person.[164] Further, while in an investigative inquiry the facts "emerge in a more elusive and less orderly manner than in civil litigation" such that it may not be possible for all adverse material to be disclosed at an early stage, a person who may be adversely affected by a finding should not be "left in the dark" as to the nature of the critical issues, and should therefore be afforded an opportunity to adduce additional material in response to adverse evidence at an appropriate stage of the inquiry.[165]

201. The failure to call DCI Young, DS Brown and "others" alleged to have held the same views or putting them on notice and allowing them to seek to be heard in circumstances where Counsel Assisting advocates for adverse findings to be made against them does not merely mean the Inquiry does not have the benefit of their evidence. Rather, they have been "left in the dark" and deprived of the opportunity to defend themselves or respond in any way to matters of serious criticism before such findings are made. It is for this reason that it is submitted that to make the findings proposed by Counsel Assisting would constitute a breach of procedural fairness and natural justice and those findings are accordingly unavailable to the Inquiry.

***The "Lateline Issue"***

202. A significant portion of the evidence in Public Hearing 2, comprising approximately 3 hearing days, 300 transcript pages and 52 documents, together with approximately 20 pages of written submissions by Counsel Assisting, was devoted to what has been referred to as the "Lateline Issue".

---

[162] *Saeed v Minister for Immigration and Citizenship* (2010) 241 CLR 252, 259 [14]-[15] (French CH, Gummow, Hayne, Crennan and Kiefel JJ).
[163] *Kioa v West* (1985) 159 CLR 550 at 587.
[164] Minister for Immigration and Border Protection v SZSSJ [2016] HCA 29 at [83].
[165] *Mahon v Air New Zealand Ltd* [1984] AC 808 at 814-815 and 820-821.

203. Broadly, the "Lateline Issue" may be described as the circumstances in which DCI Young came to give a televised interview with journalist Emma Alberici on ABC's Lateline television program, which aired on the evening of 13 April 2015, and the extent to which other members of the NSWPF , in particular Mr Willing, knew and approved of the fact and content of that interview.

204. As submitted above, it is the Commissioner of Police's position that SF Macnamir and the investigation into Mr Johnson's death was outside the Inquiry's Terms of Reference. Similarly, it is submitted that a detailed investigation by the Inquiry into the Lateline Issue was also outside the scope of the Terms of Reference, and ultimately fruitless.

205. Nevertheless, the Commissioner of Police's ultimate position in relation to the Lateline Issue may be summarised as follows:

a) DCI Young was authorised by the NSWPF to conduct off-the-record "backgrounding" of two journalists in relation to the Johnson matter.[166]

b) In the event State Coroner Barnes made the Young Statement public in the course of the directions hearing on 13 April 2015, further consideration would be given to on-the-record statements being made to the media,[167] for which further approval by a Deputy Commissioner would be required.[168]

c) Following the Coroner's determination to hold a further inquest, DCI Young was approved to conduct a "door stop" with journalists outside the Coroner's Court on 13 April 2015, welcoming the inquest.[169]

d) There is no evidence DCI Young was approved to conduct an on-the-record televised interview with ABC or any other media outlet, approval which would have had to have been obtained from among others, Deputy Commissioner Kaldas.

e) There is no evidence DCI Young not approved, and it cannot be reasonably contended that approval ever would have been given, to make the detailed comments she made on Lateline, including to the effect that the Minister was "kowtowing" to the Johnson family.

---

[166] Transcript, T.1713.8-14.
[167] Exhibit 6, Tab 383 (NPL.0147.0001.0012); Transcript, T.3751.4-18.
[168] Transcript, T.3751.12-18.
[169] Exhibit 6, Tab 328A (NPL.2017.0001.0029), p. 3.

f) The evidence strongly suggests that DCI Young deliberately deceived her superiors, including Mr Willing, in relation to her intentions in engaging with the media in the context of the Johnson matter, and was conscious her actions would never have received approval from NSWPF. This is evidenced by:

(i) her *apparent* provision of an unredacted copy of the Young Statement to Ms Alberici 8 weeks prior to the Lateline interview;[170]

(ii) her *replacement* of the journalist who had been chosen by police for a backgrounding with Ms Alberici;

(iii) her promise to the ABC of an "exclusive", well before the Coroner's determination to make any parts of the Young Statement public;[171]

(iv) her determination not to have any media liaison officer present in the context of the *backgrounding* of journalists due to possible "repercussions";[172]

(v) her undertaking of a recorded "practice" where she was coached through various answers by Ms Alberici, noting at times that these answers would be "controversial";[173] and

(vi) her own acceptance that her actions were "unusual".[174]

However, in circumstances where Counsel Assisting has not called DCI Young to give evidence and afforded her an opportunity to defend herself in this regard, as a matter of procedural fairness, no finding to this effect could properly be made.

206. It is accepted that there were some inconsistencies in the evidence given by Mr Willing about his interactions with DCI Young on the day the Lateline program went to air. However, it is submitted these inconsistencies are not significant, are unsurprising given the passage of time since the Lateline interview took place, and do not justify a finding either that Mr Willing knew of DCI Young's intentions to conduct the Lateline interview, or endorsed this approach or the views she expressed in it. The documentary evidence supports this position, with evidence that those involved in the original approval process for the backgrounding of journalists, Ms Georgina Wells

---

[170] Exhibit 6, Tab 354 (SCOI.82991); exhibit 6, tab 346 (NPL.0138.0001.0072).
[171] Exhibit 6, Tab 348 (SCOI.82992).
[172] Exhibit 6, Tab 352 (NPL.0138.0004.7178).
[173] Exhibit 6, Tab 342 (NPL.2017.0004.0549), pp. 4, 13.
[174] Exhibit 6, Tab 379 (NPL.3000.0003.5326).

and Mr Strath Gordon, were shocked at DCI Young's appearance and considered such an appearance was not approved:

a) Ms Wells, Media Supervisor, observed in her Ashurst interview:

> *When it started I was shocked she was in the studio because I was expecting it to just be a backgrounder… The backgrounder was off the record. Pam and I discussed it previously and she asked 'once the statement is released does the backgrounder become on the record?' I said 'no there needs to be a separate interview'… I thought it would just be a few grabs that she hadn't told me about. I didn't expect a sit down interview… Once I saw it I was speechless. I didn't contact her straight after…*[175]
>
> *and*
>
> *The difficulty is you assume a DCI would understand that to mean [the possibility of going on the record afterwards] that you can't sit down and do a 20 minute interview with Lateline. It is clear to most Police that only Superintendent and up can do that without express permission.*[176]

b) Mr Gordon, Director of Public Affairs, said "when I found out the interview it was a shock" and "Pam felt she was free to go and talk about whatever she wanted which I think is a long bow".[177]

207. There is no evidence to suggest "others in the State Crime Command" personally supported what DCI Young said in the Lateline interview, or at least did not disagree with it (cf CA, [503]). Counsel Assisting does not identify who those "others" are alleged to be, there are no documentary records suggesting this is the case, and no "others" in the State Crime Command were called to give evidence before the Inquiry.

208. In any event, noting that:

---

[175] Exhibit 6, Tab 384 (NPL.0147.0001.0001), p. 3.
[176] Ibid, p. 1.
[177] Exhibit 6, Tab 381 (NPL.0147.0001.0015), pp. 4 and 6.

(i) DCI Young was removed from the Strike Force Macnamir investigation team following the airing of the Lateline program in April 2015;

(ii) the Johnson matter proceeded to and was investigated further in the context of a third inquest; and

(iii) following further investigation in the context of SF Welsford, Mr White was convicted of manslaughter in February 2023;

it is not clear how the pursuit of this issue advanced the Inquiry's task of inquiring into "the *manner and cause of death* in all *cases that remain unsolved* from the 88 deaths or suspected deaths of men potentially motivated by gay hate bias that were considered by SF Parrabell" (emphasis added).[178]

Brief responses to discrete issues raised by Counsel Assisting in the context of the Lateline Issue

209. The Commissioner of Police makes the following brief responses to discrete points made by Counsel Assisting in the context of the Lateline Issue.

*Media "strategy" document*

210. Although not stated expressly, to the extent that Counsel Assisting implies at [400] that a document setting out the media "strategy" in relation to the Johnson matter exists and was not produced by NSWPF, this is rejected. There is no evidential basis for such a submission, express or implied.

*Provision of Young Statement to the ABC*

211. There is no evidence to suggest that Mr Willing's evidence that he did not know that eight weeks before the April 2015 directions hearing, DCI Young had provided a copy of the Young Statement to Ms Emma Alberici, was anything other than accurate (CA, [410]). This is unsurprising, noting the Young Statement had not been made public and NSWPF was seeking non-publication orders over it at the directions hearing. Mr Willing's evidence on this point should be accepted.

*Attendance of media liaison officer at backgrounding*

212. It is accepted that, when DCI Young sought to attend the backgrounding sessions with the journalists without a media liaison officer present, this should have raised concerns for

---

[178] Special Commission of Inquiry Terms of Reference (13 April 2022), cl. A.

Mr Willing, such that he should have at least had a further discussion with DCI Young as to what she intended to say during those backgrounders (CA, [413] – [415]).

213. However, while his trust in DCI Young in this regard was ultimately misplaced, it is submitted he could not have reasonably anticipated the lengths to which she, an experienced and high-ranking detective, was prepared to go in relation to expressing her personal views on a murder investigation to the media; DCI Young's interview was unprecedented.

*The timing of the "backgrounder" with Emma Alberici*

214. Contrary to the submission of Counsel Assisting at [420], Mr Willing's dot points prepared in the context of his Ashurst interview shortly after the Lateline Issue occurred indicate that:

a) DCI Young had not finished her backgrounding with Dan Box by 1:54pm on 10 April 2015; and

b) she called Mr Willing sometime "later that afternoon" after she had conferred with Senior Counsel Assisting in relation to the directions hearing scheduled for 13 April 2015 to say she was going to the ABC.[179]

It is therefore entirely plausible that Mr Willing considered DCI Young had not had an opportunity to complete the backgrounder that day given the limited time available before the close of business. He indicated as much in his evidence.[180]

*DCI Young's use of the term "kowtowing"*

215. Paragraph CA [433] of Counsel Assisting's submissions is an inaccurate reflection of the evidence. The exchange between Senior Counsel Assisting and Mr Willing on this issue was as follows:[181]

> Q. *I need to ask you this, Mr Willing, before I leave the Lateline topic. Had Pamela Young openly used the term "kowtowing" to describe the Police Minister to you in office on many occasions between February 2013 and April 2015?*

---

[179] Exhibit 6, Tab 382A (NPL.2017.0001.0029), p. 2.
[180] Transcript, T3761.23-27.
[181] Transcript, T1720.20-27; Transcript, T1721.11-39.

A. *She might have used that term talking to me privately once or twice but I can't recall it being discussed in those terms openly in the office.*

…

Q. *And didn't she, in that conversation with her on the way to the ABC studio on 13 April, tell you that she was likely to use the word "kowtowing" if she was asked about the Police Minister?*

A. *She might have. I can't recall it.*

Q. *And did you respond with a laugh?*

A. *Well, it was something that – an expression I hadn't heard before, but I can't recall whether I did or not. I might have.*

Q. *An expression you hadn't heard before?*

A. *Yes, that's right.*

Q. *I thought you told us that she had used it to you privately several times previously?*

A. *After that meeting.*

Q. *After the February 2013 meeting?*

A. *Yes.*

Q. *Yes and before the —*

A. *Sorry, after the – I took that to mean after the interview that she gave on Lateline.*

Q. *Are you saying that she had never used the word "kowtowing" in your hearing about the Police Minister until after the ABC Lateline interview?*

A. *That's correct. That's correct.*

Self-evidently, and in direct contradiction to Counsel Assisting's submissions, Mr Willing's evidence was not that DCI Young referred to "kowtowing" in the context of the 5pm phone call.

Mr Willing confirmed that DCI Young had never used that word in his hearing about the Police Minister until after the Lateline interview.[182]

*The 5pm phone call*

216. In relation to Counsel Assisting's submissions at CA, [435] – [451]:

a) It is acknowledged that in his evidence before the Inquiry in February 2023, Mr Willing accepted that DCI Young had called him around 5pm while "on the way" to the ABC, and that in his evidence before the Inquiry in May 2023 when his dot points were put before him, Mr Willing agreed that in fact DCI Young had stated she "had recorded" an interview with ABC. Such inconsistencies in a witnesses' evidence, particularly eight years after an event, are not unusual.

b) Counsel Assisting has not explained the basis on which Mr Willing's explanation that he considered the reference to a "recorded interview" was a reference to a doorstop outside the Coroner's Court should be rejected, and Counsel Assisting's interpretation at CA, [447]-[448] preferred. It is submitted that in the circumstances, it was far more likely that, rather than jumping to a conclusion that DCI Young had attended the ABC studios to give an in-person television interview on the record without his knowledge or approval, Mr Willing either, as he suggested in oral evidence:

(i) assumed DCI Young had lied about the absence of media at the Coroner's Court by the time she came out (which it appears she had); or

(ii) the ABC had come by after DCI Young had spoken to Mr Willing at around lunchtime.

c) The evidence that Mr Willing reported his conversation with DCI Young to Ms Wells shortly thereafter and there were no concerns raised at that time by either Mr Willing or Ms Wells, and that a filmed doorstop with DCI Young in fact on aired on ABC that evening, would tend to support Mr Willing's account.

d) The Commissioner of Police embraces the submissions made orally by Senior Counsel for Mr Willing: for DCI Young to have called Mr Willing at 5pm to tell him about the studio interview with the ABC would have been illogical and completely inconsistent with her

[182] Transcript, T1721.36-39.

efforts of the preceding weeks to keep the studio interview a secret from her superiors until it went to air.[183]

*The evening of 13 April 2013*

217. Paragraphs [453] – [454] of Counsel Assisting's submissions seem to incorrectly assume that a "doorstop" could not be on camera. Doorstop interviews are routinely recorded on camera and presented as part of news and current affairs broadcasts. Indeed, the doorstop with Ms Alberici, DCI Young and Steve Johnson outside the Coroner's Court took place on camera. Accordingly, the inference that Counsel Assisting says should be drawn, that Ms Wells' framing of the media update suggested Mr Willing knew that what was going to air was *not* a doorstop, is not available. In any event it is difficult to understand the basis on which Counsel Assisting purports to be able to precisely specify what Ms Wells did and did not understand at a particular point in time in the absence of evidence from her.

218. As noted at CA [459] – [460], Mr Willing explained that he considered that the reference in DCI Young's text message to him around 7pm on 13 April 2015 to "hair & lippy good too – especially on Penny!" must have been to the doorstop outside the Court because DS Brown was not on the Lateline program. It is not clear how Counsel Assisting assert (CA, [461]) that such an interpretation was "not available" to him, simply because he had not watched the ABC news broadcast. Mr Willing clearly would have expected DS Brown to have been present with DCI Young at the Court for the directions hearing. He gave evidence that it was usual for other officers involved in an investigation to be present with them for doorstops.[184] It was not necessary for Mr Willing to have seen the news broadcast in order for him to consider that this is what DCI Young referred to in her text message.

219. This reference to DS Brown is therefore only likely to have strengthened Mr Willing's assumption that DCI Young's references in her communications that afternoon and evening were to a doorstop rather than a studio interview. For the reasons discussed below at [222](b), Mr Willing is unlikely to have dissected the text message into various separate parts to attempt to determine its meaning, as now undertaken by Counsel Assisting (CA, [462] – [463]).

---

[183] Transcript, T3833.38-3834.18.
[184] Transcript, T3832.19-35.

220. That Mr Willing did not seek to carefully distinguish between terms used in such communications is also evident from his text message to the Coroner at 8:11pm on 13 April 2015. Counsel Assisting seeks to make much of the particular words used in that text message to demonstrate that, contrary to Mr Willing's evidence, he was aware at this point of the studio interview that was to air on Lateline (CA, [468] – [469]). But consideration of even the first sentence of the text message to the Coroner undermines Counsel Assisting's argument: Mr Willing refers to DCI Young having been "interviewed by the ABC and the Australian concerning SF Macnamir". While Counsel Assisting considers the use of the term "interview" to be significant in this context, it is submitted its use, in reference to *both* the ABC a*nd* the Australian (with whom DCI Young had had only a backgrounder) tends to suggest Mr Willing did *not* appreciate what was to air on Lateline that evening.

*Mr Willing's actions after Lateline airs*

221. Counsel Assisting submits that because Mr Willing did not immediately contact DCI Young or his superiors after the airing of the Lateline broadcast on the evening of 13 April 2015, the available inference is that he was not "shocked" or "angry" at DCI Young's actions (CA, [476], [477]). Mr Willing expressly rejected this proposition in oral evidence.[185]

222. Mr Willing's response on the evening of 13 April 2015 also needs to be considered in the context of the following:

a) The evidence suggests Lateline aired at "about 10:30pm" on 13 April 2015.[186] In those circumstances nothing can sensibly be inferred from the fact that Mr Willing did not contact other NSWPF officers at the time the program went to air. The episode had been shown; nothing could be done about it then and there. Accordingly, there is nothing surprising in Mr Willing's evidence that he considered that to be too late at night to be contacting others and that he could address the issue the following morning.[187]

b) While undoubtedly significant, this was not the only substantial matter over which Mr Willing as Homicide Commander had oversight of and responsibility for that week. He gave evidence that:

---

[185] Transcript, T3807.33-42.
[186] Exhibit 6, Tab 362B (SCOI.47473).
[187] Transcript, T3807.7-3808.9.

(i) on the afternoon of 13 April 2015, directly prior to the 5pm phone call from DCI Young, he was at the funeral of the first Homicide Commander, Detective Inspector Harry Tupman;[188]

(ii) the Lindt café investigation consumed a considerable amount of his time in April 2015, with 30 to 40 detectives preparing evidence for the coronial inquest;[189]

(iii) on 16 April 2015 NSWPF held a press conference and media interviews in relation to a major announcement in the William Tyrrell investigation, which had been the subject of significant internal discussion and preparation in the days prior;[190]

(iv) he had convened and prepared the first meeting of Heads of Homicide from around Australia for a two-day conference held on 16 and 17 April;[191] and

(v) there were approximately 60 to 80 active homicides being investigated by the Homicide Squad at that time.[192]

223. It is submitted that in these circumstances, Counsel Assisting's submission that it "beggars belief" that Mr Willing "did nothing" between the hours of approximately 10:30pm and 7am in relation to DCI Young's actions is highly unfair. Further, an inference that this was because, contrary to Mr Willing's oral evidence, he was not shocked and angry, simply cannot be drawn.

*Mr Willing and DCI Young's text exchange on 14 April 2015*

224. At CA [357] – [359], Counsel Assisting sets out a text message exchange between DCI Young and Mr Willing on 14 April 2015 and submits that this evidence permits a finding that Mr Willing shared the views of DCI Young that the Johnson family should be "defeated" by "opposing and preventing a view of homicide".

225. It is not disputed that on the documents before the Inquiry, it appears a fraught relationship between DCI Young and the Johnson family had developed by April 2015. However, again the Inquiry should be slow to make adverse findings to the effect that DCI Young considered the Johnson family were her "opponents" that she sought to "defeat" to "oppose and prevent a finding

---

[188] Transcript, T3827.17-21.
[189] Transcript, T3825.3-13.
[190] Transcript, T3826.18-32.
[191] Transcript, T3826.34-T3827.3.
[192] Transcript, T3827.5-8.

of suicide" in circumstances where she has not been afforded to give evidence as to her thought-processes or to be represented in the course of the Inquiry.

226. As recorded by Senior Counsel for Mr Willing, it is of significant note that DCI Young attended some of the Inquiry hearings of Mr Willing's evidence in relation to SF Macnamir and the Lateline Issue, but did not provide a statement to the Inquiry and was not called to give evidence. Rather, other witnesses, particularly Mr Willing, were called upon to give evidence as to the motivations behind DCI Young's actions and what she meant by particular words or phrases found in the documentary evidence.

227. In respect of the specific text exchange on 14 April 2015, this read as follows:[193]

Young to Willing:

> *Mick & Ken — I believe you have tried on my behalf but it my own organization again puts me in a position where the Johnson family can criticize & humiliate me & all our efforts I will not take it well. I made use all — especially our command — look good last night. I am one of those silly idealists who are of little value these days when popularity rules. I'll wait & see.*

Willing to Young:

> *I know Pam. I have felt this crap too and you know that I support you. I want all the hard work you have done to come out in court for what it is and show the Johnson's for what they are. We need to let that happen and can't jeopardise that now by letting them win. This is for Penny and well and all of the other people who have helped. We/l need you on this one. Call me when you feel like it. Mick.*

Young to Willing:

> *Mick — I will not let them win — that is not in my DNA. I want to see my GP tomorrow on sick report & will be in Thu. If I feel the need to personally respond to new insults of me by the Johnson family because of that release I will talk to you about it first but I am not incline (sic) to suffer them any longer. I'll wait & see. Pam.*

Willing to Young:

---

[193] Exhibit 6, Tab 382A (NPL.2017.0001.0029), p. 4.

*Ok. I understand. We will work through it and we will come out on top.*

228. While Mr Willing's reference to "letting [the Johnson's] win" was unfortunate, it must be viewed in the following context:

a) it is in response to a text message in which DCI Young expresses concern about the Johnson family criticising and humiliating her;

b) it occurred in the immediate aftermath of the Lateline interview, in circumstances where Ms Young had just been informed that NSWPF were issuing a media release in which Mr Willing would be attributed as saying her comments on the Lateline programme were "inopportune" – that is, that NSWPF would publicly distance itself from her comments and actions;

c) Mr Willing recorded DCI Young's response to being informed of the media release as follows: "She became very upset and began crying before hanging up the call";194

d) DCI Young refused to answer Mr Willing's calls for the next hour, until she started sending him the text messages at 5:04pm;195

e) DCI Young referred to going to the doctor on the basis she was unwell and that she would not be coming into work;196 and

f) Mr Willing was DCI Young's supervisor and it was appropriate he be concerned for her welfare, regardless of the situation.

229. It is submitted that the above context provides support for Mr Willing's contention that his comments were an attempt to appease DCI Young, given how upset she was at the time. In any event, they do not provide a sufficient basis on which to reject all of Mr Willing's evidence that his views as to the likely cause of Mr Johnson's death changed over time and that while he ultimately thought homicide was more likely than suicide or misadventure, he could not rule it out (cf CA, [359]).

230. Further, there is no documentary evidence to suggest Mr Willing sought in any way to "defeat the Johnson family by opposing and preventing a finding of homicide" and he expressly

---

194 Ibid.
195 Ibid.
196 Ibid, p. 5.

disavowed such a notion.[197] Such a finding, which effectively asserts Mr Willing sought to pervert the course of justice, cannot be made in the absence of clear evidence.

Findings proposed by Counsel Assisting unavailable

231. In relation to the Lateline Issue, Counsel Assisting submits that the evidence permits that "at least" the following findings to be made (CA, [503]):

a) Mr Willing was on notice at least some hours before the programme aired that DCI Young would be appearing in an exclusive interview on Lateline on 13 April 2015;

b) Mr Willing's "initial inaction and nonchalance", even after seeing her on the programme, provide a basis for an inference that Mr Willing personally supported what DCI Young had said or at least did not disagree with it; and

c) "perhaps" this inference of personal support for DCI Young, or at least not disagreement, extended to "others in State Crime Command".

232. For the reasons above at, it is submitted that there is an insufficient evidential basis to find that Mr Willing in fact knew of the exclusive interview to air on Lateline hours beforehand. At the very least, there is no evidence to suggest he could have possibly anticipated the nature or scope of DCI Young's actions in the context of that interview, which appear to have been the product of weeks of surreptitious planning.

233. For the reasons above at [221] – [223], it is submitted that Counsel Assisting's characterisation of Mr Willing's response between the hours of approximately 10:30pm and 7am is unfair, and an inference that this was because he personally supported or did not disagree with DCI Young's actions is unavailable. To say the least, it is inherently unlikely that the Commander of the Homicide Squad and an officer of Mr Willing's character and standing would personally support one of its detectives going on national television and accusing the Minister of "kowtowing" to the Johnson family. A finding of that type that would require clear and positive evidence. There is no such evidence.

234. Counsel Assisting's submission that "perhaps" this support extended to "others in State Crime Command" is a grave allegation without any evidential foundation. Indeed, no evidence in

---

[197] Transcript, T3727.32-3730.27.

support of this submission is offered by Counsel Assisting. Such a finding is unavailable and the submission should never have been made.

## Part D: Strike Force Neiwand

235. SF Neiwand was established in or around October 2015 with the following Terms of Reference:

> *To re-investigate the suspicious disappearance and death of Giles Mattaini from Bondi on 01/0911985; the suspicious disappearance and death of Ross Warren from Bondi on 22/07/1989 and; the suspected murder of John Russell at Bondi on 23/11/1989.*[198]

236. As noted by Mr Willing, as a consequence of both the Operation Taradale investigation and the SF Macnamir investigation, a number of potential persons of interest had been identified. Against that backdrop, SF Neiwand was intended to be a comprehensive re-investigation, including a consideration of the possible involvement of various persons of interest. In Mr Willing's words:

> *[SF Neiwand] was established to try and identify a person and persons who may be responsible for those deaths and bring them to justice…*[199]

237. The original officer-in-charge of SF Neiwand, DS Penny Brown, has not been called to give evidence before the Inquiry. An email sent by DS Brown on 1 February 2016 circulated a list of persons of interest to the investigation, indicated that the members of SF Neiwand would have "a lot of work to do" and expressed a hope that the investigators "will get a positive result for SF Neiwand."[200] That email, and the associated spreadsheet, underscores that the objective of SF Neiwand was a simple one; to attempt to solve the cases, including via an examination of the possible involvement of the identified persons of interest.

238. In the result, the re-investigation conducted by SF Neiwand did not live up to the hopes held at the time of its establishment. Only a limited re-investigation was, in fact, conducted; the bulk of SF Neiwand's efforts were directed to reviewing the material on file.

239. The reasons for this have not been comprehensively explored before the Inquiry. In particular, the evidence called by Counsel Assisting has been limited to evidence from DS Morgan, who was the investigation supervisor. No evidence was called from DSC Chebl, who was the OIC

---

198 Exhibit 6, Tab 17 (SCOI.74884).
199 Transcript, T1710.44 – 1711.4.
200 Exhibit 6, Tab 306 (NPL.3000.0001.0026).

and, as such, the person responsible for setting the course of the investigation and directing it. DSC Chebl is no longer a police officer.[201]

240. The evidence suggests a number of forces *may* have been at play: first, having conducted some investigations, DSC Chebl, may have taken a view that on the evidence there was a real question as to whether any of the deaths were, in fact, homicides; second, there were insufficient resources available to conduct a comprehensive review of all of the persons of interest[202]; third, in some instances there were perceived to be legal and technical difficulties in pursuing an undercover operation in respect of a person who had exercised a right to silence.[203] However, in the absence of evidence from, at least, DSC Chebl the question of why SF Neiwand failed to live up to its original mandate cannot be satisfactorily resolved.

241. However, contrary to Counsel Assisting's submissions (see CA, [635] – [641], considered further below), there is no proper basis for a conclusion that the conduct of SF Neiwand formed part of a coordinated effort to minimise the incidence of gay-hate violence. Counsel Assisting's submissions to that effect rest on array of specious inferences that are sought to be drawn in lieu of evidence from DSC Chebl, DS Brown and other members of the investigative team.

***The deaths of Ross Warren, John Russell and Gilles Mattaini (CA, [507] – [522])***

242. Ross Warren disappeared in July 1989. His body has never been found. His car was located in Kenneth Street, Bondi, which is close to Marks Park. Mr Warren's disappearance was not reported to the Coroner and it appears that the initial investigation (conducted by DS Kenneth Bowditch) was relatively perfunctory. DS Bowditch is no longer a police officer. He has not been called to give evidence, and the investigative decisions he made have not been explored.

243. John Russell was found dead on the rocks at the bottom of some cliffs at Marks Park on 23 November 1989. Mr Russell's death was the subject of an Inquest. The Coroner's Court does not appear to have retained a transcript or other record of those proceedings. The manner and cause of his death is said to have been recorded as "the effects of multiple injuries sustained then and there when he fell from a cliff to the rocks below, but whether he fell accidentally or otherwise, the evidence does not enable me to say".[204]

---

[201] Transcript, T1942.28.
[202] Transcript, T1794.32; T1960.45
[203] Transcript, T2194.8
[204] Exhibit 6, Tab 161 (SCOI.02751.00021), p. 1.

244. Gilles Mattaini disappeared on or around 15 September 1985. He was last seen walking in Bondi. He was not reported missing to police until August 2002.[205] It appears that there was likely a misunderstanding among Mr Mattaini's friends in relation to the making of a report.[206] His disappearance was not considered by a Coroner until the Taradale Inquest.

***Investigation by DS McCann (CA, [523] – [527])***

245. In April 1991, DS McCann, who had been the lead investigator in the murders of Richard Johnson and Krtichikorn Rattanajurathaporn (which occurred in January 1990 and July 1990 respectively) compiled a summary of potential links between those matters and other incidents of violence against members of the gay community.

246. It is not clear from the evidence tendered before the Inquiry what, if anything, was done in response to the documents prepared by DS McCann. DS McCann states that he had hoped to obtain further intelligence from the Modus Operandi Section that might have enabled him to pursue further inquiries in relation to the relevant matters.[207]

***Operation Taradale and Taradale Inquest (CA, [528] – [547])***

247. As noted by Counsel Assisting, Operation Taradale was "very substantial"[208] in scope (CA, [532]). It involved up to 12 officers[209], and sought to explore all possible avenues in relation to each of the deaths.[210] Deputy State Coroner Milledge quite properly described the investigation, which employed "sophisticated police techniques and methodology", as "impeccable".[211]

248. The investigation was necessarily more limited in relation to Mr Mattaini. Mr Mattaini's case only came to the attention of Operation Taradale in August 2002 (CA, [539] – [540]) and DS Page prepared a statement in relation to Mr Mattaini's case on 28 August 2002.[212]

249. It appears that Operation Taradale formally continued for some time thereafter; the Inquest, at least, did not conclude until 2005. In the intervening period, Deputy State Coroner Milledge could have directed further investigations in relation to Mr Mattaini's disappearance had her Honour

---

[205] Exhibit 6, Tab 172 (SCOI.74881), [27] – [29]; Transcript, T2275.31
[206] Ibid, [25] – [29].
[207] Exhibit 6, Tab 233, (SCOI.77310_0002), [17].
[208] Exhibit 6, Tab 253 (SCOI.82472), [17].
[209] Transcript, T2347.15-T2347.17.
[210] Exhibit 6, Tab 253 (SCOI.82472), [12].
[211] Exhibit 6, Tab 161 (SCOI.02751.00021), p. 8.
[212] Exhibit 6, Tab 160 (SCOI.02744.00024).

considered that such steps might have been worthwhile. In the result, it does not appear that any significant further investigation was conducted in relation to Mr Mattaini. No doubt the very limited information that was available in relation to Mr Mattaini's disappearance played a role in the circumscribed nature of the investigation; the reality is, in the absence of further evidence from a member of the community, very little could practicably be done in relation to Mr Mattaini's disappearance in 2005. The position was no different when SF Neiwand came to consider the matter in 2015.

250. The evidence uncovered during Operation Taradale did not positively establish any person as responsible for the deaths of Messrs Warren, Russell or Mattaini.

251. Nevertheless, the investigation led by DS Page regarding the deaths of Messrs Warren and Russell can fairly be described as exhaustive. As concerns Mr Mattaini, DS Page did what he could, having regard to the extremely limited avenues of investigation that were realistically open to him in connection with Mr Mattaini's disappearance.

***Period between 2005 and the establishment of SF Neiwand in 2015 (CA, [548] – [576])***

252. Counsel Assisting "supposes" that the findings of the Taradale Inquest "would immediately have prompted a further reinvestigation of the deaths" (CA, [548]). This observation overlooks the fact that Operation Taradale was a comprehensive and sophisticated investigation into the deaths (in particular those of Messrs Warren and Russell). It employed "all available techniques" including covert devices, telephone interceptions and undercover operations.[213] It had, however, failed to identify any evidence to concretely link a potential Person of Interest (**POI**) to any of the deaths.

253. There is no reason to think that an immediate reinvestigation would have borne additional fruit; in essence, a reinvestigation would have traversed precisely the same ground, in circumstances where little time had passed, and there is no suggestion of forensic advances, changes to relationships, or other factors that might have allowed an immediate reinvestigation to advance further than Operation Taradale. The publicity associated with the Taradale Inquests did not, for example, result in additional witnesses coming forward.

254. Counsel Assisting's observations in this respect also overlook the fact that the UHT was only formed in 2004, and was not structured in a way that allowed it to conduct reinvestigations until

---

[213] Exhibit 6, Tab 162 (NPL.0113.0001.0001), p. 8.

2008.[214] There is, as the Inquiry has heard repeatedly, a very substantial number of deaths that fall within the purview of the UHT. The years following the UHT's inception were necessarily spent reviewing cases and attempting to ascertain where scarce resources could best be deployed.[215]

The Taylor Review

255. The deaths of Messrs Warren, Russell and Mattaini were the subject of a careful review by DSC Taylor of the UHT in 2012.[216]

256. DSC Taylor took the view that the investigations that formed part of Operation Taradale were "meticulously undertaken" by DS Page and that the investigation team was "highly motivated" and made "every effort" to identify the potential perpetrators.[217]

257. As concerns Mr Mattaini's death, DSC Taylor noted that:

> *"In the absence of intelligence, witnesses or forensic evidence there has been no further investigative avenues established for Giles Mattaini. A reward has not been offered for information in relation to the missing person and may be a source to generate further information."*[218]

258. DSC Taylor went on to observe that the suspects identified in the course of the Messrs Russell and Warren investigations were, as indicated above, the subject of covert operations using listening devices and telephone interceptions (as well as overt attempts to elicit information via interviews).[219]

259. DSC Taylor noted that three persons had been identified as the main potential suspects and that there was no indication of further contact between them since the conclusion of Operation Taradale. Accordingly, DSC Taylor concluded 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".[220] She noted that in the absence of forensic evidence or

---

[214] This will be the subject of evidence tendered in the course of the Investigative Practices Hearing.
[215] Again, this will be the subject of evidence to be tendered during the Investigative Practices Hearing.
[216] Exhibit 6, Tab 162, (NPL.0113.0001.0001), p. 33.
[217] Ibid.
[218] Ibid.
[219] Ibid.
[220] Ibid.

admissions from suspects, there was no mechanism by which the matters might be resolved, before recommending that the offer of a reward might serve as a means of eliciting further information.[221]

260. It is observed by Counsel Assisting (CA, [553]) that it "might be thought" that DSC Taylor's recommendations would have prompted a reinvestigation of the deaths. It is not entirely clear whether this is meant as a direct criticism. If it is, it is made without any insight into the competing obligations of the UHT at that time. DSC Taylor's review identified possible avenues for reinvestigation (at least as concerns the deaths of Messrs Warren and Russell). No doubt reviews of many other cases falling within the ambit of the UHT similarly revealed potential avenues for reinvestigation. In the absence of a comprehensive understanding of the overall picture of the UHT at the time, including the investigations it was, in fact, undertaking and the other cases where opportunities for reinvestigation had been identified (including the relative urgency of those cases, having regard to matters such as the age of witnesses)[222], there is no proper basis for any criticism on the ground that a re-investigation was not immediately commenced following DSC Taylor's review.

Rick Feneley article of 9 August 2013

261. Counsel Assisting then turns to consider the media attention directed to possible gay-hate homicides in 2013 and in particular the article by Rick Feneley, dated 9 August 2013.

262. The article indicates that "Homicide detectives have revealed they are reviewing two gay-hate murders and two disappearances on the Bondi cliff tops and have pleaded for the public's help to solve many more killings of homosexual men dating back decades." Mr Willing is then quoted as saying:

> *"We can't solve some of these cases without the help of the community".*[223]

263. This observation is entirely consistent with the conclusions expressed by DSC Taylor. The reality is that it was (and is) highly unlikely that these cases will be resolved in the absence of further information from the community.

---

[221] Ibid, p. 34.
[222] See Transcript, T1761.27 where Mr Willing confirmed that the formation of a Strike Force is a matter that would occur only following "a discussion that would occur with members of the UHT, given the limited resources and what it was they were focused on at a particular time".
[223] Exhibit 6, Tab 214 (SCOI.82026).

264. Mr Feneley then writes:

> *After a Fairfax Media investigation pointed to as many as 80 gay-hate murders between the late 1970s and the late '90s – almost 30 of which remain unsolved – Superintendent Willing agreed to an interview this week, saying: "I know I've been quiet until this point and there is a reason for that – and that's because we're quietly working away on it.*[224]

265. In asserting that Mr Willing's remark was untruthful (CA, [559]), Counsel Assisting has removed it from the context in which it appears; the text of the article makes it clear that the relevant cases were subject to a "review" not a "reinvestigation". This is underscored by the fact that the cases under review were stated to "include" those of Messrs Russell, Warren and Mattaini; they were not confined to the Operation Taradale matters but extended to include other cases among the "80 gay-hate murders".

266. At the time of Mr Willing's comments, the review conducted by DCI Lehmann that resulted in the 2013 Issue Paper was underway, having commenced in July 2013. The review included searches of the records of the Homicide Squad, wider police archives and the Coroner's office.[225] SF Macnamir itself was also underway.

267. Moreover, as noted in the 2013 Issue Paper, the work conducted by DCI Lehmann coincided with some of the work of Operation Parrabell, which DCI Lehmann described as "a project being conducted by the Bias Crimes Coordinator (Sergeant Steer) and the Gay, Lesbian, Bisexual, Transgender and Intersex project officer (Senior Sergeant Jo Kenworthy), to assess the prevalence of 'gay hate' murders."[226]

268. Contrary to Counsel Assisting's submissions (CA, [557]), Mr Feneley's article, and Mr Willing's comment in it, were not confined to a consideration of the Taradale cases. Rather, the article related to the broader array of potential gay-hate homicides. At no stage did Mr Willing state that the Taradale cases were being re-investigated. Rather, he is quoted as saying that police were "working away on it". Having regard to the relevant paragraph (as set out in full above); the text of the article as a whole; and the context set out above, the "it" is properly understood as a

---

[224] Ibid.
[225] Exhibit 6, Tab 47 (SCOI.74906).
[226] Ibid, p. 1.

reference to the review being conducted by DCI Lehmann, which involved a substantial amount of work in relation to the "unsolved" cases referred to in the relevant paragraph.

269. Counsel Assisting's submissions at CA, [556] – [559] remove Mr Willing's remarks from their context. The submission that Mr Willing's remarks "stretched the truth" rests on an incomplete and inaccurate characterisation of the evidence and must be rejected.

270. It is also appropriate to note, given Counsel Assisting's submissions regarding the motivations of the various Strike Forces (which will be considered further below), that the text of the article itself makes clear that Mr Willing's interview with Mr Feneley formed part of a genuine attempt to elicit information to solve the relevant crimes. Mr Willing is quoted as saying:

> *If someone has information – evidence, I should say evidence – of a particular homicide, I want them to come forward.*[227]

271. He is also said to have "appealed to members of the old gay-bashing gangs or any of their associates who may know what happened".[228]

272. The other function of the interview given by Mr Willing was one of community outreach. In that respect, Mr Willing "acknowledged a history of broken trust with the gay and lesbian community meant that many victims chose not to report crimes to police. But he said the police force was working hard to rebuild that trust".[229]

2013 Issue Paper

273. As alluded to above, between late July and September 2013, DCI Lehmann conducted a review of the 30 potentially unsolved gay-hate homicides identified by Sue Thompson and produced the 2013 Issue Paper[230].

274. As noted by Counsel Assisting, the 2013 Issue Paper adopted the findings of DSC Milledge in the Taradale Inquest in relation to the cases of Messrs Warren, Russell and Mattaini (CA, [561] – [562]). Those three cases were included among the eight cases characterised as possible or probable hate crimes.

---

[227] Exhibit 6, Tab 214 (SCOI.82026).
[228] Ibid.
[229] Ibid.
[230] Exhibit 6, Tab 47 (SCOI.74906), p. 1.

275. Consistent with the submissions made at [260] above, the observation (at CA, [563]) that the 2013 Issue Paper might have prompted a re-investigation of the cases is made in a vacuum; it pays no heed to the competing obligations of, and resources available to, the UHT at the relevant time. Moreover, Counsel Assisting's observation does not account for the nature of the exercise being conducted by DCI Lehmann, who was simply reviewing the then-available information for the purposes of reaching a preliminary determination as to whether each of the relevant deaths was a possible gay-hate crime.

276. What the review did was record, on the basis of DSC Milledge's findings, that two of the Taradale cases were probably gay-hate motivated crimes, and one of the cases was possibly a gay hate motivated crime. There is nothing to suggest that the review uncovered additional information that might have elevated the priority of the Taradale cases as concerns a possible reinvestigation, identified possible avenues for reinvestigation, or enhanced the possibility that such a reinvestigation would be fruitful. This is underscored by Mr Willing's comments in the 9 August 2013 article by Mr Feneley, which emphasised that "we can't solve these cases without the help of the community".

277. It is important to note, in light of the overarching submissions made by Counsel Assisting regarding the intended function of SF Neiwand, SF Parrabell and SF Macnamir, that there was no attempt to minimise the extent of gay hate violence generally in the 2013 Issue Paper. In particular, DCI Lehmann specifically noted that "[t]here is no doubt that anti gay hostility, particularly in the 1980's and 1990's resulted in a number of murders and serious crime of violence in NSW".[231]

278. DCI Lehmann has not been called to give evidence. There is no basis to conclude that the findings he recorded in the 2013 Issue Paper (which was, of course, not designed for external publication) were anything other than an honest record of the views he reached on the basis of a review of the material at that time. The word "gross" in connection with "exaggeration" is language that would not likely have been employed in an external publication, given the potential that it could be construed in a negative fashion. Nevertheless, it was certainly not unreasonable for DCI Lehmann to conclude that the observation that there were 30 unsolved gay-hate murders was, in fact, likely to be a significant overstatement.

---

[231] Ibid, p. 9.

The relevance of SF Macnamir

279. In considering the lead-up to SF Neiwand, Counsel Assisting makes some observations about SF Macnamir and the comments made by DCI Young in the Lateline interview. In particular, reference is made (CA, [566]) to the following exchange between Ms Alberici and DCI Young:

> *Q. What's changed since the last coronial inquest that would warrant another one?*
>
> *A. We have put to the test some of the findings of Operation Taradale, which was, - did identify or reinvestigate some gay-hate crimes in Bondi, and two were found to be possible homicides.*[232]

280. In setting this out, Counsel Assisting cites the transcript of the Lateline episode, rather than the complete interview itself. The relevant exchange does not, however, appear in the transcript of the television program referenced, nor does it appear in the interview of 13 April 2023. Rather, it is drawn from the interview between Ms Alberici and Ms Young on 10 April 2023 and, in any event, is not an accurate record of the exchange, which read as follows:

> *Well, again, that's an ultimate question for the coroner to decide, whether one's justified or not. We certainly have done a broader investigation. We've looked at a lot of crime reports – thousands of crime reports, actually, from that time – to see about patterns, to see about – with similarities. We've gone to more detail about the victimology – so that's what Scott was like and what people thought of Scott, including his brother. We have a lot of detail along that line.*
>
> *We have put to the test some of the findings of Operation Taradale, which was – did identify or reinvestigate some gay-hate crimes in Bondi, and two were found to be possible homicides. So we've – we've provided a more analytical basis and a broader basis of the investigation, and we of course interviewed a lot of people, gathered more witness statements – not witnesses to Scott's death; there are no eyewitnesses to Scott's death. And we've also done some operations.*[233]

281. As noted in Part C, the consideration of SF Macnamir is severely hamstrung by the absence of evidence from DCI Young (and, indeed, DS Brown). The suggestion that the Inquiry can draw

---

[232] Exhibit 6, Tab 318 (NPL.2017.0004.0549), p. 20.
[233] Ibid.

any inference as to the UHT as a whole's approach to the Taradale deaths from the four words "put to the test" expressed in the context of an interview about SF Macnamir, by a person who was not part of SF Neiwand, and who has not been asked about the meaning of the words she used, is extraordinary. The submission at CA, [567](b) is wholly speculative. Any finding in accordance with it would be unsafe.

282. Counsel Assisting then makes reference at CA, [568] – [569] to the announcement of a reward in relation to the Taradale deaths on 23 June 2015. Counsel Assisting's submissions again inaccurately represent the evidence in this respect. It is said that in the relevant press release Mr Willing was quoted as saying that "the matters are the subject of review based upon coronial findings that they were suspicious in nature and possibly the result of gay-hate related crimes" (CA, [568]). This is wrong. The relevant passage reads as follows:

> *The circumstances surrounding the three incidents have been the subject of a review by the Homicide Squad's Unsolved Homicide Team in recent years. Homicide Squad Command Detective Superintendent Michael Willing said the matters had been reviewed based on the Coroner's findings that they were suspicious in nature and possible the result of gay hate-related crimes.*
>
> *"We believe there are still people in the community who know what happened to these men and we hope these rewards will be an incentive for those people to come forward," Det Supt Willing said.*
>
> *"We will follow up each and every piece of information that is provided to us. We are committed to resolving these three cases and being able to provide answers for the families of these three men.*[234]

283. Contrary to CA, [569], the press release did not indicate that a review of the deaths was "actually underway at the that time." Instead, it stated that they had been "the subject of a review by the Homicide Squad's Unsolved Homicide Team in recent years". In line with this, DSC Taylor had conducted a review of the deaths and they were also considered as part of the 2013 IssuePaper and as part of SF Macnamir.

284. Not only does a review of the actual text of the press release make it apparent that there was no misrepresentation of the status of the review of the Taradale deaths (cf CA, [569]), it provides a

---

[234] Exhibit 6, Tab 163 (SCOI.76962.00014).

clear insight into the NSWPF's aspirations in relation to the soon-to-be-commenced SF Neiwand. Mr Willing's remarks make it plain that the UHT hoped to solve the cases, including by reference to information provided by "people in the community who know what happened to these men". Moreover, the suggestion (addressed further below) that SF Neiwand was designed by police leadership as anything other than a genuine attempt to identify and charge the person/s responsible is conclusively refuted by the fact that substantial rewards of $100,000 in each case had been arranged and offered "for information which leads to the arrest and conviction of the person or people responsible for the deaths of Messrs Mattaini, Warren and Russell".[235]

***The rationale and purpose for the establishment of SF Neiwand (CA, [572] – [595])***

285. Counsel Assisting poses the question as to what "suddenly" prompted the establishment of SF Neiwand in or around October 2015 (CA, [572] – [574]).

286. As noted above, Mr Willing did not tell Rick Feneley that police were *reinvestigating* the Taradale deaths (cf CA, [573]). Rather, his comments were a reference to the more general *reviews* being conducted in relation to the potential gay-hate homicides. And, again as noted above, Counsel Assisting is wrong to say that the media release of 23 June 2015 claimed the deaths were then the subject of a review (cf CA, [573]).

287. The first observation to make is that the use of the word "suddenly" is unwarranted and apt to mislead.

288. Again, the Inquiry does not have any understanding of the competing priorities and resource constraints of the UHT in the years leading up to SF Neiwand. The UHT was relatively small, and its resources were finite.[236] What is clear is that the cases were subject to a review in 2012 by DSC Taylor and then again as part of SF Macnamir. Subsequent to the conduct of investigations as part of SF Macnamir, DS Brown formed the view that the Taradale cases might productively be the subject of reinvestigation.[237] The possibility of a productive reinvestigation was further enhanced by the fact that very significant rewards had been made available in respect of each of the deaths, as had been recommended by DSC Taylor.[238]

---

[235] Ibid.
[236] Transcript, T3434.31.
[237] Transcript, T1757.10; 1759.28.
[238] Exhibit 6, Tab 162 (NPL.0113.0001.0001), p. 34.

289. It is apparent from the terms of the press release considered above that the possibility of a successful identification of persons responsible for the Taradale deaths was the driving force behind the establishment of SF Neiwand. Mr Willing's evidence squarely accords with this:

> *To my recollection, Strike Force Neiwand was established to look at the available evidence and, if at all possible, to bring any person or persons who might have been involved in the deaths to justice.*[239]

290. It is said by Counsel Assisting that the following conclusions are "safe to reach" (CA, [575]):

a) a significant reason for the establishment of SF Neiwand was the extensive and sustained media interest in matters involving suspected hate crime deaths, and criticism of police investigation of those deaths; and

b) SF Neiwand "was not just responsive to that criticism but reactive to it."

291. No evidence is cited in support of either of these submissions.

292. The idea that the media attention may have played some role in the decision to commence SF Neiwand may have some intuitive appeal. No attempt, however, is made to identify a specific media report in connection with this submission. The only media article referred to in the relevant section of Counsel Assisting's submissions is Rick Feneley's article of 9 August 2013 (see CA, [573]), which plainly could not have been the impetus for SF Neiwand, given its publication date.

293. As concerns the evidence more generally, Counsel Assisting has tendered a number of media articles from 2013 and, then some further articles around the time of the announcement of the Inquest into the death of Scott Johnson in April 2015. None of the articles contained in the brief date to October 2015.

294. In any case, while – as a general rule – the NSWPF seeks to conduct investigations independent of public pressure, it is not inappropriate for it, at times, to respond to public concerns, for example in relation to the re-investigation of particular cases that are the subject of significant public interest. Undoubtedly, the Taradale matters were the cause of much community concern; there was (and is) a strong community interest in solving those cases.

---

[239] Exhibit 6, Tab 252 (SCOI.82369.00001) [73]. See also Transcript, T1710, T1762, T1771; T3447.40-T3448.4.

295. Counsel Assisting's submission (CA, [575]) that SF Neiwand was "not just responsive" to media criticism but a "reaction to it" is similarly opaque. Again, no evidence is cited in support of the proposition, which does not appear to flow from the preceding consideration in Counsel Assisting's submissions. If what is meant is that SF Neiwand was a deliberate attempt to "react" to criticism by demonstrating that the relevant deaths were not gay-hate related, then it is wholly unfounded and unsupported by evidence. Such a conclusion would, contrary to the position advanced by Counsel Assisting, be entirely *unsafe*.

296. Counsel Assisting goes on to submit that "[i]n its implementation and outcomes, [SF Neiwand] was clearly aimed at discrediting both the work of Operation Taradale and Mr Page personally, and discrediting the findings of the Taradale Inquest at well" (CA, [576]). This assertion is confusing; in particular, it is not clear how a Strike Force could be "aimed" at discrediting the work of another Strike Force in its "outcomes". To the extent it can be discerned, the logic underpinning Counsel Assisting's premise is flawed; the fact that an investigation reached particular conclusions, does not enable a finding that those conclusions were the "aim" of the relevant Strike Force.

297. Counsel Assisting then conclude their consideration of the timing of SF Neiwand's formation with the following (CA, [576]):

> *It is difficult to resist the conclusion that the eventual implementation and outcomes were consistent with the original objectives, even if those original objectives were not written down.*

298. That submission is made wholly on the basis of a speculative inference, without *any* recourse to evidence (whether written or not); it is nothing short of extraordinary.

299. As identified by Mr Willing, there was no benefit to police in seeking to undermine what had been identified by Deputy State Coroner Milledge as an exemplary investigation.[240]

300. Equally extraordinary is that this submission is made in circumstances where key witnesses, including officers the subject of significant criticism such as DS Brown and DSC Chebl, have not been called to give evidence. In particular, not only has DSC Chebl not been called to give evidence, he is not represented in this Inquiry, and – as far as is known by the NSWPF OGC

---

[240] Transcript, T3447.46.

(again, he is no longer a member of the NSWPF) – has not been afforded an opportunity to respond to these assertions.

301. Again, SF Neiwand was not "suddenly" established (cf CA, [574]). Rather, it was established in circumstances where the death of Scott Johnson was before the Coroner (such that the bulk of SF Macnamir's work had been performed) and the Family Court murders had been resolved such that significant resources became available (in circumstances where most of the UHT's officers had been performing work on that investigation).[241] Moreover, very substantial financial rewards had been arranged and made available, thereby increasing the prospect that additional information might be forthcoming from the community. [242] Shortly stated, DS Brown considered that the SF Neiwand cases could be productively pursued, and resources had become available to do so.

The establishment of SF Neiwand

302. Counsel Assisting commences the consideration of the establishment of SF Neiwand with a pedantic examination of Mr Willing's observation that he was "not directly involved in the establishment of SF Neiwand, but endorsed it occurring" (CA, [577] – [578]).

303. Counsel Assisting then asserts that Mr Willing had an "early tendency to distance himself from SF Neiwand, a tendency that was increasingly apparent as his evidence continued" (CA, [580]). It is unclear why this pejorative framing is employed in circumstances where it does not appear to be asserted that Mr Willing's evidence (as summarised at CA, [579]) as to the extent of his involvement in the establishment and direction of SF Neiwand was untrue.

304. SF Neiwand was formally created by DCI Lehmann in October 2015.[243]

305. Mr Willing was the commander of the Homicide Squad. In that capacity, he had an overarching responsibility for the conduct of approximately 60 to 80[244] extant homicide investigations as well as the work of the UHT and the approximately 700 cases that fell within the purview of that team.[245] Quite properly, Mr Willing was not involved with the day-to-day intricacies of each of the investigations within the Homicide Squad.

---

[241] Transcript, T1762.34.
[242] Exhibit 6, Tab 163 (SCOI.76962.00014).
[243] Exhibit 6, Tab 291 (NPL.0115.0001.0009), p. 1.
[244] Exhibit 6, Tab 252 (SCOI.82369.00001), [45].
[245] Ibid.

306. Any conclusion to the contrary would represent a fundamental misapprehension of the nature of command structures and responsibilities within large police forces (or, indeed, managerial responsibilities in any large organisation).

Mr Willing's Evidence

307. As noted by Counsel Assisting (CA, [583]), Mr Willing gave evidence that there were three key factors underpinning the formation of SF Neiwand:

a) the fact that SF Macnamir had reviewed the Taradale cases as part of its investigations;

b) the fact that DS Brown took the view that the Taradale cases were worth pursuing, in particular by reference to the persons of interest that had been identified[246]; and

c) the fact that some UHT resources had additional capacity flowing from the making of an arrest in another case (CA, [583]).

308. Mr Willing categorically rejected the suggestion that SF Neiwand had been established to undermine and contradict the findings of Deputy State Coroner Milledge.[247] His clear evidence was that the "desired outcome" was "uncovering evidence that led to an arrest or arrests".[248]

309. There is no basis on which the Inquiry could sensibly dismiss Mr Willing's evidence in respect of the original objectives of SF Neiwand.

SF Neiwand's stated purpose

310. Consistent with this, SF Neiwand's Terms of Reference described the purpose of the investigation as a "re-investigation" of "the suspicious disappearance and death of Giles Mattaini"; "the suspicious disappearance and death of Ross Warren" and "the suspected murder of John Russell".[249]

311. The Investigation Plan for SF Neiwand contemplated the production of a "detailed list of persons of interests [sic]" following an "extensive review of all material"[250] and noted that a "community source has been identified and has indicated a willingness to assist."[251] It also confirmed that

---

[246] Transcript, T1757.10; T1759.28-41.
[247] Transcript, T1710.22.
[248] Transcript, T1760.42; see also Transcript, T1762.16.
[249] See Exhibit 6, Tabs 16 (SCOI.76962.00001) and 17 (SCOI.74884).
[250] Exhibit 6, Tab 18 (SCOI.74880), p. 3.
[251] Ibid.

"Follow up statements will be required from identified witnesses for clarification and expansion purposes as well as statements from freshly identified witnesses". [252]

DS Brown's email of 1 February 2016

312. As noted at [237] above, DS Brown sent an email on 1 February 2016, attaching a spreadsheet identifying 116 persons of interest and expressing hope for "a positive result for SF Neiwand".[253]

313. There is no reason to doubt that the identification of possible persons of interest with a view to identifying possible perpetrators, investigating them, and achieving the "positive result" of laying charges was, as at 1 February 2016, the abiding ambition of SF Neiwand.

314. Consistent with this, and in line with the evidence referred to above, Mr Willing reiterated in evidence that SF Neiwand was established "because of the possibility of uncovering further evidence that would lead to an arrest or the cases being solved".[254]

DS Morgan's understanding of SF Neiwand's purpose

315. Counsel Assisting submit that "[o]ther members of SF Neiwand seem to have understood its purpose differently" (CA, [589]).

316. Reference is made to SF Morgan's observation (framed by Counsel Assisting as a "claim" – CA, [590]) that he had "no particular knowledge or involvement about the reasons for the establishment of Strike Force Neiwand" and then indicated that he believed Deputy Commissioner Willing may be able to address the reasons for the establishment of SF Neiwand.

317. These observations ought to have been wholly uncontroversial; DS Morgan was not involved in the establishment of SF Neiwand and was not its OIC at its inception (or at all). It is hardly surprising for a subordinate member of the Homicide Squad to indicate that the rationale for the establishment of a strike force would be known to more senior members of that squad.

318. Little can be taken about the observations DS Morgan made in his email of 26 February 2016 in relation to the fact that the investigation might have political or media implications (CA, [593] – [594]). That observation was self-evidently correct.

---

[252] Ibid.
[253] Exhibit 6, Tab 306, (NPL.3000.0001.0026).
[254] Transcript, T1762.16-17.

319. Notably, DS Morgan's email recorded that S/F Neiwand was to be "a renewed investigation into the three gay guys who were believed to have been thrown from the cliffs near Bondi during the mid-late 1980s."[255] There is nothing in that observation to suggest that police considered that the Taradale investigation or Coronial findings were incorrect or needed to be somehow "undermined". To the contrary, it makes it apparent that DS Morgan's understanding was that the investigation would proceed on the basis that the three men had met violent deaths, having been "thrown from the cliffs".

320. Mr Willing acknowledged that there was media and political interest in the case.[256] That does not, however, detract in any way from his evidence that SF Neiwand "was about identifying and seeing whether or not we could effect arrest for those matters" and that the "intent behind Neiwand was to investigate it again if there was a chance of uncovering evidence that led to an arrest or arrests, that was the desired outcome".[257]

321. There is no inconsistency between an investigation being a matter of significant political or media interest and police harbouring a desire that the relevant investigation result in the identification of person/s of interest and the laying of charge/s. Indeed, contrary to the imputations of Counsel Assisting's submissions, the reputational interests of police would best have been served by the identification of evidence sufficient to justify the laying of charges.

***The conduct of SF Neiwand (CA, [596] – [603])***

322. As is apparent from the above consideration, it was intended that SF Neiwand would involve a thorough reinvestigation of the Taradale cases, with a view to identifying potential persons of interest and, in turn, examining their possible involvement in the hope of effecting an arrest.[258]

323. It is accepted, however, that the available material (noting the absence of evidence from both of the OICs) suggests that SF Neiwand did not proceed in line with the approach contemplated by those responsible for its establishment, as recorded in the Terms of Reference and set out in the Investigation Plan (CA, [596]).

---

[255] Exhibit 6, Tab 285 (NPL.0115.0004.3512).
[256] Transcript, T1760.33
[257] Transcript, T1760.31-44.
[258] See also Exhibit 6, Tab 253(SCOI.82472), [73].

324. As identified by Mr Willing[259], the decision not to comprehensively pursue the persons of interest identified by DS Brown was likely made by the OIC of the investigation.[260] Given the contents of DS Brown's email of 1 February 2016, it appears likely that the relevant decisions were primarily driven by DSC Chebl. DSC Chebl is, as noted above, no longer a police officer, has not been called to give evidence, and is not represented in these proceedings.

325. At CA, [600], in the context of DS Morgan's evidence as to when that decision *may* have been made, Counsel Assisting makes reference to an "assumption" that "SF Neiwand was not actually set up in the first place to undermine Operation Taradale and overturn the findings of Coroner Milledge" (CA, [600]). It is *assumed* herein that Counsel Assisting is not advancing that "assumption" as a serious proposition; it is contrary to the evidence discussed above, is abjectly speculative, was not put to Mr Willing, and has not been put to DS Brown who was the OIC at the outset of SF Neiwand or to DCI Lehmann, who formally created it.[261]

326. It no doubt would have been difficult for SF Neiwand to undertake a comprehensive investigation of the 116 POIs in DS Brown's schedule (see CA, [602]). There would never seriously, for example, have been scope to conduct operations targeting each of those persons (including, for example, via electronic surveillance and/or undercover operations).[262]

327. While it is acknowledged that there was nothing preventing the officers involved from requesting further resources,[263] it is clear that the Investigation Plan did not contemplate such a widescale investigation of every POI. Rather, as indicated by DS Brown's email, the logical first step was to conduct an assessment to confirm which of those persons could, most fruitfully have been examined. Again, DSC Chebl, who had the primary responsibility for issues in relation to the deployment of staff within SF Neiwand[264], has not been called to give evidence.

***The conclusions of SF Neiwand (CA, [604] – [608])***

328. When asked about the focus of SF Neiwand on suicide or misadventure, DS Morgan stated:

---

[259] Transcript, T1790.30.
[260] See also Exhibit 6, Tab 17 (SCOI.74884), [2], which indicates – in line with conventional policing practice – that the Officer In Charge of the investigation has primary responsibility for operational decisions.
[261] Exhibit 6, Tab 291 (NPL.0115.0001.0009).
[262] Transcript, T1794.32.
[263] Transcript, T1961.11.
[264] Exhibit 6, Tab 17 (SCOI.74884), [2].

*"…I think we went in with an open mind and the thing of suicide or misadventure developed as we were going through the inquiry."*[265]

329. Consistent with the evidence discussed above regarding the objectives of SF Neiwand, DS Morgan indicated that finding fault with SF Taradale "wasn't something we deliberately set out to do".[266]

330. Similarly, DS Morgan denied that SF Neiwand's criticisms of the Taradale investigation were made to undermine Deputy State Coroner Milledge's analysis[267] and he did not accept that SF Neiwand had sought to give support to the possibility that Scott Johnson had died by suicide.[268] It cannot be sensibly contested that DS Morgan gave anything other than candid and forthright evidence during the course of the Inquiry, including by acknowledging shortcomings where appropriate. There is nothing to suggest his evidence was anything other than truthful.

331. Counsel Assisting then makes reference (CA, [607] – [608]) to Mr Willing's acceptance of certain propositions regarding the activities of SF Neiwand. Mr Willing, of course, was not a member of SF Neiwand and was not involved in the investigation; any evidence he (or any other witness) gave in relation to what was in the mind of other persons should be approached with caution, not least because it would not ordinarily be admissible in civil (or criminal proceedings).[269] Ultimately, and quite properly, Mr Willing observed that he was unable to comment on why SF Neiwand criticised Operation Taradale.[270]

***SF Macnamir, SF Neiwand and SF Parrabell (CA, [619] – [641])***

332. Counsel Assisting's submissions refer to what is asserted to have been a "remarkable convergence on a position which downplayed the extent of the homicidal violence against members of the LGBTIQ community" (CA, [609]). Submissions of a similar character are addressed above in the context of SF Macnamir at [121] – [156], above.

---

[265] Transcript, T1955.31.
[266] Transcript, T1955.45.
[267] Transcript, T1960.20.
[268] Transcript, T1960.25.
[269] Special Commissions of Inquiry Act 1983 (NSW), s 9(3).
[270] Transcript, T1803.35.

333. There is, as outlined above, no proper basis on which to conclude that either Strike Force was *designed* or intended to "downplay" the extent of the violence against members of the LGBTIQ community.

334. As observed above in Part C, while DCI Young concluded that Scott Johnson's death was more likely a suicide, that was not part of some coordinated attempt to undermine assessments as to the prevalence of gay-hate homicide. Rather, it was the product of an honestly held assessment following the conduct of an extensive investigation. Significantly, the NSWPF never contended at either the second or the third Inquests that a positive finding of suicide should be made; rather, the position expressed by the NSWPF was that an open finding would be appropriate.[271] Moreover, as addressed at [188] – [194] above, the determination that Mr Johnson died as a result of a gay-hate attack perpetrated by multiple persons was inaccurate.

335. As for SF Neiwand, while it appears (on the basis of the limited available evidence) that the activities actually undertaken by SF Neiwand did not live up to the ambitions held at the time it was initiated, in particular insofar as it did not comprehensively explore the potential involvement of various persons of interest. there is no basis to suggest that any failures of SF Neiwand were attributable to a coordinated attempt to minimise gay-hate related violence.

336. Similarly, for reasons explored at Parts E and F, SF Parrabell was not designed to minimise the incidence of anti-LGBTIQ violence. Rather, as is plainly apparent from the consideration in Parts E and F, its purpose was to conduct an open-minded assessment of the relevant deaths, with a view to examining, to the extent possible with the resources and materials available, what the true position was. Of particular note, as addressed at [617] – [622] the conclusions reached by SF Parrabell align very closely with those advanced by Counsel Assisting in the context of the "tender bundle" hearings.

<u>"Meetings between SF Neiwand and SF Parrabell"</u>

337. As addressed at [121] – [156] above, the fact that all three inquiries were running concurrently does not sensibly allow for an inference to be reached that they formed part of some collaborative LGBTIQ-bias minimisation project. Nor does the fact that Mr Willing was the commander of Homicide at the time; Mr Willing had absolutely no responsibilities in respect of SF Parrabell and

---

[271] See [69], [76] and [98] of Part C.

played no role in the day-to-day investigations conducted in respect of the other strike forces (cf CA, [611]).

338. The contact between SF Parrabell and the Homicide Squad was limited. Counsel Assisting provides a short summary of that contact at (CA, [613]). Some observations should be made about Counsel Assisting's observations there:

a) First, the contact set out therein was not "between SF Neiwand and SF Parrabell", rather it was contact between AC Crandell (who was responsible for SF Parrabell but was not responsible for its day-to-day review activities) and Mr Willing (who was not a member of SF Neiwand, nor involved in its investigative activities), in which SF Neiwand was mentioned or discussed, along with other issues.

b) Second, the email correspondence referred to at CA, [613] is not properly characterised as "between" Mr Willing and Mr Crandell and others. Similarly, while the communication occurred on dates that fell "between 6 and 20 March", that phrasing is apt to provide an inflated impression of the extent of the correspondence. Rather:

(i) There was an email exchange on 6 and 7 May. In that exchange, an email was sent on 6 May 2016 by one member of the NSWPF media team to another, regarding messaging around SF Parrabell (including that it is a review of the 88 cases, that it is a response to concerns raised by the community directed at confirming the facts, that the review is independent of homicide but has homicide's full support, and that it will not impact on the re-investigation being conducted by SF Taradale). Mr Crandell then responded to this email to attach a briefing regarding SF Parrabell and provide some further background to SF Parrabell. AC Crandell's email makes no mention of SF Neiwand. Mr Willing was cc'd but did not engage in the exchange.[272]

(ii) On 20 May 2016, a member of the NSWPF media team sent a draft media release to AC Crandell and Mr Willing. There was no discussion of SF Neiwand *per se*; AC Crandell suggested an amendment to the press release to refer to the fact that that one case (presumably that of Scott Johnson) was before the State Coroner,

[272] Exhibit 6, Tab 60 (SCOI.74209).

and some of the cases (presumably the Taradale/Neiwand cases) were the subject of reinvestigation by the UHT.[273]

c) Third, the description of the events of 17 May 2016 as a "meeting between AC Crandell and Mr Willing, at Parliament House" is also likely to give an erroneous impression. What occurred that day was a meeting between AC Crandell, Mr Willing and Alex Greenwich MP for the purposes of briefing Mr Greenwich on the progress of SF Parrabell and the reinvestigation of the Taradale matters.[274]

d) Fourth, reference is made to some media articles by Ava Benny-Morrison in May 2016. Similarly, there is nothing in that media reporting to suggest any real *coordination* between SF Neiwand and SF Parrabell:

(i) A 20 May 2016 article (which was updated on 22 May 2016) concerned the Taradale deaths.[275] Mr Willing was quoted as indicating that an investigation had, in the wake of the Scott Johnson investigation, been "recommenced" into each of the three Taradale deaths. Mr Willing also referred to the availability of government rewards for information in relation to each of the cases. Moreover, the article proceeds on the basis that each of the matters was, in fact, a murder (referring to the "killers" in each case). There is nothing, for example, to suggest that the NSWPF was, at that time, suggesting that Deputy State Coroner Milledge's findings were incorrect. SF Parrabell is not considered in the article.

(ii) The 21 May 2016 article essentially provided an overview of the activities of SF Parrabell and the matters that led up to it. There was no mention of the Taradale cases. AC Crandell provided a number of comments for the purposes of the article. Mr Willing does not appear to have played a part.

339. As noted by Counsel Assisting, Mr Willing attended a meeting in 2016 for the purposes of being introduced to Associate Professor Dalton. There were no substantive discussions about the cases at that meeting.[276]

---

[273] Exhibit 6, Tab 61, (SCOI.74221), p. 2.
[274] Transcript, T697.5; T1740.36.
[275] Exhibit 6, Tab 259 (SCOI.82370).
[276] Transcript, T1741.7-19.

340. There is absolutely no evidence that any of the above interactions included a discussion in relation to the need or desire to minimise the incidence of anti-LGBTIQ homicidal violence.

341. Indeed, the contact between Mr Willing (who again, was not involved in SF Neiwand's activities) and AC Crandell was very limited; the contact between the two officers did not extend to a consideration of the substance of the cases.[277] Counsel Assisting's assertions effectively amount to grave allegations of collusion (framed as "coordination") between two very senior members of the NSWPF, both of whom have had exemplary careers of public service. The assertions made by Counsel Assisting are devoid of any proper evidentiary foundation; speculative inferences predicated on (inaccurately characterised) communications and the confluence of events such as the publication of media articles are not a proper basis on which to make serious findings of the type advanced by Counsel Assisting.[278]

"Collaborative media"

342. At (CA, [619]) Counsel Assisting refers to AC Crandell's passing reference to communications involving Mr Willing regarding the "need to do collaborative media".[279]

343. Mr Willing and AC Crandell did not speak to Ms Benny-Morrison together.[280] As is observed above, the two articles were distinct, with one quoting AC Crandell and the other quoting Mr Willing. The email correspondence referred to above suggests that the coordination or "collaboration" was driven by members of the police media unit rather than AC Crandell and Mr Willing. Consistent with this, Mr Willing observed that any interactions with AC Crandell he had on the subject would have occurred via a media liaison officer.[281]

344. Counsel Assisting notes that the 22 May 2016 article by Ms Benny-Morrison did not refer to SF Neiwand "by name" (CA, [621]). The import of this observation is unclear, though given Counsel Assisting's description of SF Neiwand as "secretive" (CA, [782]) it should be addressed. Mr Willing was quoted as indicating that the NSWPF was conducting "investigations into the deaths of Gilles Mattaini, John Russell and Ross Warren"; there was no need for the article to make reference to the name police employed, internally, to describe the Strike Force. Nor does the

---

[277] Transcript, T1741.24-32.
[278] *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-362; *Neat Holdings Pty Ltd v Kara an Holdings Pty Ltd* (1992) 110 ALR 449 per Mason, Brennan, Deane and Gaudron JJ.
[279] Transcript, T763.45-764.7.
[280] Transcript, T1874.3-16.
[281] Transcript, T1874.6.

fact the article did not do so allow an inference that there was anything "secretive" about SF Neiwand's activities.

345. Importantly, the quote from Mr Willing notes that he "would like to remind the community there are government rewards on offer for information in each investigation".[282] In line with the observations made above, that observation makes it abundantly clear that Mr Willing was seeking information in relation to each of the three deaths with a view to solving the cases. It is a complete (though not the only) answer to the suggestion that the investigations were *designed* to minimise the extent of gay-hate crimes. Having regard to the available information, the only realistic avenue for advance in relation to any of the cases was the provision of information from a member of the community. The publication of information in relation to the availability of a reward was a key step in pursuit of such information. If there was not a genuine desire to advance each of the cases, such publicity would no doubt have been avoided.

346. The submission at CA, [624] that AC Crandell and Mr Willing were "collaborating *inter alia* in the way in which those matters were portrayed in the media" is, again, surprising. Counsel Assisting has not even attempted to articulate the "*inter alia*" in this submission. No evidence is referred to therein. As is apparent from the foregoing consideration, any collaboration regarding media was relatively limited, and occurred through the conduit of NSWPF media liaison personnel. The contact between NSWPF and Ms Benny-Morrison was wholly conventional, and plainly aimed at community outreach as concerns the work of SF Parrabell on the one hand, and an attempt to publicise the Taradale investigations and potentially elicit helpful information from members of the public, on the other.

347. The work of the NSWPF is the subject of very significant media interest. The creation of publicity is a critical aspect of the effective performance of the role the NSWPF serves in NSW society. That some pejorative inference is sought to be drawn from the fact that both AC Crandell, and Mr Willing were involved in communications with the media in connection with SF Parrabell and SF Neiwand is remarkable. It simply defies logic.

Role of DCI Lehman

348. Counsel Assisting engages in a consideration of the role of DCI Lehmann in SF Neiwand. It is said that he "devoted considerable time to the issue of suspected hate crime deaths, the police

---

[282] Exhibit 6, Tab 259 (SCOI.82370).

response to those deaths and the public criticism of that response" (CA, [625]). Extraordinarily, this submission is made in circumstances where DCI Lehmann has not been called to give evidence to the Inquiry. Neither the work he performed in connection with the 2013 Issue paper, the views he held, nor the basis for those views have been explored with him.

349. Even more extraordinary is the submission at CA, [627]:

> *Whether DCI Lehmann approached the task of supervising SF Neiwand with the motivation of solving these cases, as homicides, is open to doubt. At the very least, his trenchantly-expressed views support a reasonable apprehension that he had quite a different motivation.*

350. This submission seeks to impugn DCI Lehmann's professional conduct and, on the basis of a paper written for an entirely different purpose (i.e. to allow police to gain a preliminary understanding of the suggestions made in the media that there were up to 30 unsolved gay-hate crimes), posits that his motivation, in supervising an investigation (the extent of such supervision not being known), might reasonably be supposed to have been in some unstated way, nefarious. It is, in effect, an allegation that DCI Lehmann was motivated to pervert the course of justice, and that he may have done so. That such a submission would be made in the absence of *any* evidence from DCI Lehmann (who is not represented in these proceedings) is nothing short of astonishing.

351. Setting aside the fundamental natural justice concerns,[283] there is simply no proper evidentiary basis for the submission advanced at CA, [627]. The evidence given by AC Crandell referred to at CA, [628] – [629] does nothing to cure this difficulty; AC Crandell (who was not in any way involved in the operations of the Homicide Squad) unsurprisingly did not know why DCI Lehman was appointed the investigation supervisor for SF Neiwand.[284] That AC Crandell agreed to a proposition regarding whether or not the selection of DCI Lehmann would "aid the notion of objectivity"[285] does not begin to provide an adequate basis for Counsel Assisting's submission. The fact that AC Crandell agreed with the wholly speculative proposition referred to at CA, [630] regarding the possible objectives of some unidentified person is similarly of no moment. It is trite to say that anything is *possible*. And the evidence of a person, as to the possible motivations

---

[283] See *Minister for Immigration and Border Protection v SZSSJ* (2016) 259 CLR 180; [2016] HCA 29 at [82] - [83] per French CJ, Kiefel, Bell, Gageler, Keane, Nettle and Gordon JJ.
[284] Transcript, T676.35.
[285] Transcript, T677.21.

driving an unspecified other person's activities, in circumstances where the first person had no involvement in those activities, is of no conceivable probative value. It should be disregarded by the Inquiry.[286]

352. Of additional note, and a further reflection of these difficulties, Counsel Assisting's submissions (CA, [629]) make no reference to the various caveats AC Crandell quite appropriately placed upon his evidence regarding the "objectivity" of DCI Lehmann and other personnel, including by stating: "It's difficult for me to comment on another command. I don't know what their situation was in relation to resourcing and I don't know the reasons for why they would put those people in those positions".[287]

353. A further indication as to the lack of any proper factual basis for Counsel Assisting's submission comes from the fact that the 2013 Issue Paper treated each of the deaths of Messrs Russell, Warren and Mattaini as possible or probable gay-hate homicides.[288] There is absolutely nothing at all to suggest that, at the time of SF Neiwand's creation, DCI Lehmann considered that a conclusion that departed from DSC Milledge's findings should be reached in connection with the reinvestigation conducted by SF Neiwand.

354. In any event, it was also not suggested to Mr Willing (who in any event was not involved in the resourcing of SF Neiwand[289]) that DCI Lehmann was selected for involvement in SF Neiwand because of views he expressed in the 2013 Issue Paper.

Personnel in SF Macnamir and SF Neiwand

355. Much is made by Counsel Assisting of the asserted overlap between the personnel involved in SF Neiwand and SF Macnamir.

356. Aside from the fact that DS Morgan prepared a statement in connection with a discrete aspect of SF Macnamir (and had no further involvement in the investigation[290]), and the limited available evidence regarding the work DS Brown performed in, for example, identifying possible persons of interest to consider as part of SF Neiwand, there is scant evidence in relation to the nature or extent of any cross-over between the investigative teams.

---

[286] Special Commissions of Inquiry Act 1983 (NSW), s 9(3).
[287] Transcript, T678.8.
[288] Exhibit 6, Tab 47 (SCOI.74906).
[289] Transcript, T1748.29.
[290] Transcript, T1907.47-1908.1.

357. On the other hand, the evidence clearly establishes that the listing of personnel on e@gle-i as part of an investigation does not mean they played an active part in the actual investigation[291].

358. Counsel Assisting then refers to AC Crandell's evidence that "it's very difficult for them [being DS Morgan, DSC Rullo and DSC Chebl] to have objectivity, given their history".[292] Again, as noted above at [351] the important caveats regarding AC Crandell's lack of insight into how and why personnel were selected for the relevant strike forces have been omitted.

359. Furthermore, and again as noted above, the evidence of AC Crandell is no cure for the absence of any evidence at all in relation to the actual involvement across the two investigations of, for instance, DSC Chebl or DSC Rullo, or any evidence as to their actual objectivity (cf CA, [634]).

360. Counsel Assisting's severe criticism of DS Morgan and DSC Chebl for their failure to afford DS Page (see [366] – [369] below) the opportunity to respond to criticisms made in the summary documents prepared by DSC Chebl (which are internal to police), is at odds with their approach to the making of allegations against DSC Chebl and the other members of SF Neiwand, who have been subject to strident criticism, in an entirely public forum, but have not been called to give evidence or otherwise afforded the opportunity to respond.

Conclusions at CA, [635] – [641] regarding Macnamir, Neiwand and Parrabell

361. Counsel Assisting submits that the "actual (as distinct from documented) objective of SF Neiwand, as exemplified by what it actually did, was to attack and rebut the work of Operation Taradale and the findings of Coroner Milledge. That is also one aspect of what had been embarked upon by SF Macnamir ('putting to the test" the Taradale findings)" (CA, [635]).

362. It is accepted that the available evidence suggests that what SF Neiwand actually did was to conduct a documentary review, together with some relatively limited further investigative work, principally directed to examining the possibility that each of the deaths were occasioned by suicide or accident or, in the case of Mr Warren, that he may have been the victim of an attack by someone he knew.

---

[291] Transcript, T1792.40.
[292] Transcript, T678.9-11

363. It is further accepted that in the course of that exercise, views that were unjustifiably critical of the exemplary work of DS Page were expressed. The reasons for this are not known, in light of Counsel Assisting's decision not to call DSC Chebl.

364. There is nevertheless an important distinction between a finding that, in fact, the investigations of SF Neiwand were narrowly focused and failed to meet their original objectives, and a conclusion that the investigations were established and pursued in accordance with an overarching objective, developed by unspecified senior leadership, to minimise the prevalence of gay-hate homicide (cf CA, [638]). The latter conclusion rests entirely on speculative inferences drawn from what is described as a "coincidence" in outcome. It is simply not open on the evidence. What is more, given Counsel Assisting's decision not to call evidence from any of the personnel actually involved in the investigations (beyond DS Morgan), and the fact that none of those personnel (many of whom are no longer police officers) are represented before the Inquiry, a finding to that effect would amount to an extraordinary denial of natural justice.

365. There is no basis to conclude – particularly in the absence of evidence from him – that the views expressed by DSC Chebl in relation to the appropriate findings in each of the SF Neiwand cases were anything other than honestly held, on the basis of the evidence reviewed. The same is true of DS Morgan.

366. Counsel Assisting asserts that the criticism of DS Page, hyperbolically described as "ruthless", would "tend to reinforce the 'company line' and (intentionally or not) to send a message to other police officers about the investigation of LGBTIQ hate crimes" (CA, [641]) Counsel Assisting has not articulated what is said to have been the "company line" with any precision or indicated how criticisms recorded in an internal homicide squad summary would "send a message" to the broader police force. For the reasons set out above (and further explored in Parts C, E and F of these submissions) there was no 'company line' regarding the "investigation of LGBTIQ hate crimes".

367. All told, the evidence does not establish why SF Neiwand failed to live up to its original goals; as alluded to above, there is some material to suggest that questions of resourcing or concerns about technical or legal limitations may have been at play. Similarly, it is not known why DSC Chebl was so critical of the Taradale investigations. It is, however, an extraordinary logical leap to reason from the deficiencies in SF Neiwand, to a conclusion that it combined with SF Macnamir and SF Parrabell to form part of a coordinated attempt to refute the suggestion that there had been a large number of gay hate murders.

368. DS Morgan confirmed in evidence that no one at any level in the police force suggested to him that SF Neiwand should be anything other than a full reinvestigation or that persons of interest should not be considered; that no one suggested to him that SF Neiwand should criticise DS Page and/or Operation Taradale; that no one suggested to him that the investigation should diminish the possibility that Messrs Mattaini, Warren and/or Russell were the victim of gay hate murders; and that no one suggested to him that SF Neiwand should seek to depart from Deputy State Coroner Milledge's findings.[293]

369. Indeed, it would have been bizarre if a senior member of the NSWPF had made any such suggestions; the Taradale investigations had been commended in glowing terms in the course of Deputy State Coroner Milledge's findings. There was no benefit for the NSWPF in seeking to reverse that glowing commendation. Indeed, as described by DS Morgan, the criticism of DS Page in the SF Neiwand summaries was "not a good look" for the NSWPF.[294]

370. For the reasons set out above, and addressed further in Parts C, E and F, Counsel Assisting's speculative assertions do not begin to provide an adequate foundation for the extraordinary allegations made at CA, [638] – [641].

***The investigations conducted by SF Neiwand (CA, [642] – [668])***

371. As noted above, it is accepted that SF Neiwand did not ultimately engage in the comprehensive investigation of potential persons of interest initially contemplated, first by DSC Taylor's review in 2012[295]; second, in the Terms of Reference and Investigation; and third, in the initial work of DS Brown in compiling and providing a record of potential persons of interest for investigation.[296]

372. It should be noted, again, that DS Morgan was not the OIC of the investigation. Mr Willing, for his part, played no role in determining the nature or extent of the investigations conducted by SF Neiwand.[297]

373. The precise scope of investigations actually conducted has not been explored with the OIC, DSC Chebl. Nevertheless, Counsel Assisting observes that "[n]o evidence has been produced to the Inquiry to indicate that [investigations of the identified persons of interest took place]" (CA, [645]).

---

[293] Transcript, T2273.15-2274.8.
[294] Transcript, T2272.43-2273.1.
[295] Exhibit 6, Tab 162, (NPL.0113.0001.0001).
[296] Exhibit 6, Tab 306 (NPL.3000.0001.0026); Exhibit 6, Tab 306A (NPL.3000.0001.0027).
[297] Transcript, T1790.22-1791.34

In that respect, it is important to recall that a Special Commission of Inquiry is not an adversarial civil or criminal proceeding. It is inappropriate for inferences to be drawn from the mere absence of evidence from DSC Chebl in relation to what he did, or did not do; it is for the Inquiry to call witnesses and investigate matters (cf CA, [645] – [647]).

Mattaini investigation (CA, [648] – [655])

374. It is accepted that – subject again to the fact that no evidence has been called from the OIC of the investigation – that the primary focus of the Mattaini investigation was on the possibility of suicide.

375. In circumstances where DSC Chebl has not been called, the reasons for this are not apparent on the evidence. The most likely inference is that, as a result of the documentary review, DSC Chebl concluded that it was unlikely that avenues of investigation in relation to the possibility of homicide could be fruitfully pursued.

376. The fact that it may have been appropriate to attempt further investigations before reaching that conclusion is not, however, to say that the conclusion itself was necessarily wrong:

a) Mr Mattaini had not been reported missing. As a consequence, there was no contemporaneous investigation of his disappearance and possible death, including in relation to possible persons of interest.

b) His body has never been found, and there is no evidence that would allow a conclusion to be reached as to exactly where he died.

c) There were no eye-witnesses.

d) There were no available exhibits or opportunities for forensic testing.

e) Mr Mattaini's death occurred some four years before the deaths of Mr Warren and Mr Russell. Assuming those deaths were, in fact, homicides, there is no real evidence that there was any commonality of perpetrator, and Deputy State Coroner Milledge found that the person or persons identified as potential persons of interest in the Warren and Russell deaths would have been too young at the time of Mr Mattaini's disappearance and death.[298]

---

[298] Exhibit 6, Tab 161 (SCOI.02751.00021), p. 14.

377. Counsel Assisting observes that the investigation by SF Neiwand into Mr Mattaini's death was very short, by reference to the conclusion expressed by DSC Chebl on 10 April 2017 that Mr Mattaini's cause of death could not be determined.[299] The submission as to the duration of the investigation into Mr Mattaini's case is somewhat difficult to understand in circumstances where SF Neiwand commenced in October 2015.

Warren investigation (CA, [656] – [658])

378. SF Neiwand focused its attention on the possibilities of suicide, misadventure, or homicide of a domestic nature (CA, [656]) – [657]).

379. The reasons for this again have not been explored with DSC Chebl, nor has the question of the extent (whether "lesser" or otherwise) to which he considered homicide of a domestic nature as the likely cause of death (CA, [656] – [657]) or the possibility of gay hate homicide (cf CA, [658]).

380. It is accepted that DS Morgan could not recall the steps taken to inquire as to the possibility of gay hate gang violence, beyond a review of the Operation Taradale material.[300] There remains, however, a fundamental difficulty with Counsel Assisting's positive submission that there is "no evidence" of such investigations (CA, [658]). That is, DS Morgan was not responsible for the day-to-day conduct of SF Neiwand's investigative steps, and no evidence has been called from DSC Chebl, the OIC of the investigation.

Russell investigation (CA, [659] – [661])

381. It is accepted that the evidence tendered before the Inquiry tends to suggest that SF Neiwand focused its attention more on the possibility of misadventure than on the possibility that the death of Mr Russell was a homicide (CA, [659]).

382. Again, the extent to which this was the case, and the reasons why, have not been explored with DSC Chebl.

The investigation plan (CA, [662] – [668])

383. The written Investigation Plan for SF Neiwand identified a number of steps including the taking of statements from "freshly identified witnesses" and the canvassing of persons who lived around Marks Park in 1989 to 1990. The Investigation Plan provided that "a detailed list of persons of

---

[299] Exhibit 6, Tab 164F (SCOI.82051), p. 4.
[300] Transcript, T2024.40.

interest will be further developed after an extensive review of all material". DS Morgan could not recall such a list.[301]

384. Again, the contents of the investigation plan, and the steps taken in response to it have not been pursued with DSC Chebl.

385. Counsel Assisting (see CA, [668]) put to Mr Willing that by the time the investigation plan was produced that the real objective was not to reinvestigate the deaths in any comprehensive way but rather to focus on the possibilities of suicide or misadventure and to cast a critical eye over operation Taradale. Mr Willing clearly indicated that he did not believe that to be the case.[302] The fact that he accepted that "such an assertion could be made" is of no probative force; he did not say that such an assertion would be persuasive or accurate. The relevant proposition was not put to DS Morgan and of course, has not been put to DSC Chebl. It would be entirely inappropriate to proceed to reach a finding to the effect of that proposition in the absence of evidence from at least DSC Chebl, if not further members of SF Neiwand.

***Progress Reports and Summaries (CA, [669] – [685])***

Progress reports

386. Counsel Assisting took DS Morgan to various aspects of the progress reports for SF Neiwand completed between 1 July 2016 and 20 November 2017.[303]

387. It is accepted that those progress report tend to suggest, consistent with the observations above, that SF Neiwand's investigations had only a limited focus on potential persons of interest.

388. As noted by Counsel Assisting, however, UHT Investigation Coordinator, Detective Acting Inspector Mathieu Russell provided advice (recorded in the report of 26 October 2016) to [redacted][304]

389. The recommendations made by A/I Russell make it plain that the overriding objective of SF Neiwand, as understood by the broader UHT leadership, was to consider the possible involvement of particular persons of interest.

---

[301] Transcript, T2008.39.
[302] Transcript, T1800.25-26.
[303] Exhibit 6, Tabs 164A-I.
[304] Exhibit 6, Tab 164C (SCOI.82053), p. 5.

390. Nevertheless, in the absence of evidence from DSC Chebl, the precise scope of the work actually conducted by SF Neiwand and the reasons particular tasks were, or were not, undertaken cannot be properly understood by the Inquiry (cf CA, [670](g), for example).

The Neiwand Summaries

391. Counsel Assisting sought to remedy some of the obvious difficulties arising from the fact that DSC Chebl was not called by asking a range of questions of DS Morgan regarding the Neiwand Summary documents. As was readily apparent from DS Morgan's responses, the answers to many of those questions could only have been known by the officers (including DSC Chebl) who actually conducted the relevant investigative steps.

392. Counsel Assisting further seeks to address these difficulties by framing DS Morgan as the "joint author" of the Neiwand Summaries (CA, [678]). Such an outcome may be convenient in circumstances where a decision was taken not to call DSC Chebl. It nevertheless has no basis in fact.

393. DS Morgan's unequivocal and repeated evidence was that DSC Chebl was the writer of the summaries. It is abundantly clear from his evidence that DS Morgan was not familiar with the minutiae contained therein. While it was not his role to check the factual accuracy of each matter set out in the summaries,[305] he candidly acknowledged that he did not read the summaries in enough detail.[306]

394. The Inquiry is charged with determining the true version of events. A finding that DS Morgan was the author of the SF Neiwand summaries would be contrary to the unambiguous factual position. The term author means "a writer of a book, article, or document". DSC Morgan simply did not write the documents. On any natural construction of the term, the 'author' was DSC Chebl. The pejorative employed by Counsel Assisting, that DS Morgan's evidence was "ridiculous to the point of embarrassment" is unwarranted and unjustified (CA [678]).

Criticisms of Operation Taradale (CA, [680] – [686]), [699])

395. It is accepted that the criticisms of SF Taradale contained in the SF Neiwand Summaries were unjustified (see CA, [680] – [685]).

---

[305] Transcript, T2274.28-29.
[306] Transcript, T2274.18-22.

396. Those criticisms were not the product of any direction or suggestion from the leadership of the UHT or Homicide Squad more generally as to the direction SF Neiwand should take.[307]

Mr Page's response to the Summaries (CA, [693] – [698])

397. At CA, [693] – [697], Counsel Assisting makes reference to a range of evidence given by Mr Page. Counsel Assisting then submits that "Mr Page's evidence as to factual matters, both in his statement and his oral evidence, should be accepted" (CA, [698]). Counsel Assisting does not further delimit what is meant by "factual matters".

398. No exception is taken to Mr Page's evidence of the activities undertaken by Operation Taradale. That evidence is evidence of fact, given by a person heavily involved in the relevant events. As outlined above, it is accepted that Operation Taradale was a diligent and comprehensive investigation, that made use of sophisticated investigative techniques and was conducted in an open-minded manner.

399. However, some of the evidence of Mr Page referred to by Counsel Assisting does not relate to factual matters (or at least to factual matters about which he could sensibly give evidence). The evidence referred to at CA, [694] and [696], for example, is a combination of speculation as to what SF Neiwand did and opinion evidence (or, perhaps more accurately, something resembling submissions) in relation to Mr Page's perception of the appropriateness of SF Neiwand's actions and conclusions.

400. No criticism is made of Mr Page for expressing those views. That he would seek to do so is understandable given the criticisms of his investigations contained in the SF Neiwand materials. Nevertheless, that Counsel Assisting would seek to rely upon Mr Page's evidence as to what SF Neiwand did – and the extent its actions were appropriate – is remarkable. Mr Page has no knowledge that would allow the Inquiry to regard the evidence set out at CA, [694] and [696] as evidence of fact, and it scarcely needs to be said that he could not appropriately be regarded as an independent expert, capable of giving admissible opinion evidence in accordance with the principles applicable to s. 79 of the *Evidence Act 1995* (NSW).[308]

---

[307] Transcript, T2291.46-T2292.3.
[308] See also, s. 9(3) of the Special Commissions of Inquiry Act 1983 (NSW).

***The appropriate approach to the findings in each case (CA, [687] – [692], [700] – [756])***

Contradiction of Coronial findings (CA, [687] – [692])

401. The findings of SF Neiwand differed from those arrived at by Deputy State Coroner Milledge following the Taradale Inquest (CA, [689]).

402. The fact that UHT detectives might, on a reinvestigation of a matter, arrive at conclusions different to a Coroner more than a decade earlier was not, *per se*, inappropriate; in certain circumstances, the results of further investigations may well warrant a departure from a previous Coronial finding.

403. It is appropriate to note in this respect that Coronial findings are reached only on the balance of probabilities and at a particular point in time; a finding as to the manner and cause of death is not an unimpeachable and unchanging determination as to what transpired in a particular case.

404. At the outset, it is accepted that should a conclusion be reached that is contrary to a previous Coronial finding, the appropriate course would usually be to notify the State Coroner, who may wish to consider holding a further Inquest. The evidence discloses that such a course of action was contemplated but did not ultimately occur.[309] It should have.

Ross Warren (CA, [700] – [718])

405. As concerns the death of Mr Warren, SF Neiwand's conclusion aligned with the view of Counsel Assisting the Taradale Inquest, Paul Lakatos (a very experienced criminal barrister then of some 20 years standing, who took silk in the year the findings were released, and was appointed a District Court Judge three years later).

406. Specifically, Mr Lakatos (as he then was) submitted that the manner and cause of Mr Warren's death remains unknown and that an open finding should be brought in.[310] Mr Lakatos observed that there was a "real suspicion" regarding foul play before submitting "however there is no reliable evidence that this conclusion can firmly be drawn".[311]

407. The Investigation Summary in relation to Mr Warren's case does not express any certainty as to how Mr Warren died. DSC Chebl simply indicates that Mr Warren's "death may have been one

---

[309] Exhibit 6, Tab 304 (NPL.0115.0002.7430).
[310] Exhibit 6, Tab 323 (SCOI.02751.00159).
[311] Ibid.

of several possible scenario's [sic], including misadventure, suicide or homicide. Police were unable to rule out the possibility of the death being linked to anyone [sic] of those scenarios."[312]

408. To find that DSC Chebl's conclusions were not open on the evidence would be to find that the submissions made by Lakatos SC DCJ (as his Honour shortly became) were unreasonable.

409. Against that backdrop, it is appropriate to note that there are a number of matters that would tend to support DSC Chebl (and Counsel Assisting's) conclusion that an open finding was appropriate (cf, CA, 756]).

410. In particular, while thought by DSC Chebl to be "an unlikely scenario" there were nevertheless, a number of matters that may have been relevant to the possibility of suicide (irrespective of the absence of indications to his family or friends as to whether he had expressed suicidality; notoriously, suicide regularly occurs without such express indications).[313] Those matters are identified at CA, [703]:

(i) evidence of Mr Warren's mother that Mr Warren may have missed out on a job opportunity with another TV station;

(ii) reported statements from work colleagues that Mr Warren was "always concerned about the effect his homosexuality would have on his career";

(iii) two alleged rejections from potential romantic interests; and

(iv) Mr Warren's potential exposure to HIV/AIDS.

411. Ultimately, a very comprehensive investigation undertaken by SF Taradale was unable to link any individual or group to Mr Warren's disappearance.[314]

412. The evidence referred to by Deputy State Coroner Milledge in support of her Honour's finding of homicide appears to be limited to a combination of the difficulty in positively establishing another cause for Mr Warren's death, and the evidence in relation to the evidence of significant violence directed towards gay men at the time, and the location where his car was found (being in proximity to a beat).[315]

---

[312] Exhibit 6, Tab 174 (SCOI.74883), [261].
[313] See also, Transcript, T2163.46-47.
[314] Exhibit 6, Tab 174, [264].
[315] Exhibit 6, Tab 161 (SCOI.02751.00021), pp. 3 – 5.

413. As has been submitted in other contexts, it is appropriate to note that both accident and suicide are vastly more common than homicide, particularly homicide perpetrated by persons unknown to the victim.[316]

414. In view of these matters, and those addressed in the Investigation Summary prepared by DSC Chebl[317] a conclusion that the cause of Mr Warren's death could not be determined was not unreasonable.

John Russell (CA, [719] – [734]

415. The Russell Summary prepared in the context of SF Neiwand concluded:

> *[T]here is still a possibility of RUSSELL's death being a result of a homicide; unfortunately, a lack of corroborating evidence, physical evidence and witness accounts prevents this investigation being considered as a homicide from proceeding any further.*[318]

416. It went on to note that "[c]onsideration needs to be given to the fact RUSSELL may have died as a result of misadventure, which can be supported with corroborating evidence".[319]

417. It is accepted that the investigation conducted by SF Neiwand in relation to Mr Russell's death did not amount to the comprehensive reinvestigation of Mr Russell's death by reference to potential persons of interest contemplated in the Terms of Reference.

418. Again, the Inquiry has not received evidence from DSC Chebl (or other investigating officers beyond the Investigation Supervisor, DS Morgan) and is therefore not in a position to make a reliable determination as to what DSC Chebl's approach to the investigation was or why that approach was undertaken. The evidence of DS Morgan and Mr Willing referred to at CA, [731] – [734] is no cure for this difficulty. Counsel Assisting proposes a finding not only that SF Neiwand failed to conduct the broad-ranging investigations contemplated at the time of its establishment, but that it deliberately pursued a finding of misadventure as part of a strategy to undermine

---

316 In 2021, for example, there were 3,144 suicides recorded in Australia (Australian Bureau of Statistics, Causes of Death, Australia (ABS Website, 2021) <https://www.abs.gov.au/statistics/health/causes-death/causes-death-australia/2021#cite-window1>), but only 370 homicides – 193 of which were recorded as murders (Australian Bureau of Statistics, Recorded Crime – Victims (ABS Website, 2021) <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/latest-release>).
317 Exhibit 6, Tab 174 (SCOI.74883).
318 Exhibit 6, Tab 173 (SCOI.74882), [149].
319 Exhibit 6, Tab 173 (SCOI.74882), [149].

Deputy State Coroner Milledge's finding. The very serious finding proposed at CA, [720] (which, again, is tantamount to a suggestion that the officers of SF Neiwand sought to pervert the course of justice) is premised on speculative inferences, drawn in the absence of evidence from the very person (i.e. DSC Chebl) to whom the finding most closely pertains.

419. While additional investigations ought to have been conducted in line with the Investigation Plan, the conclusions ultimately reached by DSC Chebl in the Neiwand summaries were not without at least some foundation (cf, CA, 756]).

420. Mr Russell was found at the bottom of a cliff in circumstances where he was highly intoxicated.[320] The pattern and distribution of his injuries did not allow for differentiation between an accidental fall, an intentional fall, or a fall assisted in some way by other persons.[321] Ultimately, Professor Duflou observed that he was "unable to provide an opinion, on the basis of the body location and the injuries, whether the deceased died of an accident, or as a result of suicide or the result of the action of another person or persons".[322] All of the injuries suffered by Mr Russell "could reasonably be explained by the fall", though Dr Duflou noted that "there could be other reasons for both the bruising below the right eye and on the hands."[323] Dr Duflou considered that the hair found on Mr Russell's hand was "unlikely to have originated from the head of the deceased although I do not absolutely exclude this as a possibility given there was a laceration of the back of the scalp which may have dislodged hair as part of the action which caused the laceration."[324]

421. Elizabeth Brooks, Senior Forensic Scientist with the Australian Federal Police, had provided a statement regarding the hairs located on Mr Russell's hand in May of 2014. She conducted a review of the available photographs and noted that "these hairs are unremarkable in that they could have come from the deceased's own scalp".[325]

422. An attempt to have the photographs enhanced so that a better examination of the hairs could be conducted was unsuccessful. On 30 November 2016, SF Neiwand investigators met with Adine Boheme, AFP Forensic Biologist on 30 November 2016. DSC Chebl's summary of that meeting indicates that Ms Boheme advised police that "generally in homicides if an offender's hair is left in the crime scene it would generally be a single strand of hair rather than a bundle. Ms Boheme

---

[320] Exhibit 6, Tab 173 (SCOI.74882), pp. 35 – 36.
[321] Exhibit 6, Tab 171 (SCOI.10385.00060), [12](a).
[322] Ibid.
[323] Ibid, [12](b).
[324] Exhibit 6, Tab 171 (SCOI.10385.00060), [12](g).
[325] Exhibit 6, Tab 173 (SCOI.74882), [122] – [123].

also stated it's highly probable as Mr Russell had a 7.5cm laceration to the back of his head that the hair from around the wound would be displaced. Ms Boheme did concede that a Forensic Pathologist would be in a better position than her to offer opinion on the possibilities of displaced hair being from a deceased within a crime scene."[326] This latter observation is notable not only because it is more consistent with misadventure than homicide, but because DSC Chebl recorded the very important caveat raised by Ms Boheme that a forensic pathologist would be in a better position to comment than here in respect of the presence of displaced hair within a crime scene. Had DSC Chebl been engaged in a calculated attempt to undermine suggestions as to the prevalence of gay-hate homicide, one would have expected him to omit this caveat.

423. Having regard to those matters, and to the fact that DSC Chebl has not been called to give evidence, the Inquiry could not properly or fairly conclude that the position expressed by DSC Chebl and, in turn, SF Neiwand was anything but an honest reflection of the views he reached having reviewed the SF Taradale material and conducted the additional investigative steps (albeit relatively limited) he set out in the SF Neiwand summary. That is not to say that DSC Chebl *should* have departed from the conclusion reached by Deputy State Coroner Milledge. The fact of the departure from the Coroner's view, however, is not evidence that his views were formed and propagated as part of a conspiratorial attempt to "reinforce the company line" as asserted by Counsel Assisting (cf, [641]).

<u>Gilles Mattaini (CA, [735] – [756])</u>

424. DSC Chebl expressed the view that Mr Mattaini "may well have taken his own life rather than met with foul play. There are no further lines of inquiry for the MATTAINI matter. There is no forensic evidence, no identified suspect and/or witnesses that can provided [sic] a time line for his last movements."[327]

425. Counsel Assisting the Inquiry does not appear to be suggesting that those conclusions were inaccurate.

426. It is accepted that the primary focus of the investigative efforts undertaken by SF Neiwand appears, at least on the material tendered before the Inquiry, to have been Mr Mattaini's previous suicide attempts and ideation.

---

[326] Ibid, [126].
[327] Exhibit 6, Tab 172 (SCOI.74881), [61].

427. The reasons for this have not been explored with DSC Chebl. It seems probable that DSC Chebl reached the view that alternative investigative steps were highly unlikely to bear fruit. Such a view is, having regard to the fact that Mr Mattaini was not reported missing until some 18 years after his disappearance and likely death, and the total absence of any forensic or other evidence that could sensibly ground a positive conclusion of homicide, understandable. It may be that, having regard to those matters and the information actually available, DSC Chebl considered that it was appropriate for his investigation to focus on the possibility of suicide. Having engaged in investigative efforts in that respect, it appears that he formed the view that Mr Mattaini "may well have taken his own life".[328]

428. Noting that there is a real question as to the extent that alternative avenues could realistically have been pursued, the evidence tendered before the Inquiry suggests that SF Neiwand did not engage in a detailed investigation of possibilities other than suicide. Nevertheless, the view that Mr Mattaini "may well have taken his own life rather than met with foul play"[329] is not only entirely defensible, but one which, having regard to the available evidence, should not be controversial. Indeed, a conclusion that suicide was not a very real possibility would be highly surprising in the circumstances.

429. Counsel Assisting makes reference to the account given by DSC Chebl in the Mattaini Summary of his December 2016 conversation with Mr Musy. It is then said that in summarising the conversation, DSC Chebl "failed to acknowledge that Mr Musy made it clear that both suicide attempts had occurred years before 1985, when Mr Mattaini still lived in France" (CA, [741]). It is accepted that Investigation Summary did not include information drawn from Mr Musy's evidence before the Taradale Inquest. The reasons DSC Chebl did not include that information have not been explored with him. Nor have any of the matters raised at CA, [735] – [742]. It is surprising indeed that Counsel Assisting would make submissions in relation to the "unacceptability" of DSC Chebl's actions without seeking first to explore them with him (CA, [743]).

430. The conversation that DSC Chebl had with Mr Musy was summarised in the Investigator's Note prepared by DSC Chebl on 8 December 2016. That note included the following:

---

[328] Ibid.
[329] Ibid.

*The first incident occurred prior to their relationship commencing. MUSY states during this suicide attempt MATTAINI 'slashed his wrists' and he was treated for his injuries. It is MUSY's opinion that MATTAINI attempted suicide on this occasion due to the pressures from MATTAINI's father, as he would continually tell Gilles 'you're not the son he wanted'. This caused MATTAINI to be sad and distant from his father. MUSY reiterated that MATTAINI was happiest when they commenced their relationship.*

*The second suicide attempt occurred while MATTAINI was serving in the French Army. MUSY stated on this occasion MATTAINI took a number of pills and 'went to sleep'. MUSY explained that MATTAINI was treated 'mentally' and discharged from the army. MUSY believes this suicide attempt was due to Gilles not being able to cope with the pressures of being a homosexual and serving in the military. MUSY stated throughout his relationship with MATTAINI he found him to be comfortable with death and would speak openly about dying on his own accord rather then naturally. MUSY elaborated on this by saying, following MATTAINI's discharge from the army and prior to the pair*

*moving to Australia MATTAINI would make comments about taking his own life. MUSY explained this by stating "He (MATTAINI) spoke of death as being a release for him from this life. He believed death was more attractive than life, he believed he would be happier dead.*

*Detective CHEBL asked MUSY about the information he provided EYRAUD in relation to MATTAINI stating "he wanted to die and nobody would found his body". MUSY agreed this comment was said by MATTAINI, he elaborated on this by explaining that MATTAINI believed if nobody found his body it would cause less pain and grief for his family. MUSY quoted MATTAINI "If I die I will do it so no one finds my corpse, it would cause less pain and grief for my mother." When MUSY was explaining this comment he reinforced the point MATTAINI was making that he did not wanting his body to be found to ease the grief on his mother and friends.*[330]

---

[330] Exhibit 6, Tab 167 (SCOI.10389.00042), pp. 4 – 5.

431. DSC Chebl's Investigator's Note also made reference to an email sent to him by a French Government official.[331] That email noted that the government official had spoken to Mr Musy and noted:

> *[f]or the moment, he just said he was surprised in 2002 of crime investigation's about Gilles MATTAINI because he said a couple of times "he wanted to died and nobody would found his body body". he made suicide attempts before he missing so MATTAINI's relatives haven't been surprised of his disappearance."* [332]*:*

432. DSC Chebl has not been asked about the matters he set out in the Mattaini Summary. It may be, for example, that some of the nuance of what Mr Musy said about his interactions with Mr Page was lost in translation; it certainly seems unlikely that Mr Page deliberately set about "convincing Mr Musy" that Mr Mattaini had been murdered. However, the Inquiry cannot sensibly make findings of the type proposed by Counsel Assisting vis-à-vis the contents of the Mattaini Summary in circumstances where the person who engaged in the relevant conduct (i.e. DSC Chebl) has not been afforded the opportunity, in evidence, to respond to the criticisms and explain his actions.

433. That said, the Commissioner of Police agrees that, having regard to the evidence given by Mr Page, and the evidence he placed before the Taradale Inquest, the suggestion that he did not consider suicide as a possibility should be rejected. It may be accepted that Mr Page conducted his investigation appropriately.

434. Nevertheless it is difficult to resist DSC Chebl's conclusion that Mr Mattaini "may well" have taken his own life: he had a history of suicidal ideation, and past attempts (albeit dated), he was having visa difficulties; his partner was out of the Country; his family were not surprised in relation to this disappearance; his body had never been found, and there was no positive evidence *at all* of foul play.

435. In that connection, it must be said that the matters said by DS Page[333] to be inconsistent with suicide are not, in fact, inconsistent with suicide. Many people who die by suicide do not leave a note[334], and many will have future events planned or diarised.[335] There is no requirement that

---

331 Exhibit 6, Tab 326 (SCOI.82589).
332 Exhibit 6, Tab 326 (SCOI.82589).
333 Exhibit 6, Tab 253 (SCOI.82472), [85](c).
334 Transcript, T2163.46.
335 Transcript, T2287.9.

someone would be in financial disarray and the fact that his keys, spray jacket and headphones appear to have been taken with him simply do not bear on the question of whether or not he is likely to have taken his own life. While some people engage in a great deal of planning prior to suicide, others do not.[336]

436. It should also be noted that SF Neiwand did not rule out the possibility that Mr Musy died by homicide or misadventure; DSC Chebl specifically stated that "One cannot dismiss the involvement of the members of these youth gangs".[337] SF Neiwand did not "recategorise" Mr Mattaini's death; the finding advanced by DSC Chebl was, in essence, an open finding, albeit one that recognised that the death was one that "may well" have been the product of suicide (cf CA, [756]).

Appropriate approach to the findings of Deputy State Coroner Milledge

437. To be clear, it is not submitted that this Inquiry should disturb the findings made by Deputy State Coroner Milledge in relation to any of the three cases. Indeed, in the case of Mr Mattaini, SF Neiwand did not propose that the open finding be disturbed.

438. It is certainly open to the Inquiry to conclude that her Honour's formal findings were correct, and/or that the three deaths have been sufficiently and appropriately dealt with for the purposes of the Inquiry's Terms of Reference.

439. The investigation conducted by Mr Page and the officers he directed was plainly careful, and comprehensive.[338] Mr Page (and the officers he led) should be commended for their efforts.

***Distribution of the findings of SF Neiwand***

440. It is accepted that, as a general rule, concerns of the type SF Neiwand raised in relation to an officer's investigation ought to have been raised with the relevant officer (CA, [761]). DS Morgan gave evidence that he was not aware of why Mr Page was not approached, but noted that his understanding was that Mr Page had left the police force because of an illness or psychological condition of some kind, which may explain why a decision was taken not to contact him.[339]

---

[336] Transcript, T2286.40.
[337] Exhibit 6, Tab 172 (SCOI.74881), [55].
[338] Transcript, T2290-2291.
[339] Transcript, T2136.1-36.

441. It is similarly accepted that, in line with the proposal set out in email correspondence between DI Leggatt and Detective Acting Superintendent Dickinson in November 2017,[340] the findings of SF Neiwand should have been conveyed to the State Coroner.

442. In line with Mr Willing's evidence, it is similarly accepted that the families of each of the three men should have been informed of the findings of SF Neiwand (CA, [771]).

***Conclusions regarding SF Neiwand***

443. It is, as outlined above, accepted that SF Neiwand does not appear to have conducted a reinvestigation of all the potential persons of interest in the deaths of Mr Warren and/or Mr Russell.

444. In the absence of evidence from DSC Chebl or the remaining members of the investigative team, the Inquiry does not have a comprehensive picture of the investigations undertaken. Similarly, given DSC Chebl was not called, it is unclear why further attempts to identify and pursue potential persons of interest were not undertaken.

445. Undoubtedly, the decision to depart from the Deputy State Coroner Milledge's findings should, ultimately, have been communicated to the State Coroner so that, as identified by DI Leggatt, a decision as to whether a further Inquest was appropriate could be held.

446. Nevertheless, while it is accepted that while SF Neiwand should have conducted further investigations prior to its departure from the Coronial findings, the ultimate views expressed were not without foundation (cf, CA, [779]) for the reasons expressed at [405] – [436] above.

447. It is correct that, following the conclusion of SF Neiwand, the matters were listed as "inactive" (CA, [781]). The fact that an investigation is not the subject of active reinvestigation does not mean that new and compelling information will not become available. New evidence, leading to the initiation of a reinvestigation can emerge in a number of ways, for example, by way of prison or other source information, or by way of information provided in response to a reward.

448. It is accepted that SF Neiwand did not engage in the detailed consideration of persons of interest initially contemplated by DS Brown. The precise meaning of the suggestion that SF Neiwand was part of some coordinated or deliberate "attempt" by those who conducted and supervised it to avoid or negate the consequences of the Taradale Inquest" is, however, obscure (CA, [782]).

---

[340] Exhibit 6, Tab 304, (NPL.0115.0002.7430).

In particular, it is not clear what the "consequences" of the Taradale Inquest might have been for police.

449. The implication that there might have been some kind of deliberate or coordinated effort to "avoid" the unstated "consequences" of the Taradale Inquest is extraordinary. The evidence of DS Morgan makes clear that no instructions or suggestions to that effect were directed to him. SF Neiwand was no doubt deficient. But, for the reasons set out above, there is no evidence that would properly ground a finding that it was in any way devious.

450. Equally extraordinary is that criticisms of that nature would be levelled at "those who conducted" the investigation (i.e. DSC Chebl and those under him) in circumstances where those officers have not been called to give evidence and are not represented in these proceedings.

451. For DS Morgan's part, he accepts that he failed to engage as carefully as he should have with the material set out in the various progress reports provided by DSC Chebl and that it would have been appropriate for him to more closely interrogate the apparent decisions not to further pursue the persons of interest who had been identified by DS Brown.[341]

452. There is no evidence, however, that DS Morgan actively and deliberately attempted to "avoid or negate the consequences of the Taradale Inquest". Counsel Assisting has, in circumstances where DSC Chebl was not called, attempted to treat the role of an investigation supervisor as synonymous with that of the officer-in-charge of an investigation. Such an approach is divorced from the reality of the structure of police investigations. That being so, the submission advanced at CA, [782], along with a variety of the other submissions considered above, rests entirely on speculative inferences derived from suspicions, the foundations of which are sorely lacking. Such inferences are plainly an inadequate basis for the extremely serious findings proposed by Counsel Assisting.

453. Finally, while it is accepted that it would have been appropriate for the State Coroner to be informed of the investigation, that is not to say that the term "secretive" is aptly deployed by Counsel Assisting at [782]. To the contrary, the results of UHT reviews or reinvestigations are not ordinarily the subject of wide publicity, unless, for example, a decision is reached to charge a person of interest or to apply for a further inquest to be held.

---

[341] T2274.10-40.

## Part E: SF Parrabell – Origins and Beginnings 2015 / 2016

### *2012 – 2013: The media and Operation Parrabell (CA, [783] – [796])*

454. Effective policing is dependent on a positive relationship with both the community at large, and groups within that broader community. Police are not able to solve and prevent crime without community support. In order to preserve and improve key relationships, police routinely seek to address community concerns, whether expressed in the media, via members of Parliament or through grassroots organisations. It is therefore wholly unremarkable that media attention and community interest would have played a role in the establishment first, of Operation Parrabell, and subsequently, SF Parrabell.

455. In embarking upon Operation Parrabell, Sgt Steer contemplated the conduct not only of a review of the available resources, but also scene visits, discussions with relevant police officers in locations of interest, interviews with friends and family, and interviews with offenders and witnesses.[342]

456. Operation Parrabell was a well-intentioned undertaking by Sgt Steer. However, it is clear that the approach he proposed – while not extending to a full reinvestigation from the standpoint of identifying and charging a perpetrator – would have been enormously resource-intensive. Having regard to the resources applied to SF Parrabell, it is clear that the far-more expansive process contemplated by Sgt Steer would very likely have taken far longer than even the three to five years that Sgt Steer estimated following his request for material from State Archives.[343]

457. In this respect, Counsel Assisting notes that Ms Sharma "agreed that Operation Parrabell was under-resourced" (CA, [792]). Counsel Assisting's submissions appear to suggest that Ms Sharma agreed in a general sense that the Bias Crimes Unit was "under-resourced" (CA, [792]).[344] That is an inaccurate characterisation of the relevant evidence; Ms Sharma merely agreed with the proposition that the "Operation Parrabell Team" did not continue beyond the initial bias crimes assessment in relation to North Head and Marks Park because they did not have sufficient resources.

---

[342] Exhibit 6, Tab 6 (SCOI.82080), p. 12 [34]; Exhibit 6, Tab 12 (SCOI.75056), pp. 2 – 3.
[343] Exhibit 6, Tab 6 (SCOI.82080), pp. 14 – 15 [39].
[344] Transcript, T1186.35-1187.6.

458. It is accepted that the evidence suggests that between about October 2014 and February 2015, there was an increased emphasis in the Bias Crimes Unit on "current threats posed by organised hate groups and their activities".[345] It is not clear whether Counsel Assisting is suggesting that this shift was inappropriate (CA, [795] – [796]). There would be no basis for such a submission; as at 2014 and 2015, there was undoubtedly a real and current threat of significant hate violence associated with right wing extremism and race-based terrorism.[346] It was certainly not inappropriate for current threats to be regarded as a higher organisational priority than a review of historical hate crimes. The evidence makes clear that first, Operation Parrabell was never going to be capable of effectively completing the task it had set for itself in a reasonable timeframe; and second, that the continuation of Operation Parrabell would have undermined the capacity of the Bias Crimes Unit to address bias crimes generally, and to assist field officers in assessing crime trends.[347]

459. An additional concern with an exercise of the type contemplated by Operation Parrabell is that there would have been a real risk that steps such as interviews with persons of interest and witnesses could potentially have compromised the effectiveness of any subsequent reinvestigations by, among other things, alerting (either directly or indirectly) potential investigation targets to the fact that their involvement in an offence was subject to consideration.

***2014-2015: Rationale and objectives re Parrabell (CA, [797] – [817])***

460. As recorded in the Parrabell Report itself, AC Crandell's evidence was that the ultimate objective of SF Parrabell was:

> *[t]o bring the NSW Police Force and the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer community closer together by doing all that is possible from this point in history"*[348]

461. AC Crandell expanded upon this in his oral evidence:

> *"I was actually most interested in the families of the deceased people, particularly those families that I believed had been let down by the police in the past, and I*

---

345 Exhibit 6, Tab 52 (SCOI.74083), p. 1.
346 Exhibit 6, Tab 53 (SCOI.74082), p. 1.
347 Ibid, p. 1.
348 Exhibit 1, Tab 2 (SCOI.02632), p. 18.

*also had regard to the community. I genuinely wanted to bring the community closer to the police.*

*…*

*I thought that I could give peace of mind to family members, surviving family members. That wasn't always the case, but that was the intention. I thought that it would be good for the Police Force to be seen to have changed, in terms of a different era and a different period of time, and I thought that by making acknowledgments of truth, that that would bring both the police and the community, LGBTIQ community, closer together, and also increase that reporting standard.*[349]

462. As acknowledged by Counsel Assisting, AC Crandell's evidence in this respect was plainly genuine (CA, [800]).

463. Despite this, Counsel Assisting embarks (at CA, [800] – [817]) on an attempt to establish that the motivations for SF Parrabell included the following factors:

a) to combat negative publicity about the NSWPF, stemming from as far back as early 2013 and including publicity about the events of 13 April 2015;

b) to refute the suggestion, and perception, that there had been a significant number of gay hate motivated homicides, as found in the "list of 88" and publicity relating thereto;

c) to show that claims of 88 gay hate murders, 30 of them unsolved, were exaggerated;

d) to refute the suggestion that the NSWPF had not adequately investigated gay hate crimes; and

e) to assert that the true position was that only a small proportion of the 88 cases were gay hate murders, and that the number of those that were unsolved was much less than 30.

464. SF Parrabell took place in the wake of significant media and political interest (including, in particular, questions asked by Alex Greenwich MP and a meeting between AC Crandell and Mr Greenwich[350]). It was, to a significant extent, a community relations exercise. Its primary responsibility was not to solve crimes; that responsibility remained with the Homicide Squad and, in particular, the UHT. Rather, SF Parrabell was designed to reassure the LGBTIQ community

---

[349] Transcript, T1016.7-41.
[350] Transcript, T632.35-45.

that their concerns were being taken seriously, that significant police resources were being applied to those concerns, and that the police considered their historical grievances both in relation to the violence they suffered at the hands of the community, and to the police response to such violence, to be valid.[351] SF Parrabell was "developed to show proactivity, from this point in history at least, in the investigation of anti-gay bias crime."[352]

465. That being so, there is no dispute that SF Parrabell was established as part of a response to community concern around the list of 88 deaths, the fact that police needed to be seen to be responding to those deaths, and a desire to improve the relationship between the LGBTIQ community and police, which had been impacted upon by negative publicity (CA, [817](a)).

466. The evidentiary foundation for the remainder of the propositions at CA, [817](b) – (e) is scant, to say the least (cf CA, [801]). Neither the matters raised at CA, [800] – [816], nor those addressed elsewhere in Counsel Assisting's submissions even begin to provide a proper basis for the submissions made at [817]. The matters raised amount to little more than speculative inferences drawn by reference to the timing of events and the personnel involved (many of whom have not given evidence or otherwise been afforded an opportunity to respond to the very serious criticisms levelled at them[353]).

467. To begin, Counsel Assisting asserts (CA, [800]) that AC's Crandell's hope that the SF Parrabell exercise could improve the relationship between the NSWPF and the LGBTIQ community "might be regarded as somewhat unrealistic given that one of the aims of the Strike Force was to "counter" the views held and expressed by members and supporters of that very community, such as Ms Thompson and Professor Tomsen" (CA, [800]). In support of this proposition, Counsel Assisting refers to Mr Crandell's email to Christopher Devery of 12 February 2016.[354]

468. The email to Mr Devery was one in which AC Crandell sought guidance in relation to the engagement of an academic review team (at which time he had Professor Asquith and Dr Angela Dwyer in mind) and considered that a review would "add immeasurable legitimacy to the significant body of work performed by SF Parrabell officers".[355]

---

[351] Exhibit 1, Tab 2 (SCOI.02632), pp. 14 – 15.
[352] Ibid, p. 14.
[353] See *Minister for Immigration and Border Protection v SZSSJ* (2016) 259 CLR 180; [2016] HCA 29 at [82] - [83] per French CJ, Kiefel, Bell, Gageler, Keane, Nettle and Gordon JJ.
[354] Exhibit 6, Tab 36 (SCOI.74172), pp. 3 – 4.
[355] Ibid, p. 3.

469. It is correct that the email employs the term "counter".[356] However, it does so in the context of references to allegations of "police corruption" alleged by Scott Johnson's family and the negative impact thereof within the LGBTIQ community.[357] Nowhere in the email is it said that SF Parrabell was designed to "counter" the suggestion that there were 88 gay-hate homicides.

470. The mere fact that AC Crandell was provided the 2013 Issue paper on 22 April 2015 is not evidence as to his objectives in initiating SF Parrabell (cf CA, [805]). Nor is the fact that then Superintendent Willing provided a briefing paper in January 2014 summarising the findings of the 2013 Issue Paper (CA, [806]).

471. The fact that AC Crandell agreed (purely, it must be said, by reference to the 2013 Issue Paper and 2014 Willing briefing, rather than some independent contemporaneous knowledge) with the proposition that there was a view among some senior police (namely DCI Lehmann, DCI Young and Superintendent Willing) that claims relating to the number of gay-hate related murders were exaggerated, is not evidence that he himself held such views, or that he initiated SF Parrabell for any of the purposes set out at CA, [817] (cf [CA]([806]).

472. On the contrary, AC Crandell's evidence on the point was abundantly clear; he wanted to "get some investigative truth around the numbers"[358] and "what that outcome was did not concern me and does not concern me now".[359] Instead, he "wanted to have some evidence that we had actually gone through a process to determine whether or not these deaths were homicides and were gay-hate related".[360]

473. Consistent with this, as was observed by Associate Professor Dalton, AC Crandell made it clear to him that "There is to be no fear or favour. You find what you find."[361] There was no "pressure", "inducement" or "encouragement" directed at the Academic Review Team to arrive at a particular outcome.[362] This evidence is a complete answer to Counsel Assisting's submissions at [817](b) – (e). However, as is apparent from the above considerations, and the various other matters addressed in these submissions, it is not the only answer to Counsel Assisting's striking allegations.

---

[356] Ibid, p. 3.
[357] Ibid, p. 3.
[358] Transcript, T664.30-32.
[359] Transcript, T664.35-36.
[360] Transcript, T664.36-39.
[361] Transcript, T2608.4-5.
[362] Transcript, T2608.8-9.

474. The matters raised by Counsel Assisting at CA, [803], [807] – [815] make it clear that there was significant media and political interest in the "list of 88". As acknowledged above, that interest provided a significant impetus for the decision to undertake SF Parrabell. None of the propositions at CA, [817](b) – (e) follow from the fact that media and political interest was a significant reason for the establishment of SF Parrabell.

475. At CA, [816], Counsel Assisting's submissions set out a series of quotations described as matters that AC Crandell "acknowledged" in his oral evidence. Each of the quoted statements in that paragraph reflects the words of Counsel Assisting, in the form of leading propositions, rather than AC Crandell's response to a question. This has the potential to convey an inaccurate impression of AC Crandell's views. For example, it is not clear what import Counsel Assisting seeks to place on the fact that AC Crandell responded "Yes" to the proposition that one of the "driving reasons" for the establishment of SF Parrabell was the perceived need for police "to be seen to be responding to the suggestion that the police had not done enough to solve cases where LGBTIQ people were the victims?"[363] Given the absence of *any* proper evidence in support of the propositions regarding AC Crandell's intentions at CA, [817](b) – (e), it seems that Counsel Assisting may be suggesting that AC Crandell's response to this question might, for example, support the proposition at CA, [817](d). The affirmative response to the leading proposition by Counsel Assisting, however, cannot be ascribed that meaning; plainly, one way of responding to a suggestion that police had not done enough to solve historical cases where LGBTIQ people were the victims would be to show, by way of an exercise such as SF Parrabell, that contemporary police are concerned about those deaths, and have an interest in determining the truth of them. In no way does AC Crandell's affirmative response to that proposition suggest that SF Parrabell was designed to refute the suggestion that the NSWPF had not adequately investigated gay hate crimes in the first place.

476. The fact that SF Parrabell was not designed to "refute" or "undermine" the suggestion that there had been a significant number of gay-hate homicides is further illustrated by the change of the "Not a bias crime" category to "No Evidence of Bias Crime" and AC Crandell's rationale for it, considered further below at [521] – [524].

---

[363] Transcript, T795.9-12.

477. In a similar vein, the Parrabell Report forcefully acknowledges the extraordinary violence perpetrated on members of the LGBTIQ community. Indeed, SF Parrabell could scarcely have been clearer on that front (emphasis added):

> *The NSW Police Force is acutely aware of and acknowledges without qualification both its and society's acceptance of gay bashings and shocking violence directed at gay men, and the LGBTIQ community between 1976 and 2000. This is an important point, because the review of these 88 deaths by Strike Force Parrabell is not designed as commentary upon the level of violence directed towards the LGBTIQ community during these times. It is clear and beyond question that levels of violence inflicted upon gay men in particular were elevated, extreme and often brutal. The victims of these crimes fell outside the scope of Strike Force Parrabell due to their survival. Many of these people were fortunate to live.*
>
> *The Gay and Lesbian Rights Lobby and later, the AIDS Council of NSW (now ACON) kept records, usually comprising self-reported incidents of gay-hate violence, that on several occasions amounted to more than 20 entries per day. Unfortunately, fear associated with anti-gay attitudes of officers within the NSW Police Force at the time prevented these reports being formally recorded, which in turn meant that crimes were not investigated. This inherent lack of consequences or accountability meant that perpetrators were given a kind of 'social license' to continue inflicting violence upon members of the gay community. This phenomenon has been associated with what some perpetrators believed was their moral obligation, driven by poor societal expectations. The Bondi incidents together with similar disappearances and deaths of men in and around beats attracted heightened levels of violence and were often associated with a victim's sexuality or perceived sexuality.*[364]

478. In stark contrast to the groundless speculation engaged in by Counsel Assisting at CA, [817](b) – (e), there is clear evidence as to the actual objectives of SF Parrabell.

479. In addition to what might be termed the community relations rationale addressed at [464] above, SF Parrabell was also, and significantly, directed to the identification of opportunities for

---

[364] Exhibit 1, Tab 2 (SCOI.02632), pp. 14 – 15.

improvement, both in relation to the investigation of bias crimes, and in the way the NSWPF related to members of the community.[365] To that end, SF Parrabell made a suite of recommendations relating to, *inter alia*:[366]

a) archiving and document management;

b) the need to reinforce the importance of investigating crime from an open-minded position with a view to properly capturing bias motivations;

c) the development of a revised system for the early identification of bias crimes, with input from academic resources;

d) training to ensure officers accurately capture information regarding bias-related crimes;

e) the continuation of investigative processes involving the attendance of separate forensic practitioners "as a safeguard against individual pockets of potential bias";

f) an expansion of the GLLO program to capture as many NSWPF officers as possible; and

g) additional training and outreach activities in relation to the LGBTIQ community.

480. Additionally, SF Parrabell sought to acknowledge the community concern regarding questions of investigative propriety and bias, and, "where possible, identify evidence of poor or biased police investigations".[367] The latter task proved more or less impossible; the SF Parrabell Report acknowledged that there were "concerns in a significant minority of cases" (cf CA, [817](d)) but found that it was "impossible to differentiate between available technology…professional misfeasance, circumstance, or bias".[368] This is, it must be said, consistent with the submissions made in relation to the tender bundle cases made by Counsel Assisting. In no case has Counsel Assisting urged a positive finding that an investigation was not properly conducted because of bias on the part of the relevant police officer.

481. A succinct summary of some of the purposes of SF Parrabell was provided in an email from AC Crandell to DCI Middleton of 12 December 2016:

---

[365] Ibid, p. 14.
[366] Ibid, pp. 39 – 40.
[367] Ibid, p. 14.
[368] Ibid, p. 22.

> *Whilst the purpose of [SF] Parrabell is to provide the LGBTI community with comfort around the proposition of 88 gay hate deaths from the late 70's to 2000, it should also, wherever possible assist guidance for NSW police officers seeking to classify bias crimes.*[369]

482. Having regard to the above matters, the submissions of Counsel Assisting regarding the rationale for the establishment of SF Parrabell must be rejected.

***2015-2016: SF Parrabell personnel and resourcing (CA, [818] – [822])***

483. SF Parrabell was led by three highly-experienced officers: DCI Craig Middleton, DS Paul Grace and DSC Cameron Bignell. DSC Bignell, who is a gay man, was a GLLO at the time.[370]

484. Very significant resources were made available by the then Region Commander, former Commissioner of Police Michael Fuller (who was then an Assistant Commissioner).[371]

485. As is to be expected, having regard to the nature of his role, AC Crandell was not involved in the selection of the team of officers below the senior leadership group.

486. Neither DCI Middleton, DS Grace, nor DSC Bignell have been called to give evidence at the Inquiry. Accordingly, the processes they put in place in relation to personnel have not been explored with them.

487. Counsel Assisting is correct to note that none of the personnel selected for SF Parrabell were from the Homicide Squad or the UHT.[372] On one view, the involvement of some UHT officers would have been desirable. However, there is no evidence as to whether sufficient resources would have been available to allow UHT officers to be seconded to SF Parrabell. Having regard to the evidence that is available about the extraordinary demands on the Homicide Squad generally, and the UHT in particular, it would be surprising if such officers could have been spared. In any event, no doubt had UHT officers been made available to SF Parrabell, Counsel Assisting would have criticised that decision on the basis that such officers were not sufficiently "independent" from SF Neiwand and/or SF Macnamir. In fact, AC Crandell considered that it was important that SF Parrabell be independent of the Homicide Squad, given the

---

[369] Exhibit 6, Tab 79 (SCOI.74394), p. 1.
[370] Transcript, T746.40-47, T1022.6-7.
[371] Exhibit 6, Tab 4 (SCOI.76961), pp. 13 – 14 [64] – [65].
[372] Transcript, T748.34-42.

possibility that members of that team may have been involved in the original investigations or known people who were.[373]

488. The key focus of SF Parrabell was the assessment of possible offender motivation. That is a key aspect of the role of any criminal investigator. Accordingly, AC Crandell took the view that if the members of the team had investigative experience and training in the identification of motivation, that was sufficient, having regard to the ultimate supervisory role of DCI Middleton, DSgt Grace and DSC Bignell.[374]

489. Each of the officers in the team was a designated detective, a plain clothes officer, or another officer with investigative experience.[375]

490. Importantly, the ultimate responsibility for the determination in each case fell to DCI Middleton, DS Grace, and DSC Bignell (with oversight from AC Crandell himself).[376]

491. It should also be recalled that SF Parrabell was a historical review, rather than an active investigation; the allocation of 13 different officers to work, at various times, full time on such a review was a reflection of the significant commitment of the NSWPF to the task.

***Participation of Sgt Steer in SF Parrabell (CA, [823] – [841])***

492. Whilst Sgt Steer was involved in the planning phases, had some contact with the members of SF Parrabell and the Academic Review Team, had access to all of the SF Parrabell materials, and performed a dip sample in relation to 12 of the cases, he was not actively involved in the daily operations of SF Parrabell.

493. Again, the identification of a perpetrator's motivation is a core aspect of the role of a criminal investigator. The members of SF Parrabell were properly equipped to perform the task; indeed, the very task they conducted is, in the context of this Inquiry, being performed – at first instance, in the context of providing assistance to the Commissioner of the Inquiry – by the solicitors and Counsel Assisting the Inquiry (i.e. persons who no doubt have had varying levels of previous experience in relation to bias crimes *per se*).

---

[373] Transcript, T1040.41-1042.13.
[374] Transcript, T747.2-10.
[375] Transcript, T747.40-748.32.
[376] Transcript, T752.41 – 754.20; T806.21-33; 807.16-29; T1034.2; Exhibit 1, Tab 2, pp. 67 – 69; Exhibit 6, Tab 386.

494. Sgt Steer had a diverse range of responsibilities and could not have been comprehensively involved in SF Parrabell without compromising the performance of those tasks.[377]

495. It is accepted that it may have been *appropriate* for Sgt Steer to have a more formal review role. That is not to say it was *necessary*.

496. Indeed, to the extent further involvement from Sgt Steer might have been *necessary*, it ceased to be so following the appointment of the academic reviewers. Despite this, Sgt Steer was asked to conduct a dip-sample.[378] The results of that dip sample were discussed at a meeting between the senior leadership of SF Parrabell and Sgt Steer on 19 January 2017 and a joint position was reached in each of the cases.[379] As part of that process of arriving at a joint position, AC Crandell suggested a change to the naming of categories to "no Evidence of Bias Crime" rather than "not a bias crime".[380]

497. The meeting minutes indicate that Sgt Steer was content with that position and note that he was asked to write a section of the Parrabell Report to explain how differences in investigation today might result in different evidence being gathered.[381] The meeting minutes then note an agreement being reached that "[i]t will not be necessary for Sgt Steer to review any additional cases, however he should participate in the next meeting with Flinders University".[382]

498. SF Parrabell included, as noted above, a range of experienced investigators, overseen by extremely experienced detectives. AC Crandell was justified in considering that the members of SF Parrabell had sufficient expertise to enable them to perform the task at hand.

499. Counsel Assisting nevertheless submits that the reasons Sgt Steer was not more heavily involved (including his competing obligations and the sufficiency of the skills and expertise of members of SF Parrabell) are not "persuasive" (CA, [837]).

500. Counsel Assisting does not, however, positively advance any alternative motivations.

501. AC Crandell, as noted by Counsel Assisting, rejected the suggestion that the choice not to use Sgt Steer more might have been because Sgt Steer might have expressed views or made

---

377 Exhibit 6, Tab 52 (SCOI.74083); Exhibit 6, Tab 53 (SCOI.74082).
378 Transcript, T1047.22-29; Transcript; T1104.17-21.
379 Exhibit 6, Tab 83 (SCOI.74429), pp. 1 – 3.
380 Ibid, p. 3.
381 Ibid, p. 3.
382 Ibid, p. 3.

assessments that AC Crandell preferred not to receive.[383] In doing so, AC Crandell made it abundantly clear that he would not "shy away from wanting to know contrary views".[384] So much is apparent from the evidence regarding the dealings between AC Crandell and the Academic Review Team, as above at [473].[385]

502. The suggestion that Sgt Steer's involvement might have resulted in a "realisation of some of the deficiencies of the BCIF" (CA, [841]) is, as Counsel Assisting concedes, a matter of speculation. It is also, on the available evidence, difficult to understand. Sgt Steer undoubtedly misunderstood the way the BCIF was being employed. He adopted the erroneous view that it was being employed as a "checklist" as part of a mathematical approach[386], as opposed to a guide to assist in the identification of factors that would later inform an overall judgment reached by the senior investigators of SF Parrabell.

503. Indeed, the actual approach adopted by SF Parrabell closely reflected the use of the Bias Crimes Indicators contemplated by Sgt Steer when Operation Parrabell was established. The Bias Crimes Investigation Agreement for Operation Parrabell included the following:

> *"Each incident will be filtered through the current ten bias crimes indicators. The purpose of this is to identify potential deaths that may have a bias motivation. The indicators do not mean that an incident was in fact bias motivated, but suggest a possibility of a bias motivation."*[387]

504. It is apparent that Operation Parrabell contemplated the use of the Bias Crimes Indicators as a mechanism to identify cases in relation to which bias might have played a part, by reference to potentially relevant indicators. This is precisely what occurred in relation to SF Parrabell; following the use of the BCIF to flag and record possible relevant considerations, a final assessment was reached.[388]

***SF Parrabell: Constituent documents (CA, [842] – [852])***

505. The Terms of Reference are set out in the Parrabell Report as follows:

---

[383] Transcript, T742.18-23.
[384] Transcript, T742.33-34.
[385] Transcript, T2608.4-5.
[386] Exhibit 6, Tab 6 (SCOI.82080), p. 8 [21]; Exhibit 6, Tab 248 (SCOI.79391), p. 2.
[387] Exhibit 6, Tab 12 (SCOI. 75056), p. 2.
[388] Ibid, pp. 2 – 3.

*Assess each of the 88 deaths identified as involving potential gay-hate bias between 1976 and 2000*

*The timeframe for review is 18 months from 30 August 2015*

*If during the assessment suspects are identified, that information will be forwarded to the Unsolved Homicide Team for information and further inquiries/investigation*

*After each assessment, a detailed report outlining the bias classification of each incident and justifying material will be prepared and presented to prominent representatives of the GLBTIQ community*

*Each incident will be filtered through the NSW Police Force 10 bias crime indicators as a general guide to identify direct or circumstantial evidence of bias motivation*

*Examine and report upon evidence capable of identifying suspected bias of the original police investigator.*[389]

506. As is apparent from the Terms of Reference, the Bias Crimes Indicators (as set out in the BCIF) were "a general guide to identify direct or circumstantial evidence of bias motivation".[390] The BCIF was not, and was not suggested to be, a scientific instrument to be applied mathematically with a view to obtaining an unimpeachable assessment of whether bias was, or was not, present. Rather, it was designed to assist officers to identify and record factors that might be of relevance in the final conclusion reached (the final decision as to categorisation being one ultimately made by the senior leadership team of SF Parrabell).[391]

507. Counsel Assisting sets out a consideration of some of the differences between what are described as the "constituent documents", namely the Terms of Reference; Investigation Plan; Coordinating Instructions; and Induction Package (CA, [846]). Counsel Assisting also examines the development of the BCIF (CA, [849] – [852]). This consideration, however, is undertaken primarily by reference to the oral evidence of AC Crandell. Those documents, on the other hand, were authored by the senior investigators of SF Parrabell, being DCI Middleton, DS Grace and

---

[389] Exhibit 1, Tab 2 (SCOI.02632), pp. 20 – 21.
[390] Ibid, p. 21.
[391] Transcript, T752.41 – 754.20; T806.21-33; 807.16-29; T1034.2; Exhibit 1, Tab 2, pp. 67 – 69; Exhibit 6, Tab 386.

DSC Bignell; AC Crandell had little input into their contents, and was not involved in the way they were implemented within the broader SF Parrabell team.[392]

508. Counsel Assisting has not called evidence from DCI Middleton, DS Grace or DSC Bignell. The Inquiry therefore has no evidence in relation to the thought processes of those officers in relation to the creation of those documents and the ongoing discourse between them and the subordinate members of SF Parrabell regarding the appropriate approach to their review of each of the cases.

***The different versions of the BCIF (CA, [853] – [897])***

509. The evidence as to the slightly different versions of the BCIF makes clear that the SF Parrabell process was an iterative one.[393] This is unsurprising in circumstances where SF Parrabell was a unique exercise, that had not been conducted before.

510. Consistent with the state of the evidence in relation to the other constituent documents, evidence from the senior investigators of SF Parrabell has not been called in relation to the changes to the BCIF, the impact of those changes, and the explanations provided to reviewing officers in relation to them. The current understanding of the NSWPF in relation to the different versions of the BCIF is set out in the letter of 19 May 2023 provided by the OGC of the NSWPF (**OGC Letter**).[394]

511. As explained in the OGC Letter, it is accepted that there were at least three versions of the BCIF. After the introduction of what Counsel Assisting describes as "Form 3", the senior investigators of SF Parrabell decided to review and reassess any matters that had previously been reviewed using the earlier form (or forms, if Counsel Assisting's assumption that there were four different forms is correct) to ensure that all matters had been reviewed by reference to the criteria set out in Form 3.[395] To that end, subsequent to the introduction of Form 3 on (or sometime before) 29 June 2016, each case that had previously been assessed was returned to the investigation team to be reviewed by reference to Form 3.[396]

512. Ultimately, all the cases were transitioned from Form 3 to Form 4 as part of the preparation for the SF Parrabell final report. The change from Form 3 to Form 4 was limited to the amendment

---

[392] Transcript, T700.42-701.30; Transcript, T705.18-30; Transcript, T786.34-38.
[393] Transcript, T845.1-6.
[394] Exhibit 6, Tab 386 (SCOI.83388).
[395] Exhibit 6, Tab 386 (SCOI.83388), pp. 3 – 4.
[396] Exhibit 6, Tab 386 (SCOI.83388), p. 4.

of the titles of two of the four 'bias categories' within the BCIF (as considered below). Those changes did not affect the underlying criteria and, accordingly, did not necessitate a further review of the cases that had by then been reviewed by reference to Form 3.[397]

513. Counsel Assisting complains that these observations were not part of the evidence of AC Crandell and "cannot now be tested, at this late stage of the Inquiry" (CA, [881]). It is entirely unsurprising that AC Crandell did not give evidence of this process; as observed above, he did not author the BCIFs and was not a part of the day-to-day reviews conducted by SF Parrabell. If Counsel Assisting had wished to examine these processes in detail, evidence could have readily been called from DCI Middleton, DS Grace and DSC Bignell.

514. In those circumstances, Counsel Assisting quite properly notes that "[t]hese submissions therefore necessarily proceed on the footing that those assertions are correct" (CA, [881]). Despite this – entirely appropriate – observation, Counsel Assisting criticises the fact that contextual matters relating to the way officers employed the forms in practice were not the subject of evidence of AC Crandell, and comments on the difficulty in assessing whether each SF Parrabell officer undertook their review in the same way (CA, [882] – [888]).

515. Again, however, AC Crandell was not involved in the day-to-day conduct of the reviews. His evidence repeatedly referred to the role of the senior investigators in providing direction and instruction in relation to the assessment process.[398]

516. As concerns CA, [887] and the submission that follows at [888], it should be noted that, contrary to CA, [887], AC Crandell was not asked how an objective observer could "check" whether each Parrabell officer had carried out the review process in the same way. Rather, he was asked how an objective observer could "be sure" that each Parrabell officer carried out the review exercise in the same way. The difference is superficially subtle, but is reflected in the answer AC Crandell gave, which was, in essence, that an observer could examine the review documents[399], and also take comfort from the "governance structures that were put in place and the review mechanism"[400], which he described as follows:

---

[397] Exhibit 6, Tab 386 (SCOI.83388), p. 5.
[398] Transcript, T788.26-33; Transcript, T794.26-37.
[399] Transcript, T794.1-7.
[400] Transcript, T794.22-23.

> *Namely, you had the commander of the operation, being myself, you had a very experienced detective inspector in charge and in charge of reviewing on a monthly basis; you had a very experienced detective sergeant who was reviewing on a weekly basis; and you had a detective senior constable who was also a member of the Gay and Lesbian Liaison Officers group, having a look on a daily basis as to exactly what was happening, and what understandings, what misunderstandings there were, how documents were to be filled out, and I believe that you could tell from the completion of those final documents whether or not there was any confusion.*[401]

517. Similarly, as concerns the inconsistencies between the Induction Package and the Coordinating Instructions, AC Crandell identified that it was not clear that the reviewing officers would have been given both documents.[402] Either way, the impact of any such inconsistencies would readily have been addressed by the instructions provided to officers. As noted by AC Crandell:

> *…in any event - if they are provided with those documents and they have questions about those documents, whether that be on day 1 or day 365, I am certain that they would have been given clear guidance on exactly what is required of them and the objectives of this particular operation. I am certain of that.*[403]

518. Counsel Assisting then posed a hypothetical in relation to what would have happened if the reviewing officers "didn't ask a question and just proceeded down what they thought was okay".[404] Consistent with the above, in response to that question, AC Crandell observed:

> *There was plenty of guidance for them in terms of the governance process that had been set up, particularly oversight by Detective Senior Constable Bignell and Detective Sergeant Grace and Detective Inspector Middleton.*[405]

519. Setting aside the fact that the proposition in relation to "checking" was not, in fact, what AC Crandell was addressing in his evidence (cf CA, [887]), the point of Counsel Assisting's submission at [888] is difficult to understand; while the completed BCIFs undoubtedly give

---

401 Transcript, T794.26-37.
402 Transcript, T785.40-786.1.
403 Transcript, T786.4-9.
404 Transcript, T786.11-12.
405 Transcript, T786.14-17.

significant insight into the reviewing officer's approach to the task (including in relation to the matters they considered relevant, and the interpretation they applied to those matters), in order to "check" exactly how they "carried out the review process", it would be necessary to ask them to explain what they did.

520. Again, none of the senior investigators of SF Parrabell have been called to give evidence. To the extent there is doubt, on the face of the available documents, about the processes actually followed on a day-to-day basis by members of SF Parrabell, those doubts could have been readily resolved. Specifically, Counsel Assisting could have called each of the senior officers and explored the manner in which instructions were given to the team, and the way in which the exercise was carried out. In turn, Counsel Assisting could have called evidence from more junior members of the team to explore the extent to which they were labouring under any confusion as to what was being asked of them. The absence of such evidence, in circumstances where Counsel Assisting elected not to adduce it, is no basis on which to submit that the Inquiry cannot "have any confidence that all the SF Parrabell officers understood and applied all the different variations in the constituent documents, and all the changes to the successive versions of the [B]CIF, in the same way" (cf, CA, [894]).

Changes to the 'bias category' titles

521. As noted by Counsel Assisting (CA, [862]) and referred to above, on or about 19 January 2017, there were changes to the titles of two of the four categories in the BCIF.[406] Those changes were as follows:

522. the category 'Bias Crime' was amended to 'Evidence of a bias crime'; and

523. the category 'Not Bias Crime' was changed to 'No evidence of a bias crime'.

524. The rationale for this change is recorded in the minutes of the meeting of 19 January 2017 between the leadership of SF Parrabell and the Bias Crimes Unit:

> *A/Asst Commissioner Crandell suggested a change in category from 'not bias crime' to 'no evidence of a bias crime'. Whilst there may be no evidence in a case,*

[406] Exhibit 6, Tab 83 (SCOI.74429), p. 3.

> *we cannot definitively say it was not a bias crime. New evidence may come to light and if we were to investigate the crime today, we would ask different questions.*[407]

525. This change did not impact upon the underlying criteria for placement in each of the categories. The revised labelling was, as illustrated by AC Crandell's above remarks, designed to reflect the fact that in some cases, where the available information indicates that there was no bias involved, it remained at least conceivably possible that further information could emerge, or that – if investigated in a different way through the prism of modern understandings and social norms – the information gathered could have been different. This change, and AC Crandell's rationale for it, strongly underscores the fact that SF Parrabell was in no way a deliberate attempt to "refute" that there had been a significant number of gay hate-motivated homicides (cf CA, [817]).

<u>The standard of proof to be applied (CA, [889] – [891], [895] – [897])</u>

526. Counsel Assisting also make submissions in relation to the "beyond reasonable doubt" standard employed in the later versions of the BCIF.

527. AC Crandell's unchallenged evidence was that the basis for employing the "beyond reasonable doubt" standard was "because criminal investigators will understand the standard of proof".[408]

528. For the reasons expressed at [516] – [520], there would be no basis to find that the application of different standards led to confusion. To the extent that there was any misunderstanding, there is absolutely no reason to think that could not have been addressed via the governance and review process discussed by AC Crandell (cf CA, [895] – [896]).

529. In any event, the responses to individual criteria within the BCIF, and the reviews by subordinate officers, were ultimately overtaken by an overarching judgment, applied at the end of the process, by the three senior leaders of SF Parrabell (and reviewed by AC Crandell).[409] That exercise was conducted by reference to all of the matters identified as potentially relevant, not by way of some rote addition of the number of positive responses within the BCIF.[410]

530. It is trite to say that the fact that the "Evidence of Bias Crime" category's use of the "beyond reasonable doubt" standard meant that category captured fewer cases than it would have if, for example, the standard was "balance of probabilities" or "any evidence of bias" (CA, [897]). So

---

[407] Exhibit 6 Tab 83 (SCOI.74429), p. 3.
[408] Transcript, T829.45-47.
[409] Transcript, T752.41 – 754.20; T806.21-33; 807.16-29; T1034.2; Exhibit 1, Tab 2, pp. 67 – 69; Exhibit 6, Tab 386.
[410] Ibid.

much is apparent from the fact that there were substantially more cases in the "Suspected Bias Crime category". However, there is no basis to find that the use of the beyond reasonable doubt standard was inappropriate:

a) the "Evidence of Bias Crime" category was one of two categories of cases that were regarded as bias crimes – the other category, being "Ssuspected Bias Crime" related simply to cases where "evidence/information exists that the incident may have been motivated by bias";[411]

b) both the "bias crime" categories referred not only to cases entirely motivated by bias, but also to cases that were "partially motivated by bias";[412]

c) in any criminal sentence proceedings (which is where, as a result of s. 21A(2)(h) of the *Crimes (Sentencing Procedure) Act 1999* (NSW), the question of whether an offence was "motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged" is most likely to become relevant), the facts to be found against an offender must be found beyond reasonable doubt: see *Cheung v The Queen* (2001) 209 CLR 1 by reference to *R v Isaacs* (1997) 41 NSWLR 374; and

d) as noted by AC Crandell, and set out above at [527], the "beyond reasonable doubt" standard is one that was likely to be familiar to the members of SF Parrabell, who had considerable experience assessing evidence by reference to that standard in the context of criminal investigations.

531. Tellingly, as will be returned to in Part F, the submissions made by Counsel Assisting in relation the individual cases so far considered have closely aligned with the conclusions of SF Parrabell. There is no evidence to suggest that the process employed by SF Parrabell, in fact, resulted in findings that unduly or deliberately minimised the incidence of gay hate.

532. It was entirely appropriate for SF Parrabell to seek to obtain a more detailed understanding of the extent of the available evidence in each of the cases by including two different categories. The alternative approach would have drawn no distinction between a case that was very plainly motivated by hate, and one featuring only relatively limited circumstantial evidence of bias. On one view, a failure to draw a distinction between such cases would have allowed the significance

---

[411] Exhibit 1, Tab 2 (SCOI.02632), pp. 122.
[412] Exhibit 1, Tab 2 (SCOI.02632), pp. 122.

of gay-hate to be downplayed in undoubted hate-crimes because such cases would have been shown to be hate-crimes only by reference to a lower standard that some "evidence/information exists". Additionally, the distinction drawn allowed the NSWPF and, in turn, the public, to obtain a better understanding of the strength or otherwise of the evidence available in relation to each of the cases.

533. Ultimately, as observed by AC Crandell, both categories were treated as bias crimes.[413]

***SF Parrabell and ACON (CA, [898] – [905])***

534. It is submitted that the fact that the NSWPF engaged with ACON and invited it, along with other community members, to stakeholder meetings and presentations in 2015 and 2016 is a clear reflection of the primary purpose of SF Parrabell; that is, to demonstrate the seriousness with which the NSWPF regarded the hate crimes perpetrated against the members of the LGBTIQ community and, in so doing, facilitate a stronger and more trusting relationship with LGBTIQ persons.

535. The speculation as to what ACON may or may not have made of the Request for Quotation is not founded on any evidence (from ACON representatives or otherwise) and ought to be disregarded. As concerns CA, [903], questions in relation to the RFQ are addressed in Part H. For present purposes, it is important to have regard to the evidence in context. That is, cl. 3.4 of the RFQ provided:

> *"One of the key challenges is locating suitable, qualified and independent researchers.*
>
> *Many researchers in this area are connected to the 'gay community' and may not be as independent as desirable.*
>
> *Some researchers have had their own personal history of negative relationships with police.*
>
> *Other researchers are concerned about the highly political nature of this area".*[414]

536. The critical aspect of the second paragraph of cl. 3.4 is the conjunction "and"; the "challenge" referred to in cl. 3.4 related not simply to the sexuality of the researchers, but to the fact that

---

[413] Transcript, T1035.43-46.
[414] Exhibit 6, Tab 23 (SCOI.76961.00007), p. 6.

*some* academics in the area might not be "as independent as desirable". The sexuality of researchers did not bear upon the decision-making processes of the NSWPF; as noted at [468] Professor Asquith, an openly gay researcher, was the person AC Crandell intended to select at the time this RFQ was being developed. Ultimately, the Academic Review Team was led by an openly gay man, Associate Professor Derek Dalton.[415]

537. It is of course *possible* that ACON may have been able to provide some further insight into the processes and methodologies of SF Parrabell had it been provided the Coordinating Instructions and/or the BCIF (CA, [904]). The submission made by Counsel Assisting in this respect is intuitively appealing, if speculative. Nevertheless, it should be recalled that SF Parrabell received external input (indeed, of a critical nature) into its methodology via the Academic Review Team.

[415] Transcript, T2609.21-31.

## Part F: SF Parrabell – Police Methodology

538. Counsel Assisting sets out a brief recapitulation of SF Parrabell's methodology at CA, [906] – [910].

539. That summary omits the critical decision-making phase of SF Parrabell. That is, following the completion of a review of the documents by SF Parrabell officers, each of the cases was subject to a review by the senior leadership team within SF Parrabell who, on the basis of their analysis of the key features of the relevant case, formed a view as to which category the case should be placed into.[416]

540. The methodology adopted by SF Parrabell is succinctly described in the Parrabell Report as follows:

> *A team of detectives (which fluctuated in number between six and ten officers throughout the course of the assessment) reviewed and scored each case. The time this took varied greatly depending on the amount of archived material that had to be read, interpreted and scored for 'products'. A reviewing detective shared findings with the head detective. The reviewing detective assessed the case, sought clarification where needed and questioned any issues that seemed pertinent to the review. The head detective finalised the review in light of this feedback process. Approximately once a month, a team of three senior detectives convened a committee to read and review all the accumulated cases. At that meeting, the detectives read and discussed the cases and sought to reach consensus about any classification issues that were proving to be challenging.*
>
> *…*
>
> *The detectives scored each case using the indicators on the BCIRF. Thus, for example, if the offender was recorded in police files as associating 'with persons known to have assaulted young gay men, then the investigator may mark Bias crime Indicator 4 (Organised Hate Group) as being relevant' (Co-ordinating Instructions page 3). In such an instance, this would be recorded on the BCIRF (in the form of a tick in a box) along with the source of the evidence and a description*

---

[416] Transcript, T752.41-754.20; T806.21-33; T807.16-29; T1034.2; Exhibit 1, Tab 2 (SCOI.02632), pp. 67 – 69; Exhibit 6, Tab 386 (SCOI.83388).

*of how the evidence relates to the indicator. As previously noted, the source of evidence was termed a 'product' and a rigorous cross-referencing system meant that that 'product' was captured and numbered should it needed to be retrieved.*

*Although each indicator was scored, the summary conclusion or finding was not determined by counting the number of 'yes' or 'no' indicators of bias and referencing that number to some sort of table that accorded a finding of bias to a particular threshold number (e.g. seven out of ten indicators). Rather, the process was described as intuitive and relied on qualitative data in the form of contextual information derived from analysing each case. That is, having taken notice of the requisite indicators of bias, the detectives would also take into account the 'Summary of Findings' section – an amalgam of the 'general comments' section that corresponded to all ten indicators. The summary was often rich in detail and – when viewed in concert with the relative indicators – allowed a view of whether bias was involved to emerge.*[417]

541. In short, the categorisation process was an intuitive one, featuring a number of discussions between reviewing officers and an ultimate determination centred on a synthesis of the features of each case identified during the review process and made with the benefit of extensive investigative experience.[418]

***Constituent documents, and the BCIF (CA, [911] – [917]***

542. The observations Counsel Assisting make regarding the extent to which the differences in the constituent documents "could well have been confusing for the officers who worked on SF Parrabell" (CA, [912]) is addressed in Part E above at [516] – [520]. To reiterate, the question raised by Counsel Assisting is one that could have been addressed by calling the relevant officers to give evidence and, in turn, by exploring their understanding of the documents. Speculative criticism as to the possible impact of the changes is, in the absence of such evidence, both unfair and inutile. As recorded above at [539] – [541], the review process was conducted in a team-environment; the officers were able to engage with the senior members of the review team, in order to seek clarification at any point (and no doubt did so). Further, and in any event, the ultimate decision regarding each case's categorisation was made by the senior

---

[417] Exhibit 1, Tab 2 (SCOI.02632), pp. 67 – 69; Transcript, T1034.2.
[418] See also Transcript, T806.21-33; T807.16-29.

investigators of SF Parrabell. There is no evidence to suggest that those officers would have been labouring under any confusion.

543. In a similar vein, Counsel Assisting complains that the following matters are unclear, both in the Parrabell Report, and in the evidence before the Inquiry (CA, [913]):

a) the extent to which those changes were explained to the officers;

b) the extent to which the officers understood those changes;

c) the extent to which the officers changed their approach as a result of the changes to the BCIF; and

d) the extent to which officers revisited cases that had already been reviewed after each of the changes to the BCIF.

544. Counsel Assisting's complaint as to the lack of clarity in this respect is extraordinary; having determined not to call evidence from the senior investigators of SF Parrabell, or from any of the officers involved in it, Counsel Assisting seeks that findings critical of the NSWPF should be made in line with the above. As a general proposition, the mere absence of such evidence is not a proper basis for criticisms of the above kind. But that is all the more true where the absence of evidence is attributable to the forensic determinations Counsel Assisting has made about the evidence that should be obtained to assist the Inquiry.

545. It is not clear what Counsel Assisting means by the assertion that the changes to the constituent documents were "material". In any event, for the reasons explored at above, it is submitted that those changes did not impact upon the ultimate outcome reached in the cases.

546. As noted in the letter of 19 May 2023, and considered above at [512], following the amendments to the BCIF, cases were revisited and reassessed to ensure that the categorisation of the cases remained appropriate.[419]

547. The matters in the 19 May 2023 letter were addressed in correspondence, in response to a request by the Inquiry made after the conclusion of the Parrabell hearings, in circumstances where Counsel Assisting had elected not to call any of the members of SF Parrabell other than AC Crandell (who, again, did not play a role in the day-to-day operations of the strike force).

---

[419] Exhibit 6, Tab 386, p. 2 (SCOI.83388).

Again, the matters at CA, [917](a) – (c) could all have been addressed in evidence with appropriate officers.

***Timeframes (CA, [918] – [921])***

548. SF Parrabell was a challenging, resource-intensive exercise.

549. The fact that resources were extended repeatedly, notwithstanding the potential impact on other policing activities, speaks to the NSWPF's desire to demonstrate to the LGBTIQ community that its concerns regarding the deaths of the 88 persons the subject of SF Parrabell were being taken seriously. Had the goals of police actually aligned with those proposed by Counsel Assisting at CA, [817](b) – (e), the exercise could readily have been conducted in a more limited or perfunctory way. Instead, it was done thoroughly, and involved a careful examination of the material that could be located in respect of each case.

***Implementation of methodology (CA, [922] – [928])***

550. Counsel Assisting engages in a consideration of SF Parrabell's implementation of its methodology. Again, this consideration is undertaken in the absence of any evidence from the officers involved in the day-to-day running of SF Parrabell.

551. AC Crandell was unable to give evidence in relation to how cases were allocated to officers. That is because he was not involved in that process; the senior officers within SF Parrabell were responsible for such allocations.[420] Those officers conducted briefings and provided instructions to the reviewing officers.[421]

552. The process followed in relation to the ultimate categorisation of cases is described above at CA, [539] – [541].[422] Again, the final conclusions in each matter were reached by the senior investigators in accordance with the process set out above.[423]

553. Reference is made to an error in relation to material relating to Peter Sheil being present in a BCIF relating to Graham Paynter (CA, [928]). It is accepted that this error is regrettable. There is no indication that the relevant error bore upon the ultimate determination in the case (which was one in relation to which the Coroner had dispensed with an inquest, likely because of a

---

[420] Transcript, T752.44-45.
[421] Transcript, T750.41-754.20.
[422] Transcript, T752.41-754.20.
[423] Exhibit 1, Tab 2 (SCOI.02632), p. 67.

conclusion the death resulted from an accidental fall).[424] Indeed, SF Parrabell conservatively evaluated Mr Paynter's death as falling into the "Insufficient Information" category, whereas both the Academic Reviewers and Counsel Assisting concluded that there was no bias involved in the death.[425] Errors in documents are inevitable. This is particularly so in a large-scale exercise such as SF Parrabell, and especially when the relevant documents are internal working documents as opposed to documents designed for public consumption. That is not to say that errors should be excused, simply that their significance should be evaluated in context and not overstated.

554. Counsel Assisting notes that AC Crandell accepted that the narratives were not "second-guessed" by the senior investigators, in that they did not go back over the files to determine whether they agreed or disagreed. AC Crandell indicated that he "did not believe" that the senior investigators would have gone back and reviewed the original files.[426] Again, no evidence has been called from those officers in relation to what they actually did. Having regard to the available information regarding the process followed at [539] – [541] above[427], it would be surprising indeed if they did not regularly review aspects of the material themselves.

555. It is said that the governance system could not "ensure accuracy" (CA, [928]). It is submitted that a system whereby individual officers conducted reviews, and their work was subject to review by senior investigators (and, in turn, the Academic Review Team) was an appropriate one. Indeed, having regard to the resources available to SF Parrabell, and the onerous nature of the task before it, it is difficult to see what kind of alternative process could have been employed; tellingly, Counsel Assisting has not proposed one.

556. In an ideal world, the entire case file for each matter would have been reviewed multiple times by multiple officers, with a view to ensuring that each particular fact was checked multiple times, and no material facts were missed. Such a process, however, would not have been possible without significant additional resources and time. Accordingly, the fact that such a process was not implemented is not a proper basis for criticism.

---

[424] See Notice of Dispensing with Inquest, 27 July 1990 (SCOI.10935.00030); Submissions of Counsel Assisting regarding the death of Graham Paynter, [83] – [84].
[425] Ibid; Case Summaries, Exhibit 6, Tab 49, p. 17 (SCOI.7961.00014).
[426] Transcript, T1031.15.
[427] Transcript, T752.41-754.20.

***Subjectivity and intuition – CA, [929] – [938]***

557. It is wholly uncontroversial that the categorisations applied in each case ultimately rested on subjective judgments, made by reference to particular factors identified in the review process.

558. No criticism could sensibly flow from that observation; intuitive judgments of the kind described in the Parrabell Report and by AC Crandell are fundamental to the work of police and, in turn, the criminal justice system as a whole.

559. In the circumstances, the submission Counsel Assisting advances at CA, [938] proceeds upon a false premise. Had the BCIF, in fact, been employed as a "checklist", accompanied by a mathematical key, and a summing of scores allocated to particular indicators, which led inflexibly to a particular categorisation, the description "faux science" might have been apposite.[428]

560. Counsel Assisting's submission at CA, [938], however, is divorced from the reality of what occurred. That process is, again, explained at CA, [539] – [541] above, and described in clear terms in the Parrabell Report.[429] The summary conclusion set out in the BCIF was not a product of some mathematical process. Rather, it was an intuitive one, that proceeded by reference to the qualitative information recorded in relation to each document. In turn, the information and views recorded in the BCIFs was analysed by first, the initial investigator, second, one of the senior investigators, and third, the senior investigators as a collective. At each of those review stages, an intuitive judgment was applied.[430]

561. The BCIF provided prompts to reviewing officers as to the factors that might be relevant in each case, and a convenient means by which pertinent factors could be recorded and subject to later review by the senior investigators (and, ultimately, the Academic Review Team). The fact that reference was made to "indicators" in that way did not render the SF Parrabell process "faux science" any more than reference to a list of aggravating and mitigating factors pursuant to s. 21A of the *Sentencing Procedure Act 1999* would render such a pejorative applicable to the "instinctive synthesis" conducted by a judicial officer in the sentencing process, which is similarly difficult to "penetrate or replicate" precisely (cf, CA, [936]).

---

[428] Exhibit 6, Tab 256 (SCOI.82366.00001), [110].
[429] Ibid, pp. 67 – 69.
[430] T752.41-754.20; T806.21-33; T807.16-29; T1034.2; Exhibit 1, Tab 2 (SCOI.02632), pp. 67 – 69; Exhibit 6, Tab 386 (SCOI.83388).

562. SF Parrabell was not, and did not purport to be, a scientific exercise. It was a review exercise conducted by experienced police officers who applied their judgments to each of the cases in attempting to reach a conclusion as to whether or not bias was a motivating factor.

***Collaboration, consensus, and independence (CA, [939] – [983])***

563. A key aspect of SF Parrabell was the retention of an Academic Review Team. The Academic Review Team described their understanding of the task they were assigned as follows:

> *"The principal task of the academic team was to comment on the efficacy and quality of SFP's review and to comment on the extent of agreement with the SFP outcomes and determinations. Additionally, the academic team was to provide recommendations for future policing, community engagement, training and development of bias crime indicators and processes."*[431]

564. The Academic Review Team set out a detailed account of the "consultation" and "collaboration" between SF Parrabell and the Academic Review Team in the following terms:

> *In terms of the work conducted by the academic team, Associate Professor Derek Dalton led a three-person project team consisting of himself, Professor Willem de Lint and Dr. Danielle Tyson. Dr. Dalton oversaw liaison between the NSWPF and the academic team, conducted negotiations regarding the terms of the review, and undertook an initial two-day exploratory trip to Sydney to meet with the SFP team. Dr. Dalton and Professor de Lint attended a subsequent trip to Sydney for further discussions and drafted the report. Professor de Lint developed a concept matrix and definition to analyse the cases. Dr Tyson assisted Professor de Lint and Associate Professor Dalton to analyse the cases based on her expertise in relation to homicide data and case analysis. Dr Tyson also participated in deliberations about how the cases should be classified where disagreement was encountered.*
>
> *Both consultation and deliberation were productive. Meetings were held in Sydney, where clarifications were sought by both parties as the process unfolded. Consultation permitted the probing of classificatory decisions by SFP and*

---

[431] Exhibit 1, Tab 2 (SCOI.02632), p. 56.

*deliberation enabled the academic team to explore the classification system and moot disagreements in a manner that ultimately produced a more nuanced understanding of the most complex cases both in their own right and in the context of their totality. The academic team worked collaboratively with the NSWPF as findings were being finalised and experienced a strong spirit of cooperation in its interactions. This might strike some observers as irregular (in terms of the logic that a review must be conducted from a perspective of pure objectivity), but the academic team believed it was prudent to engage in open and productive discussions as the work of SFP drew to a close, rather than face the possibility of working on misapprehensions or misinterpretations of processes and methods.*

*Deliberation was a particularly important aspect of the process. In looking for and determining the existence of bias crime, differences in opinion emerged and had to be reconciled. Much in the same way that the SFP detectives sought to rigorously review their findings, the academic team engaged in carefully measured debates about each individual case in the interests of being thorough, consistent and precise. This was vitally important because it allowed the academics to develop a more nuanced understanding of the logic that underpinned the categorisation decisions of SFP. At the second Sydney meeting, a large police delegation discussed differences in opinion with regard to the cases under review. The police finalised their position on the cases and declared a cessation to their deliberations. At this point the academic team members were able to clarify various assumptions and move forward on the basis of these deliberations. From this point on the academic team could formally evaluate the operations and 'findings' of SFP.*

*This report should be understood as a combination of a process that was collaborative and consultative. The academic team also contacted Ms. Sue Thompson and wrote to ACON and received valuable documents and information that informed this review process.*[432]

---

[432] Exhibit 1, Tab 2 (SCOI.02632), pp. 56 – 57.

565. It is plain that no pressure was applied to the academics to arrive at a particular position in relation to the cases. As noted earlier in these submissions, Associate Professor Dalton gave evidence that AC Crandell made it clear to him that "There is to be no fear or favour. You find what you find."[433] Consistent with this, Associate Professor Dalton "felt no sense of pressure from the outset of 'It would be really good if you could kind of concord with us'".[434]

566. In evidence, Associate Professor Dalton indicated that the final meeting with police and the Academic Review Team involved going through each of the cases and providing an overview of the factors they took into account in arriving at the conclusion they reached in respect of each of the cases.[435] The discussions were directed to an understanding of the logic of the respective teams "rather than any sort of discussion of crude agreement".[436]

567. When asked about the tone of the meetings with police as concerns questions of collaboration and consensus, Associate Professor Dalton observed:

> *I guess, if I'm honest, I went in - it was sort of a weird dynamic because, as a gay man, I'd spent a lot of my life, if I'm honest, being somewhat scared or fearful of the police. It seems a weird thing to say, but that's the truth. It's hard to explain why that was the case, but I guess because for a long while I sort of thought the police were anti-gay and that my sexuality targeted me to get treated with a bit of hostility. So I was a little bit nervous, if I'm honest. But the nervousness dissipated –*
>
> *…*
>
> *The tone. I was shocked because immediately they were so - I don't know why I should have been surprised, but they were polite, deferential, very kind, very respectful of me asking questions that - to try to understand all sorts of aspects of police process that are quite opaque to a person who is an outsider, even as a person who has a lofty title like criminologist. You know, one could try to gild the lily and go, "Oh, well, just because I'm a criminologist, I know all this stuff". I don't*

---

[433] Transcript, T2608.4-5.
[434] Transcript, T2608.1-9.
[435] Transcript, T2615.2018.
[436] Transcript, T2615.16.

> *think that's true at all. I think you're quite often ignorant of certain things and so it was important to ask a lot of questions.*[437]

568. Again, Associate Professor Dalton was at pains to point out that there was no pressure applied to reach a consensus position:

> *I know I'm under oath so it's important people understand this, absolutely not. I - in fact, I recall at one stage, Assistant Commissioner Crandell said to me, and I'm - words to the effect of, and I'm not - I'm not saying I'm quoting him, but it was - the tenor of what he said was, "You are to - don't fear - don't fear any - any sort of pressure or inducement or whatever. You are to find as many cases in whatever category as you see fit." That was kind of what he conveyed to me, and he said it at least once and it felt genuine.*[438]

569. There were, ultimately, a number of cases where SF Parrabell and the Academic Review Team did not agree. As to what police's approach to that disagreement, Associate Professor Dalton observed that "they didn't seem to care one iota"[439] before noting "it wasn't about, "oh, we've got to make sure we've got 20 'Insufficient Information' each and we've got to have about 16 of this category"; it was never about the numbers. It was about the tenor of the logic".[440] Professor de Lint similarly noted that "[i]t wasn't a concern that the teams had the same result."[441]

570. As is apparent from the foregoing, there was undeniably a degree of collaborative exchange between the SF Parrabell officers and the Academic Review Team. There is some evidence to suggest there was a "hope" that through discussions, there might have been a convergence of views.[442] The evidence relied on in that respect by Counsel Assisting in derived from Associate Professor Dalton's consideration of an email sent by DCI Middleton (CA, [962] – [963]).[443] In particular, Associate Professor Dalton and AC Crandell were asked about the meaning of words and phrases in DCI Middleton's emails.

571. Surprisingly, DCI Middleton was not called to give evidence or afforded the opportunity to explain the terms he employed or the approach he took. In the absence of evidence from DCI Middleton,

---

[437] Transcript, T2618.9-2619.13.
[438] Transcript, T2619.22-31.
[439] Transcript, T2620.4.
[440] Transcript, T2520.20-23.
[441] Transcript, T2858.21-22.
[442] See Transcript, T2477.45.
[443] Transcript, T2477.16-45.

Counsel Assisting's assertions as to the meaning of particular words or phrases in his correspondence must be approached with very great caution.

572. Counsel Assisting, for example, relies on Associate Professor Dalton's evidence in relation to an email sent by DCI Middleton's on 13 February 2017.[444]: DCI Middleton finishes that email by saying "I really don't think we are two [sic] far apart in alot [sic] of our views and I am still hopeful that they can be easily resolved." Of this, Associate Professor Dalton said in evidence: "I wonder whether he meant, and sometimes what we understood, or what I understood, was to be resolved not as in changing a classification but having a pure understanding of why they did what they did and why we did what we did".[445]

573. DCI Middleton's email was written in response to an email from Associate Professor Dalton attaching a spreadsheet setting out the Academic Review Team's results (including 21 cases where the academics had categorised cases differently to police). The opening paragraph of DCI Middleton's email included the following:

> *I am not surprised by the quandary that you guys find yourself in with the disagreements amongst yourselves as we also had those issues. The matters that you have disagreed on with us also dont really surprise me. The SBC [Suspected Bias Crime] and II [insufficient information] are fluid categories that we found matters could move between and quite easily sit in either or both.*[446]

574. Had the aim of police been matching outcomes rather than reaching an understanding of process, one would have expected DCI Middleton to undertake a systematic consideration of those 21 cases, and an explanation as to why the police's view was correct and should be adopted by the Academic Review Team. That is not what happened. Instead, DCI Middleton sent an email that outlined the general approach police took to cases, the limitations they confronted, and the way they approached different categories. There was no attempt to suggest to Associate Professor Dalton that the Academic Review Team were wrong in relation to any of the particular cases or to persuade them to change their views.

575. Otherwise, Counsel Assisting's submissions regarding collaboration and consensus rest heavily on Associate Professor Dalton's interpretation of emails sent by DCI Middleton and AC Crandell.

---

[444] Transcript, T2478.14-2481.7.
[445] Transcript, T2477.33-36.
[446] Exhibit 6, Tab 88 (SCOI.74447), p. 2.

While DCI Middleton has not been asked about the emails he sent or, importantly, his other interactions with the Academic Review Team, AC Crandell has and his evidence was unequivocal:

a) he never wanted agreement on all the cases;[447]

b) it was "never [his] intention to have a joint set of outcomes";[448]

c) his hope was that it would be possible "to learn as much as I could about classifications of bias crimes so that I could then improve the way that we do that in the NSW Police Force moving forward";[449]

d) in particular, AC Crandell hoped that via their interactions with the academics, police might "learn a different methodology for identifying bias crime";[450]

e) the collaborative process was directed to an understanding of how the different parties had come to their findings; if there were completely different findings then then police would want to understand the basis for those differences;[451] and

f) it was never his view that consensus would be arrived at, having regard to the difficulty in reaching a conclusion in each case as to the correct categorisation.[452]

576. In a summary sense, AC Crandell observed "in essence, there was collaboration to determine differences in findings and reasoning for those", but the collaboration was not "a joint effort at the production of both reports".[453]

577. There is nothing to indicate that any "convergence" was (or was intended to be) 'unidirectional' (i.e. with the Academic Review Team adopting SF Parrabell classifications). While the meetings between SF Parrabell and the Academic Review Team resulted in some changes in categorisations, those changes went both ways.[454]

578. Of additional note, following the second Sydney meeting between the Academic Review Team and NSWPF, the police "finalised their position on the cases and declared a cessation to their

---

[447] Transcript, T973.23-24
[448] Transcript, T980.2.
[449] Transcript, T969.32-35
[450] Transcript, T970.1.
[451] Transcript, T973.26-31.
[452] Transcript, T984.40-43.
[453] Transcript, T989.31.
[454] Transcript, T2858.18-35.

deliberations…[f]rom this point on the academic team could formally evaluate the operations and 'findings' of SFP".[455]

579. In the result, the Academic Review Team employed a totally different set of categories to the police. Had consensus been the aim, or had the NSWPF been in some way desirous (or capable) of compelling consensus as the "dominant party" (to employ Counsel Assisting's language[456]), the Academic Review Team would certainly not have set out about developing their own set out of categories, and something far more closely approximating identity of outcomes would have been arrived at.

580. The submission of CA, [972](a) is nothing short of astounding. Therein Counsel Assisting states that:

> *"The Strike Force led the search for consensus, and they were the dominant party in the relationship. This follows from the following facts:*
>
> *a. The NSWPF were paying the academic team;"*

581. Counsel Assisting's submission is tantamount to a suggestion that the will of the Academic Review Team could, and indeed, had been, overborne by the fact that they were being paid. This is an assertion of extraordinary gravity. It is entirely baseless. It also ignores the reality that the payment of the Academic Review Team was in no way contingent upon the answers they arrived at.

<u>Feedback on the draft report (CA, [972](c) – [978])</u>

582. As noted by Counsel Assisting, Professor de Lint gave evidence that his preference would have been for there to be a single report.[457]

583. He did not consider that there was "anything wrong"[458] with the SF Parrabell draft report and he did not wish to have control over the views expressed by police.[459] In essence, his view was that having the two reports in the same document resulted in some "inelegant" duplication of the tables reporting the results of police (in the sense that both the police and academic parts of the

---

[455] Exhibit 1, Tab 2 (SCOI.02632), p. 57.
[456] CA [972].
[457] Transcript, T2758.34.
[458] Transcript, T2758.30.
[459] Transcript, T2759.36.

report contained tables recording the results found by police).[460] He also noted that the fact of the two reports meant there was a missed opportunity to synthetise narrative, as distinct from the findings, which would in any event have remained separate.[461] Shortly stated, Professor de Lint's concerns arising from the fact of the dual reports were "purely aesthetic".[462]

584. Counsel Assisting correctly records that SF Parrabell was afforded an opportunity to provide feedback on the draft report of the Academic Review Team. As a result, a document was provided to the Academic Review Team recording the comments of Ms Braw, DCI Middleton, Ms Sharma and AC Crandell. Counsel Assisting notes that document[463] was nine pages long, but does not engage in any consideration of its contents (CA, [976]). Importantly, the feedback provided by police did not include any attempt to have the academics' change their approach to the categorisation of the cases.[464]

585. As concerns the different approach to the categories, AC Crandell's commentary is wholly consistent with his evidence considered above regarding the collaborative approach he envisaged. The fact that he hoped to learn from the academics' approach to bias crimes, with a view to improving the NSWPF's capacity to identify them, is apparent from the first of the comments he makes on the report (emphasis added):

> *Whilst not wanting to push the research team, because I think they have gone above and beyond, I wondered whether they actually prepared a bias crime indicator as an alternative to the model used by Parrabell, which is consistent with our corporate model. Does the concept of animus play a part in the identification of a bias crime that might be fashioned into a rule or guideline for operational police? If this was to be achieved I think it may have international application - clearly almost anything would be better than the UK model - Perhaps this is something we could discuss with the team in person to be a basis for a new model? I thought from earlier discussions that the research team was seeking to cut the bias crime indicators down to about 3 rather than 10, which would be positive if we*

---

460 Transcript, T2864.23-34.
461 Transcript, T2864.23-34; T2865.3-24.
462 Transcript, T2864.20-21.
463 Exhibit 6, Tab 109A (SCOI.74543).
464 Ibid.

*were to identify crimes of bias at the first available opportunity, and to create a more consistent and easier process for front line police.*[465]

586. Notably, police did not seek to mark-up changes to the Academic Report itself.[466] The comments they provided to the Academic Review Team were provided by way of suggestion only; the Academic Review Team retained control over the final form of their report.

Conclusions regarding the collaborative aspects of the academic review process (CA, [980] – [983])

587. Counsel Assisting submits (CA, [982]) that "[t]he efforts to reach consensus necessarily undermined the independence of the Academic Review Team." This submission is difficult to understand in light of Counsel Assisting's acceptance that the Academic Review Team were never required to reach the same classifications as SF Parrabell and that there was "a genuine effort, on each side, to reach a genuine opinion about the cases".[467]

588. Some insight into this reasoning is afforded by Counsel Assisting's submission that "[i]t may be one thing for each side to explain its reasoning to the other, so as to achieve a greater understanding of each other's conclusions. It might also have been legitimate for each side to alter their views as a result of that greater understanding. However, if this was going to occur, it ought to have occurred after both sides had reached their conclusions, not while that process was underway" (CA, [982]).

589. These observations, however, proceed on the basis of a misconception of the nature of the task being undertaken by the Academic Review Team; that is, a failure to appreciate they were conducting a *review* of the work of SF Parrabell. By the time they came to conduct their examination of the cases, police had already formed conclusions in relation to each case (as recorded in the BCIFs). Those views were subject to refinement, subsequent to discussions with the academics, and between the officers among themselves (i.e. a process very much like that outlined at CA, [982]).

590. In a world of unlimited time and resources, an approach of perfect independence might have resulted in an entirely separate academic review, by reference to the case files themselves, wholly insulated from the views of police. Even assuming (contrary to the likely position) that academics with the capacity to undertake such an onerous task could have been found, such a

---

[465] Ibid, p. 1.
[466] Exhibit 6, Tabs 109 (SCOI.74542) and 109A (SCOI.74543).
[467] Transcript, T2620.27.

process would have greatly elongated the course of SF Parrabell (potentially by years), to say nothing of the cost involved.

591. The academic review was a practical middle ground. It was a laudable attempt to seek external input, with a view to providing comfort to members of the LGBTIQ community that their concerns were being treated seriously, and that police were not engaged in an attempt to undermine those concerns.

592. The NSWPF were under no obligation to engage external academics. And they were under no obligation to release the report that they provided, which included some criticisms of the police approach and differences in the results arrived at.

593. Contrary to the submissions of Counsel Assisting, the steps undertaken by SF Parrabell to engage the Academic Review Team; to open themselves and their methodology to external scrutiny; and to engage with the academics with a view to understanding the Academic Review Team's approach and improving their own, should be commended.[468]

594. That SF Parrabell was designed, in part, to improve the NSWPF's approach to the identification of bias crimes is further illustrated by the steps AC Crandell took in the wake of the publication of the Parrabell Report.

595. In particular, AC Crandell approached Dr Birch, a Criminologist at Charles Sturt University in relation to the potential development of a simplified Bias Crime Indicator for operational police in light of the difficulties that emerged in relation the use of the Bias Crimes Indicators in the course of SF Parrabell.[469]

596. That approach led to the conduct of a review by Dr Birch, Ms Jenefer Hudson and Dr Jane Ireland, which was provided to the NSW Police Education and Training Command in March 2019.[470] The results of this review were considered further in Part B of these submissions.

---

[468] See Professor Lovegrove's evidence in this respect at Transcript, T2912.24.
[469] Exhibit 6, Tab 135 (SCOI.74721), p. 3.
[470] Exhibit 6, Tab 137 (SCOI.77362).

***Expert Evidence (CA, [984] – [1069])***

597. The experts called by the Inquiry did not have the benefit of evidence from AC Crandell, the academics or the senior investigators or reviewing officers of SF Parrabell as to the methodology actually employed by SF Parrabell.

598. This is, of course, no criticism of them. Indeed, the Counsel Assisting has not called evidence from the senior investigators or reviewing officers of SF Parrabell, and such evidence is not available to the Inquiry itself.

599. Nevertheless, the absence of such evidence has fundamentally diminished the utility of the expert's analysis as concerns SF Parrabell.

The SF Parrabell methodology and the BCIF

600. There is no dispute that the reliability and validity (as those terms are understood in social science literature) of the Bias Crimes Indicators, and, in turn, the BCIF have not been assessed scientifically.

601. Professor Lovegrove, for example, observes that "[t]he Police Parrabell study used a behavioural instrument (the BCIF) to determine whether hate was involved in any of the suspected homicides in any of the 88 cases" (emphasis added).[471] This is the core premise on which Associate Professor Lovegrove (and the other experts) proceeded. It is, however, fundamentally flawed.

602. Again, the BCIF was not employed as a "checklist" that was used in a mathematical fashion by reference to "scores" applied to individual indicators. Instead, as considered above at [557] – [562], the BCIF served as a prompt for reviewing officers, and a mechanism for them to record potentially pertinent information that would then be used as a source of information when the reviewing officer and, in turn, the senior investigators came to consider the appropriate categorisation of each case.

603. The Bias Crimes Indicators were described by Ms Coakley as "clues" that the professionals could look for in determining if a case should be investigated as hate/bias crime and could serve as guidelines to shape that process".[472] That is precisely how the bias crimes indicators, as set out in the BCIF were, in fact, employed; the indicators were, as noted above at [538] – [541], used

---

[471] Exhibit 6, Tab 256 (SCOI.82366.00001), [34].
[472] Exhibit 6, Tab 257 (SCOI.82367.00001), [31].

as "prompts" (or, to adopt Ms Coakley's term, "clues") that would assist in the ultimately "intuitive"[473] determination as to whether a give case should be regarded as a bias crime.

604. Unlike the experts, Counsel Assisting's submissions proceed at least with the benefit of AC Crandell's evidence regarding the use of the BCIF (though not, of course, evidence from the officers who were actually charged with using the BCIF and, in turn, the senior investigators charged with making the ultimate determinations). Despite this, Counsel Assisting's submissions adopt the same flawed premise in relation to the manner in which the BCIF was employed. For instance, Counsel Assisting submits that that "Little weight, if any, should be placed on results reached through the application of an instrument which was not fit for purpose" (CA, [1004]) (emphasis added). Again, the results recorded in the Parrabell Report were not attained via the blind "application of an instrument" to obtain a result. Rather, SF Parrabell's categorisations were the product of intuitive judgments made by highly experienced investigators on the basis of information gathered and recorded in the BCIF forms and a series of discussions with the officers responsible for the completion of those forms.

605. There was no attempt on the part of SF Parrabell to engage in "faux science" as described by Associate Professor Lovegrove,[474] or that it was presented to the public on the basis that it had "systemic validity" (cf CA, [1026]). In that respect, AC Crandell observed that it would have been "dangerous…to try to make it a scientific process".[475] He explained that observation as follows:

> *Because I don't think - because then you get back to the tick-box exercise, I fear, and I think you would then be looking at some sort of a calculation to determine whether or not somebody had bias in their mind. I don't think that we could ever get to that position, simply because we're dealing with human motivation and human behaviour.*

The absence of an independently validated and reliable tool for the assessment of hate crimes

606. There is – to this day – no independently validated tool for the assessment of hate crimes.[476]

607. Since the date of the Parrabell Report, there has been some potentially promising work in relation to the development of alternative "indicators" or "prompts" that might be useful in the identification

---

[473] Transcript, T806.21-33; T807.16-29.
[474] cf Exhibit 6, Tab 256 (SCOI.82366.00001), [110].
[475] Transcript, T1030.2-3.
[476] Exhibit 6, Tab 255 (SCOI.82368.00001).

of heterosexist and cissexist violence.[477] That research was published only in 2022.[478] Those prompts have not been the subject of testing with a view to developing a validated and reliable tool of the type considered in Associate Professor Lovegrove's evidence.[479]

608. As concerns the position in Massachusetts, Ms Coakley, observed that the Bias Crimes Indicators continue to be used "to teach people to look for as we look for motives".[480] In her view, "they are basically sound to be used, based on my training at the experience, at the beginning of an investigation".[481] Ms Coakley went on to conclude by observing that the indicators were "still valid" and noting that "that's how these crimes are still investigated".[482]

609. There is nothing to indicate that during the interactions between the Academic Review Team and SF Parrabell officers that the Academic Review Team suggested to the SF Parrabell reviewers that their approach was fatally flawed, such that their evaluations of the cases could not be relied upon.

610. No doubt that is because the Academic Review Teamwas, as is apparent from their report,[483] well aware of the role the BCIF actually played in the review process undertaken by SF Parrabell. As detailed at [539] – [541] above, the process undertaken by the NSWPF employed the BCIF as a means of gathering information that may, or may not, have been indicative of a bias motivation. As noted in the Parrabell Report, police informed the Academic Review Team "that the factors were used as prompts and there is no necessary correlation between or weighting of any of the factors and a determination of bias".[484] The BCIF served as a means of prompting investigative officers to consider and record features of a case that could potentially be salient to the examination of the motivations of the relevant offender (if any).

Reliance on archival material

611. There is no doubt that the reliance on archival material was a limitation of the SF Parrabell exercise. It goes without saying that SF Parrabell reviewers were constrained by the possibility that pertinent information may not have been recorded by the original investigators. As noted by

---

[477] Transcript, T2809.32-2810.7; T2809.32.
[478] Transcript, T2810.11.
[479] Transcript, T2810.16.
[480] Transcript, T2744.20.
[481] Transcript, T2744.26-27.
[482] Transcript, T2745.7-12.
[483] Exhibit 1, Tab 2 (SCOI.02632), pp. 67 – 69.
[484] Exhibit 1, Tab 2 (SCOI.02632), p. 70.

the academics, "an archive can only yield something that was captured in the first instance".[485] Similarly, the loss or disposal of archival material had the potential to impact on the review.

612. As noted by Counsel Assisting (CA, [1038]), the Parrabell Report acknowledges this in the first recommendation made by SF Parrabell, which relates to the NSWPF's "historically deficient" system of archiving.[486]

613. One way of recognising this was the shift to rename the "Not bias crime" category "No evidence of bias", the rationale for which included the limitations in the evidence available.[487]

614. The reliance on archival material, however, could never have been circumvented; even an approach extending to a complete re-investigation would have remained heavily reliant on archival material. The reasons why such an approach would not, in any event, have been possible are considered further below.

Criminal standard of proof

615. At CA, [1055] – [1060], observations are made in relation to the use of the criminal standard of proof. In that respect, the Commissioner repeats and relies on the observations at [526] – [533] of Part E.

616. It is of further relevance in this connection, that – as noted repeatedly above – the ultimate determination of SF Parrabell in each case was not predicated on some kind of mathematical assessment of the categorisation applied to each of the indicators that appear in the BCIF.[488] Rather, the intuitive judgment of the reviewing officer and, in turn, the senior investigators, was applied to the case, by reference to the salient features identified during the course of the review process.

Comparison between the approach of SF Parrabell and that of the Inquiry

617. To date, Counsel Assisting provided submissions in 22 case studies that were also considered by SF Parrabell. In the very great majority of cases, the assessment of Counsel Assisting aligns closely with that of SF Parrabell. In only two of those cases has Counsel Assisting submitted that anti-LGBTIQ bias should be found in circumstances where SF Parrabell had not identified

---

[485] Exhibit 1, Tab 2 (SCOI.02632), p. 80.
[486] Exhibit 1, Tab 2 (SCOI.02632), p. 39.
[487] Exhibit 6, Tab 83 (SCOI.74429), p. 3.
[488] See Transcript, T1023.29-46.

evidence of bias.[489] In one of those cases, the difference appears to be attributable to the fact SF Parrabell overlooked pertinent evidence contained in a witness statement.[490] The other case is one in which, in line with the submissions advanced on behalf of the Commissioner of Police in connection with the tender bundle hearings, the conclusion reached by SF Parrabell was readily justifiable.[491]

618. It is appropriate to note that in two further cases[492], Counsel Assisting has submitted that LGBTIQ bias was not involved in the death in circumstances where SF Parrabell had placed the relevant matter in the 'Insufficient Information' category. This provides further evidence that Counsel Assisting's submissions at CA, [817] are untenable; had SF Parrabell been established to "refute" the suggestion that there had been a significant number of gay hate homicides or to show that claims of 88 gay hate murders were exaggerated, SF Parrabell would surely have placed these cases in the 'No Evidence of Bias' category.

619. What is more, it appears that the method adopted by Counsel Assisting in relation to the assessment of bias also aligns broadly with the approach that was, in fact, employed by the SF Parrabell officers. In essence, what Counsel Assisting appears to be doing in each case is identifying a series of potentially relevant features and, on the basis of an intuitive judgment, arriving at an assessment of the likely motivation of the perpetrator (if any).

620. Indeed, a review of Counsel Assisting's submissions in each case reveals that the factors relied upon in an assessment of whether a case should, or should not, be regarded as a bias crime are – in almost every instance – closely analogous to factors that appear in the BCIF. So much is apparent from a consideration of the even the two cases where Counsel Assisting has identified bias in circumstances where SF Parrabell did not. In the matter of John Hughes, for example, Counsel Assisting's assessment of the case rests on the fact that Mr Hughes was gay; the homophobic remarks made by the POI; and the extreme violence inflicted upon him.[493] These features are all identified as potentially relevant in the BCIF (see indicators: 1, 2, and 10). If not

---

[489] Submissions of Counsel Assisting in the matters of John Hughes, 6 February 2023, and Richard Slater, 18 May 2023.
[490] Submissions on behalf of the Commissioner of Police regarding the death of John Hughes, 21 February 2023, [28], [41] – [42].
[491] Submissions on behalf of the Commissioner of Police regarding Richard Slater, 1 June 2023.
[492] Submissions of Counsel Assisting in the matters of William Dutfield, 6 February 2023 and Graham Paynter, 6 February 2023.
[493] Submissions of Counsel Assisting in the matters of John Hughes, 6 February 2023, [10] – [11], [61], [121].

for the human error that led to the relevant remarks being overlooked, Mr Hughes' case would very likely have been categorised in the same manner by SF Parrabell as by Counsel Assisting.

621. Despite having the benefit of considerably greater resources than were available to SF Parrabell, the approach adopted by Counsel Assisting seems to closely resemble that adopted by SF Parrabell. In particular, it is by no means clear that the method that Counsel Assisting has adopted is significantly more "reproducible" or "objectively assessable" than that undertaken by SF Parrabell. Its reliability and validity have similarly not been tested.

622. Of course, it must be said that the Counsel Assisting's submissions typically express the foundation for the conclusions reached far more elegantly than the available SF Parrabell materials. However, unlike Counsel Assisting's submissions, the BCIFs and Case Summaries were not produced by experienced advocates for the purposes of public consumption. They were designed as internal records of the information considered that could be used as an aid in the course of an ultimately intuitive decision-making process. It is little wonder that the reasoning contained in the BCIFs is not expressed with the clarity of Counsel Assisting's submissions. The degree to which the results align is, however, highly instructive.

***Alternative approaches to SF Parrabell (CA, [1070] – [1078])***

623. In a vacuum, it is arguable that SF Parrabell would have been better approached as a reinvestigation of the unsolved cases within the list. AC Crandell did not seek to proceed in that way because he did not consider that it would be possible to muster the resources required for such an undertaking.[494]

624. No doubt that is correct; a complete reinvestigation of all 23 of the unsolved cases would have taken many years to undertake. AC Crandell observed that with the resources available to SF Parrabell, it would likely have been possible to complete only *one* re-investigation in the relevant 18-month period (cf CA, [1077]).[495] If a re-investigative approach had been adopted, SF Parrabell would still be on foot (and, quite likely, would remain so for several years hereafter).

625. Counsel Assisting seeks to meet this concern by observing that not all of the cases would have required resources equivalent to those applied in the case of Scott Johnson (CA, [1076]). That may well be true, but even a preliminary triage process of determining which cases would require

---

[494] Transcript, T1042.15.
[495] Transcript, T1042.33-38.

which resources, and the development of investigative strategies in each case would, without question, have been substantially more onerous than the review exercise conducted in SF Parrabell. And that is to say nothing of the resources that would be involved in the implementation of the developed strategies.

626. What is more, unsolved homicides cannot, typically, be resolved by way of brute force. Many, if not most, of the 23 cases would not likely have been susceptible to productive reinvestigation at the time SF Parrabell was operating.[496] Typically – as was the case in the Scott Johnson manslaughter – the resolution of an unsolved homicide will rest on the provision of heretofore unanticipated information that arrives as a consequence of a change in relationships, or developments in forensic testing.[497]

627. There was undoubtedly a significant groundswell of public interest in the "list of 88". A re-investigation of what would have amounted to only a small fraction of the 23 unsolved cases, would have shed no light as to questions of bias in relation to the rest of the cases among the 88. It is highly unlikely to have been perceived as an appropriate or adequate response by the LGBTIQ community.

628. Moreover, a re-investigative approach, whether it was confined to one case or extended to a handful, would not have effectively facilitated a consideration of whether recommendations could be made to advance the NSWPF's approach to the policing and/or investigation of bias crimes generally. That was a key aspect of the SF Parrabell process.[498]

629. Additionally, a re-investigative approach would only have allowed potential investigative malfeasance to be considered in the few cases subject to reinvestigation. In the result, it was not possible to discern investigative malfeasance because there is no ready means of determining whether investigative shortcomings were attributable to bias, as distinct from changes to police practices over time, technological advances, incompetence, and/or deficiencies in archiving practice.[499]

630. These difficulties, however, have only become apparent as a consequence of the SF Parrabell review. The submission at CA, [1071] that SF Parrabell was not a "worthwhile exercise at all" is,

---

[496] Transcript, T2738.9.
[497] Transcript, T2737.45-2738.3..
[498] Exhibit 1, Tab 2 (SCOI.02632), pp. 39 – 41.
[499] Exhibit 1, Tab 2 (SCOI.02632), p. 22.

as outline above, premised on the fundamental misconception of the role the BCIF played in the categorisation process considered. Additionally, it is infected by a very significant hindsight bias. That is to say, it is only because SF Parrabell has been undertaken that the difficulties that impacted on the review process have been identified. The fact, for example, that the original investigations regularly did not consider a range of information that may assist in the identification of bias is only known because the files themselves were reviewed. Similarly, the only way to discern whether there would, or would not, be indicators of bias on the part of the investigators contained in the case files, was to review them.

631. As is apparent from the significant media attention, ACON's *In Pursuit of Truth and Justice* Report, the Parliamentary Inquiry, and the very existence of this Commission of Inquiry, there is a significant public interest in identifying the extent to which anti-LGBTIQ bias played a role in the "list of 88". The submission made by Counsel Assisting at CA, [1071] must be evaluated in that context and rejected for the reasons set out above.

## Part G: Choosing the academics

### *Purposes of the academic review*

632. Part G of the Counsel Assisting's submissions address the process by which academics were selected to review the work performed by SF Parrabell.

633. The purposes AC Crandell hoped to achieve by subjecting SF Parrabell to an academic review are addressed at CA, [1079]–[1086] of Counsel Assisting's submissions.

634. They are recorded in the Parrabell Report as follows:[500]

> *The purpose of academic review was to provide an independent account of SF Parrabell's systemic validity; where possible, identify evidence of poor or biased police investigations; guide future policing strategies of community engagement; and develop a more suitable bias crime identification process.*

635. It was ultimately not possible for the academics to identify evidence of poor or biased police investigations (CA, [1085]). That was not, however, because the academics were asked not to pursue such a task; rather, they determined that it would not be possible without undertaking a detailed consideration of the "investigatory procedures or efficacy of all homicides in the period against those motivated by anti-gay bias".[501]

636. Similarly, while the academics did not produce a "more suitable bias crime identification process" (CA, [1086]), that was not because police asked them not to undertake this task. No doubt it was because, as is apparent from Professor Asquith's evidence, there is no such process presently available,[502] and, consistent with Associate Professor Lovegrove's evidence, the development of a reliable and valid bias crime identification tool is likely to be a complex, time consuming, and potentially costly process.[503] Nevertheless, AC Crandell's desire to improve the bias crime identification processes within the NSWPF is readily apparent from the steps he undertook to obtain assistance from Dr Birch of Charles Sturt University in that respect (which is addressed in Section B at [45] – [49] and Section F at [595] – [596] of these submissions).

---

[500] Exhibit 1, Tab 2 (SCOI .02632), p. 14.
[501] Exhibit 1, Tab 2 (SCOI .02632), p. 58.
[502] Transcript, T2806.37-2810.20.
[503] Transcript, T2877.19-2885.15.

637. As noted by AC Crandell, the academics did not have input into the recommendations made by SF Parrabell regarding "future policing strategies of community engagement". However, contrary to CA, [1085], the Academic Report did make recommendations in relation to community engagement.[504]

638. It should be recorded that there was of course no obligation for any academic review to be undertaken: such a course was embarked upon voluntarily by AC Crandell and SF Parrabell to attempt to bring some comfort to the LGBTIQ community via an independent and impartial assessment.[505]

***Search for appropriate academics***

639. Ms Jaqueline Braw, Senior Policy Officer, Operational Programs, who reported to Ms Sharma, was appointed the project manager for the academic review.[506]

640. Given the anticipated cost of the review, internal NSWPF procurement guidelines required a formal tender process to be conducted with a minimum of three academics or teams of academics tendering for the work.[507]

641. AC Crandell initially, and then Ms Braw, reached out to a number of different people in the search for appropriate academics to undertake the review. One of the first academics contacted was Professor Gail Mason, but she did not have sufficient time to assist.[508] Given her unavailability, AC Crandell confirmed Professor Asquith should be approached, noting that they sought "someone who brings independence to the role".[509] It is not suggested by Counsel Assisting, nor could it reasonably be, that any academics with appropriate and relevant experience should have been but were not approached by NSWPF to tender for the review.

642. However, the Commissioner of Police makes the following submissions in response to three issues raised by Counsel Assisting in the context of the search for the academics.

---

[504] Exhibit 1, Tab 2 (SCOI .02632), pp. 107 – 108.
[505] Exhibit 6, Tab 4, (SCOI.76961), [70]-[71]; Transcript, T888-889.
[506] Transcript, T1204.5-18.
[507] Exhibit 6, Tab 36 (SCOI.74172).
[508] Exhibit 6, Tab 34 (SCOI.74148).
[509] Exhibit 6, Tab 34 (SCOI.74148).

The nature of the review to be conducted

643. At CA, [1093]–[1100] Counsel Assisting refers to email correspondence between AC Crandell and Dr Weatherburn in June 2015 in relation to the proposed academic review. While Dr Weatherburn was unable to assist in the review, Counsel Assisting submits that his email highlighted "two fundamental problems confronting the methodology of the Strike Force", namely: (i) in the absence of a reinvestigation, the review of whether the death was anti-LGBTIQ motivated would be heavily reliant on the accuracy of the original records; and (ii) the review would also require the academics to review the same historic material as that reviewed by SF Parrabell, which would be very time consuming.

644. In the Commissioner of Police's submission, it is not accurate to say that as a result of the first issue, the findings of SF Parrabell would be of "very limited value" (cf CA, [1096]). Undoubtedly, there were always going to be limitations to the conduct of a paper review as compared with a reinvestigation of each case. However, a paper review still provided a number of opportunities to discern whether anti-LGBTIQ motivation existed, and indeed it was identified in a significant number of cases. Even a full re-investigation would have likely encountered very significant difficulties associated with the passage of time (including an inability to re-interview relevant witnesses, shifts in police practices regarding the identification of bias, and difficulties in historical archiving practice).

645. As to the second issue, as is clear from the Request For Quotation (**RFQ**) (discussed in more detail below), the intention from the outset was for the Academic Review Team to review the same materials as SF Parrabell.[510] It quickly became apparent that this would have been an onerous task that was simply not feasible from either a resourcing or timing perspective given the volume of material. However, it is submitted that again, while this was a limitation to the academic's review, such a limitation was not a justifiable reason for AC Crandell to conclude that no academic review should be conducted. SF Parrabell should not be criticised for proceeding with what was perceived to be "the good" in circumstances where "the perfect" was simply not possible.

646. The limitations referred to by Counsel Assisting are addressed further in Part H of these submissions.

---

[510] Exhibit 6, Tab 23 (SCOI.76961.00007), p. 7 [4.1].

Email from Ms Braw to Professor Asquith of 27 January 2016

647. As noted above, one academic approached to tender for the review was Professor Asquith. In this context, Counsel Assisting references an email Ms Braw sent to Professor Asquith on 27 January 2016 inquiring as to her interest in tendering for the review, in which Ms Braw states "We would prefer someone who is neither actively 'pro' or 'anti' police… which kind rules out a few others you and I could probably think of!"[511] (CA, [1105]).

648. Senior Counsel Assisting had sought in oral evidence to extract from both AC Crandell and Ms harma who they considered Ms Braw was referring to, in saying "a few others you and I could probably think of". Both ACr Crandell and Ms Sharma gave evidence to the Inquiry to the effect that they did not know and would only be guessing.[512]

649. However, Counsel Assisting submits that the sworn evidence of AC Crandell and Ms Sharma to the Inquiry in this regard was "disingenuous" on the basis that, in Counsel Assisting's view, one of the academic's being referred to by Ms Braw was "plainly" Professor Tomsen (CA, [1108]).

650. The starting point is that in the event Counsel Assisting sought to determine who was being referred to in the email, self-evidently, the author of that email, Ms Braw, should have been called to give evidence. She was not. Nor was the email put to the recipient, Professor Asquith, who may have been able to offer some insight given the reference in the email to "a few others *you and I* could probably think of" (emphasis added). In the Commissioner of Police's submission, it was inappropriate to seek AC Crandell and Ms Sharma's speculative views on the intentions of Ms Braw in relation to an email they had not authored (nor even been copied on).

651. Further, the implication that AC Crandell considered Ms Braw was referring to Professor Tomsen in her email as being 'anti-Police' is inconsistent with AC Crandell's evidence in relation to Professor Tomsen generally. For example:

    a) AC Crandell expressly disagreed that there was a view in the ranks of police that "Tomsen's views were unpalatable or views that the police didn't like";[513] and

---

511 Exhibit 6, Tab 35 (SCOI.78856).
512 Transcript, T902; Transcript, T1220.32-36.
513 Transcript, T907.1-6.

b) AC Crandell disagreed "completely" with the suggestion put by Counsel Assisting that if Professor Tomsen was to be in one of the academic review teams tendering, that team was not likely to "get the job".[514]

652. Finally, and significantly, it was never put to either AC Crandell or Ms Sharma that they were being "disingenuous" in their evidence.

The identification of Associate Professor Dalton as an appropriate academic

653. At CA, [1116], Counsel Assisting's submissions fail to acknowledge that it was in fact Professor Asquith who recommended Associate Professor Dalton be considered as a possible tenderer for the review.[515] While in the context of the Inquiry Professor Asquith disavowed knowledge of Associate Professor Dalton's previous work and indicated she was passing on the recommendation of her colleague, Dr Angela Dwyer,[516] it is unsurprising that NSWPF would have been guided by a recommendation from an academic who had (to use Counsel Assisting's words) "substantial and recognised expertise" in the area (CA, [1172]), and invited Associate Professor Dalton to tender.

***Request for Quotation***

Independence and collaboration

654. The submissions of Counsel Assisting make repeated reference to the fact that the RFQ, a document required to be prepared and provided to the tenderers for the review as part of the procurement process, refers to a 'collaborative approach' to be adopted between SF Parrabell and by the Academic Review Team ultimately engaged to conduct the review (CA, [1088]–[1092], [1119] –1150], [1172]). In doing so, Counsel Assisting appear to submit that the fact the process was intended to involve collaboration and discussion between the NSWPF SF Parrabell team and the Academic Review Team, means there was both an intended (and in fact a) consequent departure from the objective and independent review AC Crandell had considered to be the fundamental purpose of the project.

655. That submission is directly contrary to the evidence given by both AC Crandell and Associate Professor Dalton to the Inquiry.

---

[514] Transcript, T919:4-9.
[515] Exhibit 6, Tab 244 (SCOI.79884); Exhibit 6, Tab 255 (SCOI.82368.00001), [44].
[516] Exhibit 6, Tab 255, [44] (SCOI.82368.00001); Transcript 2803.34-2804.19.

656. Associate Professor Dalton explained his understanding of the task at the time of the RFQ in the following terms:[517]

> *It was conveyed to me that this was not a 'rubber stamping' process, but one where full and frank scrutiny was encouraged. I was given to understand that regardless of the police findings, if we found significant differences, we were free to state these differences without fear or favour.*

657. AC Crandell emphasised that the collaboration referred to in the RFQ was never to be at the expense of the Academic Review Team's independence:[518]

> *Q. If your overriding concern, though, was that the whole point of having the academic review was to be independent and thus give comfort, if that's the word, to the community that the police weren't just investigating themselves --*
>
> *A. Yes.*
>
> *Q. -- then you would want them to be literally independent, wouldn't you? You would want them to be hands-off, arm's-length?*
>
> *A. I want them to be objective, but I don't see that that bars them from speaking to any member of the Parrabell team. In fact, I encouraged that.*

658. Contrary to Counsel Assisting's submissions, the Commissioner of Police does not accept that the reference in the RFQ to 'collaboration' was reflective of any reduction in emphasis of the importance of the objectivity or independence of the Academic Review Team. It is submitted that the process could be *both* independent and collaborative. That is, discussion as between NSWPF and the Academic Review Team about their respective methodologies and how particular findings were arrived at to ensure differences were a true product of a difference in opinion and not a lack of clarity or a misunderstanding, need not equate to a lack of independence or objectivity on the part of the Academic Review Team.

659. Section F of these submissions has already addressed in detail the nature of the 'collaborative' process ultimately engaged in by the Academic Review Team with NSWPF and that such a

---

[517] Exhibit 6, Tab 1 (SCOI.76959), p. 3.
[518] Transcript, T922.35-46

process did not result in any loss of objectivity or independence. However, it is worth emphasising here that AC Crandell's intended approach to, and Associate Professor Dalton's initial understanding of, that collaborative process, continued throughout the Academic Review Team's engagement. Associate Professor Dalton's evidence in this regard is instructive and bears repeating:

> *I recall in the broadest brush strokes some sort of conversation earlier where he [AC Crandell] sort of instilled in me - these weren't his terms but it was like the logic was "There is to be no fear or favour. You find what you find". There was no - I felt no sense of pressure from the outset of "It would be really good if you could kind of concord with us"; despite suggestions that were put to me yesterday, I felt no such pressure, no such inducement or encouragement.*[519]
>
> …
>
> Q. *Was there any attempt by them to apply any pressure to you and your team to reach a consensus?*
>
> A. *I know I'm under oath so it's important people understand this, absolutely not. I - in fact, I recall at one stage, Assistant Commissioner Crandell said to me, and I'm - words to the effect of, and I'm not - I'm not saying I'm quoting him, but it was - the tenor of what he said was, "You are to - don't fear - don't fear any - any sort of pressure or inducement or whatever. You are to find as many cases in whatever category as you see fit." That was kind of what he conveyed to me, and he said it at least once and it felt genuine.'*[520]

Drafting of the RFQ

660. Three additional points need to be made in response to Counsel Assisting's submissions in relation to the drafting of the RFQ.

---

[519] Transcript, T2608.1-9.
[520] Transcript, T2619.20-31.

661. First, Counsel Assisting submits that AC Crandell sought to "distance himself" from the use of the word 'collaborative' in the RFQ (CA, [943], [1127], [1138]). This proposition should be rejected for the following reasons:

a) AC Crandell confirmed in oral evidence that he was not seeking to distance himself from it and it was never suggested to him he was being untruthful in this regard.[521]

b) The unchallenged evidence of AC Crandell was that Ms Braw had drafted the RFQ, including the use of the word 'collaborative', and his evidence that this was not "his word" was entirely accurate.[522] Ms Braw was not called to give evidence as to her intended meaning of the word, despite the emphasis Counsel Assisting seeks to place on it.

c) It was abundantly clear from Senior Counsel Assisting's questioning on this issue that he was suggesting that the use of the word 'collaborative' meant a loss of independence. In light of AC Crandell's differing view on this point, as set out above [657], it is unsurprising that he did not embrace the use of the word 'collaborative' in the sense contended for by Counsel Assisting.

662. Secondly, Counsel Assisting submits that (CA, [1138]):

> *…the inclusion of specific reference to a possible loss of objectivity if a researcher was "connected to the gay community" is difficult to understand other than as an indication that the teams which included "activists" such as Professor Tomsen or Professor Asquith would be at a disadvantage in the selection process.*

663. This inference is said to arise from cl. 3.4 of the RFQ, entitled 'Challenges', which included the following:

> *One of the key challenges is locating suitable, qualified and independent researchers.*
>
> *Many researchers in this area are connected to the "gay community" and may not be as independent as desirable.*
>
> *Some researchers have had their own personal history of negative relationships with police.*

---

[521] Transcript, T924.18-41.
[522] Transcript, T922.25-33; Transcript, T924.18-41.

*Other researchers are concerned about the highly political nature of this area.*

664. Both AC Crandell and Ms Sharma acknowledged that the language of cl. 3.4 of the RFQ was unclear, and a better choice of words could have been selected.[523] Again, Ms Braw was not called to give evidence as to the intended meaning of the language used. In any event, as noted at [536] above, the conjunction 'and' is of critical importance; the 'challenge' referred to in cl. 3.4 related not simply to the connection of the researchers to the community, but to the fact that *some* academics in the area might not be as "as independent as desirable".

665. One of the tender criteria was 'objectivity' and 'independence'. Counsel Assisting have not provided any reasons as to why that criterion was inappropriate. It was possible that a number of academics and researchers in this area could have had a direct, or indirect, connection to any one or more of the cases which formed part of SF Parrabell, which could have impacted their perceived independence and objectivity in conducting the review. Involvement, for example, in the preparation of the original "list of 88" may have resulted in a perception – whether accurate or otherwise – of a lack of independence in assessing whether each of the matters on the list was in fact motivated by anti-LGBTIQ bias.

666. But it does not follow that by putting the tendering academic teams on notice of these perceived challenges, so that those challenges could be addressed in their respective tender documents (i.e. by disclosing any perceived conflicts and / or advising how those conflicts or challenges may be overcome), the NSWPF was indicating that the teams which included "activists" such as (in the view of Counsel Assisting) Professor Tomsen or Professor Asquith, would be at a disadvantage in the selection process.

667. Counsel Assisting's submission in this respect proceeds upon a strained interpretation of the words in the RFQ and is directly contrary to the evidence of AC Crandell.[524] Ms Sharma also gave evidence that connection to the community and understanding of the subject matter would generally be of assistance.[525] That a connection to the LGBTIQ community was in no way a disqualifying factor for the successful tender is evident when the previous research of Associate Professor Dalton in particular, which includes articles such as "Policing Outlawed Desire: Homocriminality in Beat Spaces in Australia" is considered. Associate Professor Dalton gave

---

[523] Transcript, T929.22-932.14; Transcript, 1212.27-1213.22.
[524] Transcript, T929.22-932.14.
[525] Transcript, T1212.44-1213.15.

evidence that he himself is gay and was widely known to be so at Flinders University,[526] and that in many respects, his previous academic work had been prepared from a perspective that could properly be described as "anti-Police". For example, he observed:[527]

> *…I would have thought anyone scrutinising my back catalogue, if you would like to call it that, would have said that I was very critical of the police and of criminal justice institutions towards - that I was, yeah, very critical of them. I would document their subtle and not so subtle acts of violence in terms of constructing gay men as perverted, deviant subjects who were requiring, both pre decriminalisation and post decriminalisation, very harsh treatment.*
>
> *Q. So you think the objective observer would, if anything, have viewed you as being anti-police rather than anti-gay?*
>
> *A. I would have thought so but - yeah.*

668. Finally, Counsel Assisting also submits at CA, [1138] that the evidence of AC Crandell "in relation to the RFQ was unconvincing" and that "he was plainly involved in its drafting". Such a submission is necessary to found Counsel Assisting's ultimate submissions, as described above, that the insertion of the references to 'collaboration' and the framing of cl. 3.4 was of particular significance in relation to the intended approach to SF Parrabell.

669. AC Crandell agreed that it was unlikely that he had not reviewed the RFQ.[528] However, he expressly denied being involved in its substantive drafting.[529] In rejecting AC Crandell's evidence that he did not have a greater role in the drafting of the RFQ, Counsel Assisting now appears to rely on documentary evidence that establishes that Ms Braw produced an initial draft of the document, Ms Sharma made some amendments and sent the document to AC Crandell, and Ms Braw later sent an email which includes a file entitled "TC edit Request for quote Parrabell.doc".

670. However:

a) this document was never put to AC Crandell;

---

[526] Transcript, T2609.26-37.
[527] Transcript, T2609.6-19.
[528] Transcript, T928.4-6.
[529] Transcript, T927.39-40; Transcript, T930.26-27; Transcript, T932.23; Transcript, T933.40-42.

b) Ms Braw, said to be the author of the original RFQ, was not called to give evidence as to AC Crandell's involvement in the drafting process; and

c) AC Crandell's evidence that he did not have substantive involvement in drafting the RFQ was entirely consistent with Ms Sharma's evidence as to AC Crandell's involvement, as follows:

> *Q. Had you been involved in the drafting or compilation of those documents?*
>
> *A. Yes, I would have been.*
>
> …
>
> *Q. I'm about to come to the actual documents, but do you recall who was in the toing-and-froing in terms of the drafting or contents of these documents?*
>
> *A. I'm fairly certain that Jackie would have drafted the request for quotation using the template that was provided to us, or the two of us could have done it jointly. Generally, how my staff worked is they would work on it and then come to me and then we'd look at a draft together, and then we would have probably sent it off to Mr Crandell as well. I think he would have relied on us to do the majority of the drafting, so I'm guessing that it would be mainly Jackie and I that would have drafted the request for quotation.*[530]
>
> …
>
> *Q. Is it consistent with what you've just been saying that you think that Jackie Braw and yourself in some combination drafted this section [the section in relation to "Challenges"]?*
>
> *A. We would have, yes.*[531]
>
> …
>
> *Q. Did you draft those two sentences or did Jackie Braw draft them or you don't remember?*

---

[530] Transcript, T1211.14-16; Transcript, T1211.29-41.
[531] Transcript, T1212.9-12.

A. *I can't remember.*

Q. *Did Mr Crandell have a role to play in the drafting of this section, 3.4?*

A. *I think he would have relied on us to do the drafting and he would have just looked at it. I don't think that he specifically inserted those lines. I don't think so. I think we did the drafting and he just looked over it.*

Q. *Well – so did you show him a draft or some drafts?*

A. *I think we must have. I can't remember exactly, but I think we must have run it past him.*[532]

671. The file name of a document never put to AC Crandell cannot reasonably be relied upon to reject the evidence of both AC Crandell and Ms Sharma on this point. Even considered in isolation, the file name does not confirm any such edits were in fact made by AC Crandell, the sections which were edited, or the nature of those edits.

672. For the reasons set out above at [654] to [671], the submissions of Counsel Assisting at CA, [1138] should be rejected.

***The tender and selection process***

673. The three teams of academics who had shown a willingness and interest in tendering for the review were provided with the RFQ. Those teams were the Lee/Crofts/Tomsen team (from the University of Sydney); the Asquith/Dwyer team (from Western Sydney University and the University of Tasmania); and the Dalton/de Lindt/Tyson team (from Flinders University in South Australia).

674. Each team submitted a written tender proposal. Each of those proposals were reviewed and scored by a panel comprising AC Crandell (as the Commander in charge of SF Parrabell), Ms Sharma (as Manager, Program Development Team, Operational Programs), Mr Chris Devery (as Manager, Research Coordination Unit, Education & Training Command) and Ms Braw (as Senior Policy Officer, Operational Programs).

675. At the completion of that process, the Dalton/de Lindt/Tyson team from Flinders University had achieved the highest score and was awarded the tender.

---

[532] Transcript, T1218.21-34.

676. Counsel Assisting submits at CA, [1171] that:

> *…the evidence points to the distinct possibility that the criteria were interpreted, whether deliberately or otherwise, in ways which advantaged the Dalton/de Lint/Tyson team, and disadvantaged both the Lee/Crofts/Tomsen team and the Asquith/Dwyer team, with the consequence that researchers with the most experience and expertise in the areas the subject of SF Parrabell were rejected in favour of academics with little if any experience in those particular areas.*

677. Counsel Assisting submits further that "NSWPF effectively excluded the possibility of engaging with an academic review team with substantial and recognised expertise, which could have provided far more credible assessment and review of the process" (CA, [1172]).

678. That the tendering process and selection for the review of SF Parrabell was anything other than transparent, competitive and fair is rejected by the Commissioner of Police.

679. As to why the Lee/Crofts/Tomsen team and the Asquith/Dwyer team received lower scores (and accordingly were not successful) is readily justified in the tender evaluation document which is now considered.[533]

Lee/Crofts/Tomsen tender proposal

680. First, it was the view of the evaluation team that the proposal from the Lee/Crofts/Tomsen team was "threadbare" and the detail of the proposal was "unclear".[534] This team therefore received a low score in relation to the criterion "proposed solution meets requirement of RFQ". Counsel Assisting do not suggest that this finding by the evaluation panel was incorrect.

681. Secondly, the evaluation team recorded that Professor Tomsen had failed to disclose or declare an association with SF Parrabell in that team's response to the RFQ, and that there was no information in the response as to how that association would be addressed by the team. The evidence before the Inquiry shows that Professor Tomsen was in fact involved in compiling the original list of the 88 cases to be considered during Parrabell.. Ms Sharma gave evidence that her recollection was that this was the "undisclosed association" referred to in the evaluation report in relation to Professor Tomsen.[535]

---

[533] Exhibit 6, Tab 22 (SCOI.77324).
[534] Exhibit 6, Tab 22 (SCOI.77324), p. 15.
[535] Transcript, T1231.26-1232.4.

682. While the *existence* of this potential conflict was not a disqualifying factor, the fact the Lee/Crofts/Tomsen team had (i) failed to declare the conflict; or (ii) detail how the conflict would be addressed by the team to ensure it was able to achieve the objectives of independence and objectivity, was understandably of concern to the evaluation panel. It is submitted that any objective observer presented with a tender proposal which fails to declare an obvious conflict, let alone detail how that conflict could be addressed, would have understandable concerns about the team's objectivity or independence, and the score ultimately awarded would reflect that concern.

683. In the submission of the Commissioner of Police, this was a very reasonable concern to hold in circumstances where the relevant conflict was that one of the team members was a creator of the very list under consideration. A creator of the original list was, at least, likely to be perceived as being protective of it, and an acknowledgement of that conflict and a proposal of how it was to be addressed should have been included in the Lee/Crofts/Tomsen team proposal.

Asquith/Dwyer tender proposal

684. First, this proposal was considerably more expensive (by between approximately $25,000-$35,000) than the other proposals and accordingly received a low score for the criterion of 'value for money'. 'Value for money' is understandably an important component of a government tender that is funded via public funds. In particular, justifying the acceptance of a tender that is between approximately 50% and 80% more expensive than the relevant competitors would be nigh-on impossible in any public-sector environment.

685. Secondly, as to the small (and only other) deduction this team received for 'objectivity' and 'independence', this was on the basis that Professor Asquith has previously done work for the NSWPF. While again this was not a disqualifying factor, in AC Crandell's evidence he indicated that he saw that prior association as a factor which might give rise to a perceived lack of objectivity. Despite the professional respect AC Crandell had for Professor Asquith and her work, he did not "want a suggestion that [he had] hand-picked reviewers at all".[536] Given the public scrutiny that would be afforded to the Parrabell Report, it is submitted that that was an

[536] Transcript, T950.33-39.

entirely appropriate consideration in the context of the tender evaluation process. As emphasised in the evidence of AC Crandell:[537]

> *It was critical for the credibility of the review that any selected university could withstand criticism that findings were influenced by local vested interests or preconceptions (either for or against the NSWPF). I am not suggesting lack of impartiality on the part of Sydney or universities within NSW; however, those perceptions were clearly addressed with an out-of-jurisdiction contractual appointment.*

Comparison as between Dalton/de Lint/Tyson team tender proposal and other two proposals

686. By way of comparison, the Dalton/de Lint/Tyson team tender proposal scored highly in the three areas in which the other teams had been marked down. That is, their tender proposal was substantially more cost effective than the Asquith/Dwyer proposal, their tender proposal clearly met the RFQ requirements, and they had no possible or perceived conflicts that could impact upon their objectivity or independence. It is submitted their scores in these areas should be uncontroversial.

687. As to the general submission made by Counsel Assisting (CA, [1158]–[1159]) that it was somehow inappropriate for the Dalton/de Lindt/Tyson team to receive the same score as the other two teams for criteria 2 (Demonstrated capability to provide services, including support, of comparable complexity and size) and criteria 3 (Demonstrated experience in supply of similar services within Australia), that submission fails to take a holistic view of the relevant experience and expertise of each academic review team.

688. Counsel Assisting has chosen to interpret those criteria as requiring demonstrated experience in the area of LGBTIQ hate crime in Australia, which all (including Professor Asquith) seem to acknowledge is a very limited field of expertise which very few possess.[538] It is submitted that the criteria were, in fact, not so limited. Each team possessed highly experienced academics, who had demonstrated *capability* to perform an academic review. When looked at through the lens of capability to conduct the exercise, the panel considered all teams had the ability to do so and all were accorded a 5/5 rating. This does not demonstrate the Dalton/de Lint/Tyson team

---

[537] Exhibit 6, Tab 4 (SCOI.76961), [79].
[538] Transcript, T2804.13-19.

was favoured. Each team also demonstrated *experience* with the subject matter of the review. While Associate Professor Dalton professed he was not an "expert per se in 'hate crime'" he nevertheless indicated he had "an excellent grasp of this academic literature, particularly as it relates to the commission and indicators of homophobic violence [bias crime]".[539]

689. In support of this interpretation, Counsel Assisting seeks to characterise AC Crandell's evidence as reflecting "determined resistance" to the suggestion that Professor Asquith and Professor Tomsen were experts in their field of hate crime (CA, [1161]). That is an unfair characterisation. The exchange between Counsel Assisting and AC Crandell in the course of his oral evidence discloses there was some confusion, stemming from what AC Crandell saw as a distinction between the words 'expertise' and 'experience'. That AC Crandell would (accurately) see those as distinct and different terms is not a foundation for criticism. However, AC Crandell accepted in evidence that Professor Asquith and Professor Tomsen were experts in hate crime.[540]

690. At CA, [1162], Counsel Assisting also emphasises that AC Crandell "flatly disputed the proposition, put to him by the Commissioner, that the most significant factor would be the level of experience in the particular motivation that SF Parrabell was concerned with". The fact that the experience of the tendering teams was one of many factors to be considered in the context of the tender is uncontroversial. The NSWPF personnel conducting the tender assessment process were bound by the NSWPF Procurement Policy in force at the relevant time. They were not free, for example, to determine that cost was not a relevant consideration. As AC Crandell emphasised, he was looking for the "the best qualified person with objectivity, and demonstrated objectivity".[541] Again, the fact that Professor Asquith, for example, may have had greater experience in the sphere of hate crime *per se*, does not mean that it was unreasonable for the evaluation panel to conclude that the Dalton/de Lint/Tyson team were also entirely capable of performing the work and award them a score accordingly. A score of "5/5" (assigned to both the Dalton/de Lint/Tyson team and the Asquith/Dwyer team) required an assessment that the relevant team's proposal was "excellent" in relation to the relevant criterion and not that they were the best of the tenderers in this respect.[542]

---

[539] Exhibit 6, Tab 25 (SCOI. 75775), p. 25.
[540] Transcript, T953:34-955:17.
[541] Transcript, T950.45-46
[542] Exhibit 6, Tab 22 (SCOI.77324), p. 10.

691. This approach does not evidence any intention by the evaluation team, or AC Crandell, to unduly favour the Dalton/de Lint/Tyson team over the other two academic review teams, as submitted by Counsel Assisting (CA, [1172]). To attribute such motivations to AC Crandell or the evaluation panel is simply not open on the evidence, particularly in circumstances where, for example, AC Crandell had Professor Asquith in mind from a very early stage and clearly held her work in high regard.[543] It also ignores the presence of, and assessments conducted by, panel members entirely independent of the work of SF Parrabell such as Dr Chris Devery, and unfairly and baselessly calls into question their integrity.

***Findings urged by Counsel Assisting not open***

692. Contrary to the submissions of Counsel Assisting, there is no evidence to suggest that the:

a) process of searching for appropriate academics;

b) request for tender; or

c) tender evaluation process,

for the academic review of the work of SF Parrabell was anything other than transparent, objective and fair.

693. In particular, the submissions of Counsel Assisting seek to attribute some ulterior motivation to AC Crandell and/or the evaluation team concerning the selection of Dalton/de Lint/Tyson team as the preferred tenderer. These assertions are grave and without any proper evidentiary foundation. Findings in accordance with them are not open to the Inquiry.

694. An examination of the tender evaluation document demonstrates the lower scores assigned to the Lee/Crofts/Tomsen team and Asquith/Dwyer team are readily justifiable in light of, *inter alia,* the "threadbare" proposal submitted by the Lee/Crofts/Tomsen team which failed to acknowledge a very relevant potential conflict, and the significantly more expensive proposal by the Asquith/Dwyer team.

695. Further, the fact that Professor Asquith, for example, may have had greater experience in the sphere of hate crime *per se*, does not mean that it was unreasonable for the evaluation panel to conclude that the Dalton/de Lint/Tyson team were also entirely capable of performing the work

---

[543] Exhibit 6, Tab 36 (SCOI.74172).

and award them a score of "5/5". Such a score reflected an assessment that the relevant team's proposal was "excellent" in relation to the relevant criterion and not that they were the best of the tenderers in that respect.[544] There is nothing to indicate that the RFQ was required to be scored on a bell curve.

696. Finally, as is evident from the selection of Associate Professor Dalton, himself a gay man with an academic background that included relevant research best described as having been conducted from an "anti-Police" perspective,[545] a connection to the gay community was not something that the NSWPF sought to avoid. Rather, given the purpose of the review was to attempt to bring some comfort to the LGBTIQ community via an independent and impartial assessment of the work of SF Parrabell, what was sought to be avoided was something that might have impacted upon the relevant academic's ability to bring an independent mind to bear on the task at hand, or otherwise given an appearance of a lack of objectivity.

697. The Commissioner of Police submits that for the reasons set out above, the findings urged by Counsel Assisting at CA [1171] and [1172] are not open on the evidence.

---

[544] Exhibit 6, Tab 22 (SCOI.77324), p. 10.
[545] Transcript, T2609.6-19.

## Part H: SF Parrabell and the academics' methodology

### *Introduction*

698. As set out in Part G of these submissions, the tender for the review of the work of SF Parrabell was awarded to the Flinders University team, comprised of Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson.

699. Associate Professor Dalton has a Masters in Criminology and obtained his PhD in Philosophy (Criminology).[546] At the time of the review, he was an Associate Professor in criminal justice at the School of Law at Flinders University. He has extensive experience in relation to policing, homosexuality and public space, with the Acting Executive Dean of Law of Flinders University observing "he is an acknowledged expert in the field of policing as it relates to sexuality, and sexual identity". Professor de Lint has a Masters and a PhD in Criminology and at the time of the review, was a Professor in criminal justice at the School of Law at Flinders University. He has published extensively, with his research areas including security and policing, and has significant experience in large-scale research projects. Dr Tyson has a PhD in Criminology and at the time of the review was a Senior Lecturer in Criminology at the School of Humanities and Social Sciences at Monash University. Her research areas are in intimate partner violence and domestic homicides and she has completed many research projects, including using qualitative research methods.

700. The purpose of the academic review is addressed in Part G of these submissions at [632] – [638] and Part I at [787] – [788].

701. Counsel Assisting's submission that the Academic Review Team were "far more collaborative than they were independent" (CA, [1181]) should not be accepted: there is no evidence to suggest collaboration between the Academic Review Team and SF Parrabell that resulted in any loss of independence or objectivity in the Academic Review Teams review. This is addressed in Part G at [654] – [659] in relation to the RFQ, and at length in Part F at [563] – [596] in relation to the interaction between the Academic Review Team and members of SF Parrabell.

702. Consideration of the services in the RFQ (CA, [1183]) is also undertaken in Part G at and Part I.

---

[546] Exhibit 6, Tab 25 (SCOI. 75775), pp. 25, 32, 36 – 45.

703. The submissions for the Commissioner of Police in this section address a number of the criticisms made by Counsel Assisting of the approach adopted by the Academic Review Team in their review of SF Parrabell's work.

***Rejection of the BCIF***

704. It is uncontroversial that the Academic Review Team did not utilise the same methodology in their review as SF Parrabell. In particular, they did not use the BCIF.

705. In the Academic Report, the Academic Review Team sets out their concerns with the BCIF and the approach adopted by police as follows:

> *FN 20 Whilst the NSWPF placed great faith in this instrument, the academic team were surprised to discover that scarcely any academic literature exists that has evaluated or critiqued this instrument. Indeed, our search efforts could not even locate one academic article. Nor could the NSWPF supply such an article when requested to do so. In the face of an apparent dearth of such literature, the academic team are reluctant to endorse these indicators. The academic team are not decreeing they are wholly deficient and needing to be dropped, but we would have liked to garner independent evidence that they are indeed 'best practice' for law enforcement. We note here that with few choices available (the UK model is over-inclusive because it pivots on victim perceptions), the NSWPF worked with this instrument despite empirical evidence for its efficacy.*[547]
>
> *…*
>
> *As academics, we commenced our assessment of the SFP review with a query concerning the authorities cited by the police to support the use of the BCIRF instrument. We were informed, as per the description above, that the factors were used as prompts and that there is no necessary correlation between or weighting of any of the factors and a determination of bias. There was no viable reference to witness or victim perception (factor 6), and there were several factors that we preferred to interpret as rightly falling under motive. We also determined that the BCIRF may have*

---

[547] Exhibit 1, Tab 2 (SCOI.02632), FN 20.

> *produced a lack of distinction between categories of bias, such as evidence of the character of motivation, that are germane to this investigation. This was the finding upon attempting to use the BCIRF in categorising the cases. This led to the querying of the values or factors and to the definition of bias used by police and by those who developed the original and subsequent lists. Whilst we most often agreed on the result, we were less enthused about the means. For instance, there is often much surmising in relation to the concept of 'gangs,' without getting behind the key factors that makes the term 'gang' relevant, those key terms being communication and association on a relation of bias. Here and on other factors of the BCIRF, it is the underlying connection with bias that is important. In sum, we were uncertain of the relation between a quantitative scoring of the 10 indicators and the summary conclusions, particularly, we felt that the scoring should be driven from the key elements of bias definition.*
>
> *In the course of conducting our academic review, we determined that we needed to get behind the BCIRG [sic] instrument and re-interpret the summary evidence that was given. As we scanned the summaries, we became aware that we needed to distinguish the direction of the animus, because it appeared that there were many cases in which there was a potential to over-categorise anti-gay bias. We determined that a proper evaluation of the cases required more than a reproduction of the methodology used by the NSWPF and its BCIRF, comprising of an 'indicative' list of ten factors. In our re-assessment, we found it necessary to develop a short list of necessary, research-informed factors directly from a definition of bias crime that could then be drawn down to mostly binary categorisations*[548]

706. In short, the Academic Review Team was concerned both about the lack of authority or academic support for the BCIF, and that the indicators used were not sufficiently nuanced. As set out at [560] – [562] of Part F of these submissions, the conclusions reached in the BCIFs by

---

[548] Exhibit 1, Tab 2 (SCOI.02632), pp. 70-71.

SF Parrabell were not a product of some mathematical assessment of the categorisation applied to each of the indicators that appear in the BCIF. Rather, the intuitive judgment of the reviewing officer and, in turn, the senior investigators, was applied to the case, by reference to the salient features identified during the course of the review process. While the Academic Review Team had concerns as expressed in the excerpt above, significantly, those concerns were not such that they considered the indicators were "wholly deficient and needing to be dropped".

707. That these concerns were obvious on the face of the Academic Report is confirmed by the following summary provided by an expert briefed by the Inquiry, Associate Professor Austin Lovegrove, following his review of the Academic Report:[549]

> *[119] The academic team does not regard the BCIF as adequate to the task for two reasons. First, it is accompanied by no evidence regarding its reliability and validity; this includes the constituent elements themselves and the assessments made in relation to these elements considered individually and together …*
>
> *[120] Second, the academic team asserts that as an instrument for the identification of hate, the BCIF is not soundly based or sufficiently nuanced. Assessments not based on key elements of bias as a measure are too crude. With this, they say, the BCIF does not differentiate between different expressions of hate, which reveal variation in motive and have different implications for certainty of classification and for social policy and, consequently (from this perspective), the potential to 'over-categorise' gay bias.*

708. Nor in their oral evidence did the Academic Review Team depart from their assertion in the Academic Report that the issues were *not* such that the indicators were wholly deficient. Counsel Assisting pressed Associate Professor Dalton as to whether he agreed that the BCIF was not fit for purpose or sufficient for the task. Associate Professor Dalton also did not accept this proposition. In response to Counsel Assisting seeking to elicit such evidence in different ways, Associate Professor Dalton gave the following evidence:

---

[549] Exhibit 6, Tab 256 (SCOI.82366.00001), [119]–[120], CA, [1203].

*Well, it was certainly a very imperfect instrument.*[550]

…

*It's a complicated explanation, but sometimes it's not just wise to replicate the use of an instrument and just see if you get a different result using the same instrument. We came to the view ultimately that it was better to engineer a different instrument.*[551]

…

*Finding it hard to answer "Yes" or "No", because it's like there's a lot of qualifiers to it – wasn't sufficient to the task? It was the best that they had and I think they were using it in good faith.*[552]

…

*I – I'm only struggling to answer because the determination of bias is such a profoundly difficult thing to do, and certainly their instrument wasn't particularly good, but nor was it so wholly terrible that it was, like, embarrassing or anything of that nature. It just, because of the fact it came from America and the nature of the way it had been put together, wasn't a sort of wonderful way to go about it.*[553]

709. Similarly, Associate Professor Dalton did not concede, under questioning from both the Commissioner and Senior Counsel Assisting, that the Academic Review Team's exercise was futile as a result of their difficulties with the BCIF:[554]

*THE COMMISSIONER:*

*Q. I take it from what you've said, even though you may not have said it, that that was your brief at the time; that it was likely to be a futile exercise?*

*A. Not wholly futile, but --*

---

[550] Transcript, T2397.17-20.
[551] Transcript, T2397.22-30.
[552] Transcript, T2397.32-41.
[553] Transcript, T2398.8-19.
[554] Transcript, T2447.11-40.

Q. *I didn't say "wholly futile", but did you think in part it was going to be a futile exercise?*

A. *No.*

Q. *So why did you believe that it was a flawed process?*

A. *Because the instrument they had used was fairly flawed.*

*MR GRAY:*

Q. *Well, the instrument was flawed, and according to what we've just been discussing, you understood that the way they were using it was also flawed?*

A. *Yes.*

Q. *Well, that makes it unsustainable, doesn't it? If the methodology is flawed to begin with and then even that methodology is not pursued properly, it's beyond redemption, isn't it?*

A. *No, that's too strong a term, I think.*

Q. *Well, what term should we use, if that's too strong?*

A. *I think we say in our strike force report the identification of bias crime is profoundly fraught and a difficult thing to do. So they were doing the best they could with good intentions.*

710. Professor de Lint also expressly disagreed with the proposition sought to be advanced by Senior Counsel Assisting:

Q. *Now, just coming to the form itself, your team – you and Dr Dalton and Dr Tyson - came to the view, as we see in the report, that the form as an instrument for the Strike Force Parrabell paper review exercise was not fit for purpose?*

A. *I wouldn't say - I wouldn't go that far and say it wasn't fit for purpose. I would say that we struggled to overlay our evaluation using the parameters of the form. That's how I would put it. So - I think "fit for purpose" is very strong. But, you know, it - it provided us – if the purpose was to - for our - to provide us with information in order to see what*

*relevant material, organised in some way, there was in order to make – in order to begin to make an evaluation, then, of course, it was fit for purpose.*[555]

…

*Q. Well, wasn't it your view - tell me if I've misunderstood - that because of all these flaws in the police methodology, their overall approach was at least to some extent misconceived in embarking on this task?*

*A. I think "misconceived" is a strong word. You know, having looked at some of the criticisms of the Levin and McDevitt, and McDevitt et al, research with respect to this, the elements of their form, I think it may be a very difficult task to develop a form which has the requisite - the kind of requirements that, for instance, Austin Lovegrove would prefer to set it at. I think that's - that's - that's why I'm a little bit hesitant now, currently --*

…

*Q. Was the effect, in your mind of those flaws or defects --*

*A. Mmm-hmm.*

*Q. -- such that you felt the form was not realistically useable?*

*A. It was, for us, more difficult to use it than to devise an alternative.*

*Q. But for them, the police?*

*A. I can't speak for them.*

711. In those circumstances, Counsel Assisting's submission that the concerns of the Academic Review Team "are by no means adequately reflected in the [Academic Report]" (CA, [1212]) should not be accepted. For the reasons above, it is submitted that the key concerns identified by the Academic Review Team as to the lack of academic support for the BCIF, and the lack of nuance in the indicators, were clearly reflected in the Academic Report. The Academic Review Team did not materially depart from such propositions in their oral evidence, and significantly, did not depart from their view expressed in the Academic Report that the indicators were not

---

[555] Transcript, T2655.26-40.

wholly deficient, nor accept that the process was not fit for purpose or in turn rendered their own review futile.

712. In any event, as emphasised at [560]-[562] of Part F, SF Parrabell's use of the BCIF and its indicators was not a product of some mathematical or scientific process. Rather, it was an intuitive one, that proceeded by reference to the qualitative information recorded in relation to each document. In turn, the information and views recorded in the BCIFs was analysed by first, the initial investigator, second, one of the senior investigators, and third, the senior investigators as a collective. At each of those review stages, an intuitive judgment was applied.[556] Therefore the BCIF simply provided prompts to reviewing officers as to the factors that might be relevant in each case, and a convenient means by which pertinent factors could be recorded and subject to later review.

713. As to the additional "weaknesses" said by Counsel Assisting to have been identified by Associate Professor Dalton and insufficiently recorded in the Academic Report Report (CA, [1210]):

a) The Academic Report clearly acknowledged the presence of subjectivity in the process undertaken by SF Parrabell, referring to it as "intuitive":[557]

> *Although each indicator was scored, the summary conclusion or finding was not determined by counting the number of 'yes' or 'no' indicators of bias and referencing that number to some sort of table that accorded a finding of bias to a particular threshold number (e.g. seven out of ten indicators). Rather, the process was described as intuitive and relied on qualitative data in the form of contextual information derived from analysing each case. That is, having taken notice of the requisite indicators of bias, the detectives would also take into account the 'Summary of Findings' section – an amalgam of the 'general comments' section that corresponded to all ten indicators.*

b) It is true that Associate Professor Dalton emphasised that a wider problem was a paucity of data to which the instrument was being applied. But this was because of the age of the cases and lack of contemporaneous information available, rather than any omission on

---

[556] Transcript, T752.41-754.20; T806.21-33; 807.16-29; Transcript, T1034.2; Exhibit 1, Tab 2 (SCOI.02632), pp. 67 – 69; Exhibit 6, Tab 386 (SCOI.83388).
[557] Exhibit 1, Tab 2 (SCOI.02632), p. 69.

the part of SF Parrabell.[558] In any event, that paucity of information due to the age of the cases limited the conclusions that could be drawn was squarely acknowledged in the Academic Report:[559]

> *…despite an exhaustive exploration of the archived material, it was ultimately impossible for the detectives to make definitive determinations about many of the deaths under review, and based on available information, the academic reviewers concur. Part of the reason this was the case can be attributed to a relative paucity of information. During the period many of the original cases were examined, the collection/recording and analysis of evidence were not as they are today. Additionally, recent scientific advances in DNA collection and analysis were, of course, not available in the past. This is not to assert that modern standards would have necessarily made a difference to the determinations, but these realties must be understood as part of the complex context of the SF Parrabell review.*

c) In light of the extracts from the Academic Report above at [707] as to the basis for the Academic Review Team's refusal to endorse the NSWPF's approach, it is unclear why Counsel Assisting suggests those reasons are not plain on the face of the report. It is also appropriate to record, of course, that Associate Professor Dalton qualified his answer in relation to the Academic Review Team's issues with the BCIF to note that "there's not many good instruments around".[560]

714. Ultimately, NSWPF was reliant on the Academic Review Team's assessment and expertise as to whether they were able to use the material with which they were briefed to perform the task which they had been engaged to undertake. The evidence falls far short of establishing the Academic Review Team either was of the view that they could not properly carry out their task with the material available to them. In any case, if the Academic Review Team was of such a view, this was never communicated to any member of the NSWPF.[561]

---

[558] Transcript, T2398.43-T2399.15.
[559] Exhibit 1, Tab 2 (SCOI.02632), p. 54.
[560] Transcript, T2443.39-T2444.3.
[561] Transcript, T2616.5-T2617.27.

***Anti-gay bias and "anti-paedophile animus"***

715. As is apparent from the Academic Report, the Academic Review Team were concerned that in many cases there was uncertainty as to whether the motivation by perpetrators for an attack was "anti-paedophile" rather than "anti-gay". They considered it was helpful to distinguish between the two motivations, but it was difficult because they often were (wrongly) conflated in the minds of perpetrators. In particular, the Academic Review Team considered that failing to distinguish between the motivations in this way and "over-including anti-paedophile animus under a straightforward anti-gay animus would be to lend inadvertent support to this historical slander".[562]

716. As a starting point, Counsel Assisting errs in suggesting that the Academic Review Team characterises "a sexual relationship between a man aged between 18-25" and a "much older man" as paedophilia. To characterise a relationship between a 25-year-old man and an older man as "paedophilia" is to "stretch the meaning of the word past breaking point". (CA, [1232]) Rather, the Academic Review Team simply observe that many of the cases the subject of SF Parrabell "involved young men of between 15-25 who killed men aged 45 years or older".[563] That is, the reference to "15-25" was a reference to the age of the perpetrator at the time of the attack, not the age of the person the victim was alleged or perceived to have been involved with.

717. Further, Counsel Assisting's assertion that Associate Professor Dalton "ultimately said that he could neither recall not explain why the academic team drew that distinction" (CA, [1235]) is both inaccurate and unfair.

718. Associate Professor Dalton explained the reasons for drawing the distinction as follows in his oral evidence:

> Q. *In other words, the 12 that you regarded as anti-paedophile, you excluded from the set of anti-gay?*
>
> A. *No, no, that's not - that's not my recollection at all. I'd put it a different way. It didn't seem helpful to categorise anti-paedophile animus merely as anti-gay hate animus. But it certainly counted as anti-gay but it was put into a subcategory, to the best of my recollection.*[564]

---

[562] Exhibit 1, Tab 2 (SCOI.02632), pp. 94-95.
[563] Exhibit 1, Tab 2(SCOI.02632), p. 84.
[564] Transcript, T2410.13-19.

…

*THE COMMISSIONER:*

*Q.* *Do your best, if I may ask, without overly persisting, why did you draw the distinction at all?*

*A.* *Between anti-paedophile animus and anti-gay bias?*

*Q.* *Yes. Why did you even bother drawing the distinction? What was the purpose of drawing the distinction?*

*A.* *Wow, I thought it was most helpful to distinguish between different phenomena, and the animus --*

*Q.* *Why?*

*A.* *Because it seems to me that if you're attacking someone and you're doing so because you hate paedophiles, as opposed to whether you just hate gay people, that the distinction is worth preserving.*[565]

719. Associate Professor Dalton did not have difficulty recalling why the distinction had been drawn. Instead, he had difficulty in recollecting the precise way this distinction had been reflected or "counted" statistically in the report.[566] Such a difficulty with recollection must be viewed in the context of Associate Professor Dalton's emphasis that he was not in a position to accurately answer such questions in circumstances where the report had been prepared more than six years ago and he no longer had access to any of his notes.[567] Nor, contrary to Counsel Assisting's submissions, does Associate Professor Dalton's difficulty in recollecting the method by which this had been reflected from a statistical perspective in the report equate to Associate Professor Dalton not seeking "to adhere to or justify the distinction". (cf CA, [1248]).

720. Further, it is submitted that the evidence of the Inquiry's experts, and Counsel Assisting's submissions at CA, [1245]–[1253], do not seem to account for the fact that in oral evidence, Professor de Lint confirmed that anti-paedophile animus was treated as a *subset* of anti-gay bias.[568] In this way, the inferences sought to be drawn by Professor Lovegrove, that "where both

---

[565] Transcript, T2412.41-T2413.8.
[566] Transcript, T2412.11-17; Transcript, T2412.27-39.
[567] Transcript, T2408.20-24; Transcript, T2408.34-41; Transcript, T2411.36-38; Transcript, T2412.33-39.
[568] Transcript, T2705.35-T2706.26.

anti-gay and anti-paedophile hatred were at play, there was a prevailing team disposition to preference the classification of paedophile over gay"[569] and "it appears that the academics' approach allows for a case where minor anti-gay bias would be trumped by anti-paedophile bias in the categorisation of cases"[570] are not available. In these circumstances, nor can it be said that the result was to obfuscate and downplay the number of bias crimes (CA, [1256]).

721. Ultimately, the Commissioner of Police submits the Academic Review Team's desire to seek to allow some distinction to be drawn between anti-gay animus and anti-paedophile animus was well-intentioned, though misguided. However, it is accepted that the process of disentangling, and appropriately recording, such differences in animus was in practice, fraught. Again, this distinction was not one drawn by SF Parrabell.

***"Anatomy of a Moral Panic"***

Introduction

722. In July 2020 Associate Professor Dalton and Professor de Lint published a journal article called 'Anatomy of Moral Panic: The "List of 88" and Runaway Constructionism'. In oral evidence, both academics agreed Professor de Lint played the lead role in the drafting of the article.[571]

723. The article considers the extent to which the list of original list of 88 deaths, and the public response to the review of that list by SF Parrabell is an example of a "moral panic", or a "demand for an enforcement response disproportionate to a [discovered crime] fact".[572]

724. The Commissioner of Police considers there to be a number of aspects of the 'Moral Panic' article that, having regard to the context, are inappropriate, including reference to gay homicide as a "so-called" problem and references to "fake news". There is no evidence the NSWPF played any part in the preparation or publication of this article. In oral evidence, both Associate Professor Dalton and Professor de Lint expressed their sincere regret about many aspects of the article on the basis that it could be viewed as seeking to diminish a very serious problem, which was never the intention, and Professor de Lint confirmed he wished now that it had never been published.[573]

---

[569] Exhibit 6, Tab 256 (SCOI.82366.00001), [131].
[570] Exhibit 6, Tab 256 (SCOI.82366.00001), [132].
[571] Transcript, T2545.25-35; Transcript, T2826.45-2863.11.
[572] Exhibit 6, Tab 205 (SCOI.82022), p. 1.
[573] Transcript, T2867.13-T2868.6.

Provisional work of the Academic Review Team on the article

725. At CA, [1259]-[1260], Counsel Assisting submits that the "evidence makes clear that the AcademicTeam commenced working on such an article by early 2017 within a few months of starting work on SF Parrabell" and that they had formed at least a provisional view that there was a "moral panic in relation to the deaths the subject of SF Parrabell" that was being "fuelled by moral entrepreneurs or crusaders" and that the "moral panic was not supported by the evidence".

726. This submission is based upon the inferences Counsel Assisting seeks to draw from a draft document of notes taken by Professor de Lint in early 2017, and fails to refer to any of the evidence actually given by Professor de Lint as to the origin, relevance or use of such notes. For example, in response to the suggestion that "as early as February 2017… you already had the view, it seems, that the suggestion of 80-plus gay bias murders amounted to trumped-up facts", Professor de Lint said:[574]

> *Well, when you are talking to yourself, essentially, about a potential academic application for material, you scope out possibilities. They may not represent the - certainly the totality of your personal introspection on a subject. So in terms of an angle for an academic paper, what I do in talking to myself is scoping out possible scenarios.*
>
> *You know, another scenario would be, you know, if 88 cases are found to be gay bias related, then the material of Parrabell would produce a paper that would be very interesting because it would support what's already evidently believed with respect to the incidence of gay bias homicide. So, I mean, there are various types of scoping that a person does for papers. They're not necessarily reflective of the full or complete interpretation of an event; they are an angle on an event, and this is an academic exercise.*
>
> *Now, other scoping events in terms of possible approaches or takes on information may be, as I just mentioned, quite different and go in a completely different direction.*

---

[574] Transcript, T2772.18-40.

727. He also sought to emphasise that this was simply one aspect of his thought process,[575] and that the ultimate construction would be dependent on what could be uncovered with respect to the facts.[576] That is "It is one view of a treatment of a possible paper. As I say, there could – there could easily be other treatments depending on how things work out in terms of whatever the empirical record shows."[577] Associate Professor Dalton gave evidence that he had never seen the notes.[578]

728. The Commissioner of Police submits the evidence establishes no more than that, as at February 2017, Professor de Lint considered there was a possibility the number of gay-hate deaths had been overestimated. That this was a possibility would have been evident from the completed BCIFs which would have indicated the number of deaths characterised as possible or suspected gay-hate crimes by SF Parrabell was far fewer than 88. There is no evidence to support the assertion that the "Academic Team had commenced working on the article" in circumstances in which Associate Professor Dalton gave evidence he had never seen the notes relied upon, and Professor de Lint gave evidence that they were notes of but one possible outcome that was dependent on the facts that were yet to be determined.

<u>The relationship between the 'Moral Panic' article and review of SF Parrabell</u>

729. At CA, [1266]–[1283] Counsel Assisting seeks to weave elements of the 'Moral Panic' article, published in 2020, together with elements of the Academic Report, in an effort to found a submission that "there is an inescapable inference that the academic team approached its review of the work of SF Parrabell, first, knowing that the NSWPF viewed the "88" number as a gross exaggeration, and secondly, sharing that view. That view, it is submitted, infected the Academic Review Team's approach to the SF Parrabell exercise from the outset.(CA, [1282]–[1283]).

~~730.~~ For the reasons above, it is submitted the presence of draft notes by Professor de Lint in February 2017 flagging a possible exaggeration of the numbers of gay-hate murders, which he emphasised in oral evidence was but one possibility he was considering at the time, falls far short of establishing the Academic Review Team failed to approach their task objectively, or that they set about to downplay the number of gay-hate murders in support of the view that they had been exaggerated. This is an extraordinary allegation, one which seeks to impugn the integrity

---

[575] Transcript, T2773.3-13.
[576] Transcript, T2773.37-39.
[577] Transcript, T2775.37-47.
[578] Transcript, T2538-2539.

of three academics, one of whom has not been called to give evidence. It was expressly disavowed by both Associate Professor Dalton and Professor de Lint[579] and is founded on nothing more than wholly speculative inference. As noted by Associate Professor Dalton, if downplaying the number of gay-hate murders had been the aim, there would have been far more straightforward ways of achieving it.[580]

731. In the absence of evidence demonstrating that an article published well after the conclusion of the work of the Academic Review Team was so well-advanced that it infected their approach to their review of SF Parrabell many months earlier, one is left with the far more likely scenario, consistent with the evidence, that the substance of the article, including the conclusions reached, was prepared *after* the Academic Review Team had conducted its review. Indeed, there is positive evidence to suggest this is the case: in an email from Professor de Lint to Associate Professor Dalton dated 18 April 2018 (in circumstances where the Academic Review Team had completed their work on the Parrabell review by mid-late 2017)[581] he states "am beginning the paper on moral panics".[582]

732. Ultimately, Counsel Assisting's submissions put the cart before the horse; the 'Moral Panic' article was a product of the observations made by the Academic Review Team in the conduct of their review. There is no evidence that it was a reflection of views they held prior to conducting the review. However ill-advised the subsequent article was, the evidence simply does not establish that the Academic Review Team set about to demonstrate there had been a "gross exaggeration" of gay hate deaths, and conducted their review in this light. In these circumstances, Counsel Assisting's submissions at CA, [1282]-–1283] cannot be accepted.

## The Inquiry's experts

### *Objectivity and experience*

733. As set out previously, the Inquiry briefed three experts to assist it in reviewing the work of both SF Parrabell and the Academic Review Team: Professor Nicole Asquith, Associate Professor Austin Lovegrove and Ms Martha Coakley (the **Inquiry's experts**). Each of the Inquiry's experts prepared a report that was tendered, and gave oral evidence before the Inquiry.

---

[579] Transcript, T2428.8-19; Transcript, T2773.17-29; Transcript, T2776.30-2779.12.
[580] Transcript, T2613.18-T2614.30.
[581] Transcript, T2771.15-21.
[582] Exhibit 6, Tab 277 (SC01.80025).

734. All three of the experts briefed by the Inquiry make a number of criticisms about the approaches and methodologies adopted by both SF Parrabell and the Academic Review Team. Some of these criticisms will be addressed specifically in the section which follows in response to the submissions made by Counsel Assisting.

735. However, some observations should be made about each of those experts.

Ms Martha Coakley

736. Ms Martha Coakley is a lawyer at Foley Hoag LLP, a law firm in Boston, Massachusetts in the United States. She has experience as a prosecutor, particularly in relation to organised crime, public corruption and child abuse. Between 2006 and 2015, she was the Attorney General of Massachusetts. Between 2015-2019 and 2022-2023, Ms Coakley assisted the United States legal team pressing for a reinvestigation into the death of Scott Johnson.

737. Ms Coakley, while undoubtedly a very experienced American lawyer, agreed:

a) she had never worked in Australia;

b) she had never conducted any research in Australia, and indeed had not conducted any criminological research studies more generally;

c) her exposure to issues relating to violence against the LGBTIQ community in Australia was limited to her involvement in Mr Johnson's case; and

d) her knowledge and understanding of other cases involving the deaths of members of the LGBTIQ community in Australia was limited to what she saw and heard in the media.[583]

738. Ms Coakley agreed that in preparing her report for the Inquiry, she had not been briefed with any of the case files associated with the deaths under consideration by the Inquiry, she had not reviewed any of the completed BCIFs, she had not spoken to either the investigators involved in SF Parrabell or the Academic Review Team, and was not aware of any of the evidence they had given before the Inquiry. Despite the limited scope of material available to her, Ms Coakley was, surprisingly, reluctant to agree that this limited her insight into the thought processes of, communication between, and reviews conducted by SF Parrabell and the Academic Review Team that were not apparent on the face of the Parrabell Report.[584]

---

[583] Transcript, T2722.30-2724.8.
[584] Transcript, T2727.31-2731.6.

739. It is submitted that Ms Coakley could and did properly assist the Inquiry as to the development of the document by McLaughlin et al, 'Responding to Hate Crime: A Multidisciplinary Curriculum for Law Enforcement and Victim Assistance Professionals/' (from which the indicators used in SF Parrabell were primarily drawn), and its use in the United States. Similarly, she could and did offer her views, based on her experience as a prosecutor, in relation to the investigation of homicides and reinvestigation of unsolved cases by police, and the resources required.

740. However, in the absence of any experience in conducting criminological research studies whether in Australia or overseas, in the Commissioner of Police's submission, Ms Coakley did not have the expertise, in the sense of having specialised knowledge, to offer an opinion as to the appropriateness of the methodology adopted by the Academic Review Team. Her opinions and criticisms in this regard should therefore be attributed little weight.

741. Similarly, her opinions as to the methodology and processes adopted by SF Parrabell must be considered in the context of the very limited information with which she was briefed by the Inquiry.

Professor Asquith and Associate Professor Lovegrove

742. Professor Asquith is the Chair and Professor of Policing and Emergency Management at the University of Tasmania. She completed her PhD in the role of hate speech in hate crime and has published a large number of publications in hate crime or violence against LGBTIQ people.

743. However, it must be recorded that Professor Asquith was one of the unsuccessful tenderers for the SF Parrabell academic review. Generally, previous involvement in a matter would mean an expert would not be engaged to provide an independent opinion and critique of such work on the basis of a possible or perceived conflict of interest. It is surprising that Counsel Assisting in their submissions do not acknowledge the potential for the objectivity of Professor Asquith to be compromised, or at least perceived to be compromised, on this basis.

744. Associate Professor Austin Lovegrove has a PhD in psychology and is an Associate Professor and a Principal Fellow at the Law School of the University of Melbourne. Associate Professor Lovegrove has undertaken a number of research projects in behavioural and social sciences.

745. Associate Professor Lovegrove frankly agreed he did not have any experience in, and had not conducted any research into, hate crimes generally or anti-LGBTIQ crimes specifically.[585]

---

[585] Exhibit 6, Tab 256 (SCOI.82366.00001), [2]; Transcript, T2888.18-27.

Rather, his assessment of the work of SF Parrabell and the Academic Review Team was guided by his experience in the conduct of research projects and the acquisition, analysis and presentation of empirical data.[586] The opinions expressed and conclusions drawn by Associate Professor Lovegrove must be considered in this light.

746. None of the experts called by the Inquiry had the benefit of evidence from AC Crandell, the academics or the senior investigators or reviewing officers of SF Parrabell as to the methodology actually employed by SF Parrabell.

747. Consideration of the degree to which this caused the experts to proceed on the basis of a false premise in their consideration of the use of the BCIFs is addressed in detail at [600] – [605] of Section F of these submissions.

***Submissions made by Counsel Assisting***

748. The Commissioner of Police makes the following brief submissions in response to various criticisms made by the Inquiry's experts, and highlighted by Counsel Assisting in their submissions. However, the Commissioner submits that it is the conclusions reached by the Inquiry's experts as to the approach they say should have been adopted by SF Parrabell and the Academic Review Team that are of greater significance. That issue is addressed in the next section of these submissions.

<u>The Academic Review Team's reliance on the BCIFs</u>

749. It is accepted that a relevant limitation of the Academic Review Team's work is that they did not access the underlying source material, and instead relied upon the completed BCIFs. It is clear from the RFQ that it was NSWPF's initial intention for such material to be reviewed by the Academic Review Team.[587] However, while the evidence is somewhat unclear, it appears uncontroversial that it quickly became apparent to Associate Professor Dalton and AC Crandell that this was not going to be feasible from either a timing or resourcing perspective given the volume of that material.[588]

750. But while undoubtedly a relevant limitation, it is not accepted that this is a basis on which to entirely reject the Academic Review Team's conclusions (cf CA, [1294]). Even Professor Asquith

---

[586] Exhibit 6, Tab 256 (SCOI.82366.00001), [2].
[587] Exhibit 6, Tab 23 (SCOI.76961.00007), [4.1].
[588] Transcript, T2616.5-T2617.27.

references the approach taken by the Academic Review Team resulting from that data as being of limited – and not no – utility in evaluating SF Parrabell's methodology.[589] Nor would access to the source material available to SF Parrabell have solved the further issue identified by Professor Asquith as to the competency of, and absence of bias, in the original police investigations.[590] In order to properly address that issue, and as acknowledged by Professor Asquith, the Academic Review Team would have been required to, at least, interview the original OICs,[591] which may have in some cases proved impossible due to the passage of time. The Academic Review Team also considered this would require a further, separate study "underpinned by a rigorous empirical methodology that would begin with a selection of cases where there is the strongest evidence that the crime was an anti-gay bias crime against a strong control group that possessed like factors excepting that one".[592]

751. In any event, NSWPF was entitled to and did rely on the Academic Review Team's expertise to identify and communicate if the inability to access the case files was such as to render their task impossible or futile. They did not do so.

752. For completeness, it is noted that CA, [1297] of Counsel Assisting's submission is not based on any evidence, was not put to any of the experts, and is entirely speculative. There could be any number of reasons for the difference between the number of cases categorised as "Insufficient Information" as between SF Parrabell and the Academic Review Team.

Terminology used

753. While it is accepted that it would have been entirely appropriate for more detail as to the specific experiences of transgender women to have been included in both the Parrabell Report and the Academic Report, both reports do reference, and clearly intend to extend to, the LGBTIQ community and not simply gay men.[593] To the extent there is a degree of focus on the experiences of gay men, this is reflective of the fact that the majority of persons on the list of 88 were men, and cannot be interpreted as an intention to minimise or erase the experiences of other members of the LGBTIQ community (cf CA, [1300]).

---

589 Exhibit 6, Tab 255 (SCOI.82368.00001), [199].
590 Exhibit 6, Tab 255 (SCOI.82368.00001), [198](a) and (c).
591 Exhibit 6, Tab 255 (SCOI.82368.00001), [158]; Transcript, T2820.27-2821.18.
592 Exhibit 1, Tab 2 (SCOI.02632), p. 58.
593 Exhibit 1, Tab 2 (SCOI.02632), pp. 12, 18, 54, 71, 108.

754. Nor is it accepted that "transgender women who were included in the original "88" (as well as the "85") seem to have disappeared or have been deadnamed by the authors of both the SFP Final Report and the academic review" (cf, CA, [1299], Asquith Report at [169]). For a number of reasons, including privacy, protection of family members and preventing prejudice to future investigations, very few references to the victims in any individual cases – whether the victim identified as transgender, gay or otherwise – appear in either the Parrabell Report or the Academic Reports.

Partial motivation

755. Counsel Assisting's submissions at CA, [1302]–[1307] seem to proceed on a misapprehension of the evidence as to the way the Academic Review Team approached the issue of "partial motivation", in particular in relation to robbery.

756. The issue of partial motivation – or where a perpetrator was or was possibly motivated by more than one factor – was one the Academic Review Team made clear that they struggled to grapple with, recording the following in the Academic Report:[594]

> *Robbery was an extremely problematic facet in some of the cases we looked at. In those cases where it appeared to be a principal organising factor behind a crime, it was profoundly challenging to accommodate how the notion of anti-gay bias played out; if at all.*
>
> *…*
>
> *Often the academic team was left to speculate. If gay men were targeted due to their perceived vulnerability and a concomitant logic that they had cash or possessions worth stealing, this begs the question whether this is factual anti-gay bias, or merely the sorts of expedient, target choices that perpetrators make when selecting potential victims…*

757. However, while their ultimate treatment of such cases was somewhat opaque on the face of the report, the nature of their approach was squarely put to the Academic Review Team and clarified in oral evidence. In particular, Professor de Lint said:[595]

---

[594] Exhibit 1, Tab 2 (SCOI.02632), p. 102.
[595] Transcript, T2703.18-T2704.22.

Q. *So with the robbery case – and there were some cases in the list that had a robbery possibility, at least in them –*

A. *Yeah.*

Q. *-- was your approach to say that well, if it was a gay person being robbed, even if it was only because, seemingly they were a vulnerable target who might not report the crime, or something, would that be a bias crime or would that be excluded because it was really a robbery?*

A. *What do you mean by reporting the crime?*

Q. *I will go back a step. I thought you were referring to cases of robbery of a gay person, which might be explained by the fact that the gay person was easy prey for a robbery, rather than being attacked because he was a gay person; I thought that's what you were getting at?*

A. *Yeah, I was getting at that if a person selects an individual for the target of robbery, for the purpose of robbery, because they perceive that person to be particularly vulnerable due to their being gay, then that is a bias crime.*

…

*THE COMMISSIONER:*

Q. *So it follows from that, does it, that you would include those matters where there were mixed motives?*

A. *Where there were what?*

Q. *Mixed motives?*

A. *Yes. Can you --*

Q. *I'm so sorry. Provided there was a gay hate bias aspect to it?*

A. *Yeah, provided that the harm was intended targeting that individual because - partly because, because if robbery is the other part --*

Q. *Yes?*

A. *-- they are more vulnerable because of their category.*

758. Professor de Lint also confirmed the position in response to questions from Senior Counsel for NSWPF:

> *Q. I think Counsel Assisting questioned you about the robbery situation --*
>
> *A. Yes.*
>
> *Q. -- where the person is a victim of robbery because they're perceived to be gay --*
>
> *A. As vulnerable --*
>
> *Q. -- and they're perceived to be vulnerable?*
>
> *A. -- and in a category, yeah.*
>
> *Q. You said you would categorise that as a gay hate crime?*
>
> *A. Yes, yes.*
>
> *Q. Even though there's an aspect of robbery?*
>
> *A. Yes. Yes, I said that the person is targeted for robbery because they are vulnerable - they have a vulnerability attached to their status, and so that targeting is the bias. And it - and so you can - it can - it can be that the person's primary motivation is robbery, and alongside that motivation of robbery, there is a targeting, and the targeting involves the bias.*
>
> *Q. So even if the primary motivation is robbery and a secondary motivation is a gay person is an easy target, would that still be categorised as a gay hate crime?*
>
> *A. Yes.*

759. For this reason, Counsel Assisting's submissions at CA, [1304] and [1307] are misconceived: in circumstances where members of the LGBTIQ community were targeted for robbery because of their identity as members of the LGBTIQ community – they were characterised as a bias crime by the Academic Review Team.

Victim perceptions

760. It is uncontroversial that victim perceptions can play a legitimate and important role in the identification and investigation of any crime.

761. However, as conceded by Counsel Assisting, their reference to Professor Asquith's preference for a "subjective, UK approach to hate crime" which utilises a victim-centred approach may be of limited assistance in relation to the identification of hate crime deaths (CA, [1310-[1313]).[596] It is submitted this must be the case and accordingly, the NSWPF (or the Academic Review Team) cannot be criticised for not adopting it in the context of SF Parrabell.

762. In relation to the additional point sought to be made by Counsel Assisting – that members of the LGBTIQ community might have knowledge about the nature of hate crimes more generally – which should be taken into account in a review of this nature, and the Academic Review Team failed to do so:

a) this failure was not put to Associate Professor Dalton or Professor de Lint, despite Counsel Assisting now asserting they seem to have misunderstood the criticism made against them in their response document to the Inquiry's experts' reports (CA, [1317]-[1318]);

b) the section of the Academic Report quoted by Counsel Assisting at CA, [1318] is not supportive of the conclusion that the Academic Review Team "did not consider such knowledge to be of any particular relevance", and rather should be interpreted to mean what it says: that the LGBTIQ community will not be the only group interested in this issue, nor can it be presumed that any member in the LGBTIQ community will prefer a particular finding; and

c) that engagement with and assistance from the community is important and valuable is expressly referenced in the Academic Review Team's recommendations:[597]

> *To arrive at a good measure of reliability and validity for this, or any such instrument, requires a methodologically rigorous evaluation. In any case, it would be prudent to consult widely for diverse expertise on the development of such an instrument. The development will also benefit from community engagement.*

---

[596] Exhibit 6, Tab 255 (SCOI.82368.00001), [119]-[132].
[597] Exhibit 1, Tab 2 (SCOI.02632), p. 108.

*Community engagement on bias crime is an opportunity not only to develop or improve a protocol, but also to educate community leaders on the necessity of policing bias from evidence.*

Intuition and objectivity

763. Counsel Assisting allege the Academic Review Team "sought to emphasise the objectivity of its own process" (CA, [1321]) and claimed "to have delivered an "objective" review" (CA, [1324]). Where such claims are said to have been made or emphasised by the Academic Review Team is not identified by Counsel Assisting. It is therefore impossible to confirm whether in such instances the Academic Review Team were referring to objectivity in the sense of offering an independent review of SF Parrabell (which is addressed elsewhere in these submissions), or an objective approach as distinct from a subjective approach to the identification and classification of bias crimes.

764. In respect of the latter, contrary to Counsel Assisting's submissions, the Academic Review Team squarely acknowledged in oral evidence that their approach involved the application of subjective opinions (cf CA, [1321]).[598]

765. However, they also made two important points in this respect that Counsel Assisting has omitted to refer to:

a) first, *any* exercise of this nature involves an element of subjectivity.[599] Such subjectivity is evident in Counsel Assisting's own assessment of the cases in the context of the tender bundle hearings, in that ultimately, someone has to make an assessment as to whether the particular incident was likely to be motivated by anti-LGBTIQ bias or not; and

b) secondly, almost any social science exercise is dependent on a significant element of subjectivity in that "they rely on people making observations or interpretations about phenomenon to a great degree."[600] However, a concordance process, where people take a measure of the same thing, using the same device, same parameters and same assumptions, is utilised in such areas and can assist to enhance the accuracy of a finding if the persons undertaking the testing arrive at the same position.[601] The Academic

---

[598] See for example, Transcript, T2523.13-18.
[599] Transcript, T2523.21-24.
[600] Transcript, T2860.22-25.
[601] Transcript, T2859.13-44.

Review Team engaged in such a concordance process in the course of their review of the cases.

766. In the above circumstances, it is submitted that Counsel Assisting's submission that the claims by the Academic Review Team to have "delivered an 'objective review' are untenable" (cf CA, [1324]) should be rejected.

767. For completeness, the Commissioner of Police submits that Ms Coakley's assessment of the Academic Review Team's selection of categories and methodologies utilised, relied upon by Counsel Assisting at CA, [1325], is beyond her area of expertise given she has never conducted a research study, and should accordingly be attributed little weight. This also applies to her conclusions in relation to those methodologies, which Counsel Assisting submit at CA, [1335]–[1336] should be accepted in full.

768. Further, [600] – [605] of Section F of these submissions considers the degree to which the Inquiry's experts proceeded on the basis of a false premise in their consideration of the use of the BCIFs.

Use of a typology

769. At CA, [1352]–[1362], Counsel Assisting criticises the Academic Review Team's use of a typology, that is, delineation of bias crimes into different categories, at all. Such a criticism does not sit comfortably with Counsel Assisting's earlier submissions that the Academic Review Team failed to engage sufficiently and apply the approaches adopted in earlier academic research, particularly that of Levin and McDevitt, who also adopted a typology (see CA, [1343]–[1349]). In short, the Academic Review Team is criticised for focussing too little on an approach Counsel Assisting does not consider appropriate for use in the SF Parrabell context.

770. Further, Counsel Assisting's submission that the use of the typology was flawed in its very purpose (CA, [1359], [1362]) because the Academic Review Team were engaged "to provide an independent account of SF Parrabell's systemic validity" and to "develop a more suitable bias crime identification process" fails to recognise this was not, nor purported to be, the function of the Academic Review Team's approach of assigning matters to different categories of bias.

771. Rather, self-evidently (and as can be seen from Appendix C to the Academic Report) each matter had to be classified by the Academic Review Team as either involving bias, no bias or Insufficient

Information (i.e., the identification of bias).[602] Then, those matters found to involve bias were further delineated into typologies based on the particular characteristics of the motivation.

772. In any event, the following is squarely stated in the recommendations section of the Academic Report:

> *NSWPF will need to develop a protocol for bias discovery that is prudent and grounded on evidence-based research…*
>
> - *The BCIRF instrument used by NSWPF is supported by practice-based rather than evidence-based adoption in a number of jurisdictions. As such, it requires empirical support that, thus far, is not evident.*
> - *To arrive at a good measure of reliability and validity for this, or any such instrument, requires a methodologically rigorous evaluation. In any case, it would be prudent to consult widely for diverse expertise on the development of such an instrument. The development will also benefit from community engagement.*

773. This excerpt makes it clear that the Academic Review Team considered the development of a bias identification tool remained to be undertaken, and rebuts any suggestion that their approach should be interpreted as constituting such a tool.[603]

Matters said not to be adequately referred to in the Academic Report

774. Finally, Counsel Assisting, by reference to the Inquiry's expert reports, considers some matters are not adequately referred to or reflected on the face of the Academic Report. In particular, Counsel Assisting criticises the Academic Review Team for:

a) not referencing in the Academic Report that it would have been preferable for reliability and validity exercises of the nature identified by Associate Professor Lovegrove to have been conducted in respect of the approach adopted by the Academic Review Team (CA, [1327]–[1330]); and

b) not referencing the full literature considered by the Academic Review Team in the course of their review (CA, [1351]) (in light of the response of Professor de Lint and Associate

---

[602] Exhibit 1, Tab 2 (SCOI.02632), p. 133.
[603] Exhibit 1, Tab 2 (SCOI.02632), pp. 107-108.

Professor Dalton to the Inquiry's experts' reports, which confirm not all literature considered was cited in the brief literature review included in the Academic Report).[604]

775. Such a submission represents a fundamental misunderstanding of the purpose of the Academic Report, which was to provide an overview of the process conducted by the Academic Review Team which was accessible to and could be understood by the general public. For the Academic Review Team to set out a detailed analysis of every limitation of their findings or an exhaustive literature review would be inappropriate in this context, and run the risk of rendering the report incomprehensible to the general public and, in turn, not fit for purpose. That this was the opposite of what was asked is reflected in AC Crandell's requirement in the RFQ for a separate research paper to be prepared.

***Conclusions reached by the Inquiry's experts***

776. The Commissioner of Police submits that it is important to squarely bear in mind the ultimate conclusions reached by each of the Inquiry's experts as to what *should* have been done by each of SF Parrabell and the Academic Review Team. That is, even if, contrary to the submissions of the Commissioner of Police, all of the criticisms levelled by the Inquiry's experts are accepted, what was the approach that should have been adopted by SF Parrabell and in turn the Academic Review Team to assess the extent to which the 88 deaths were motivated by anti-LGBTIQ bias?

777. In this regard, Professor Asquith opined that two key reasons that SF Parrabell failed in its stated aim were:

a) it did not seek to investigate possible bias in the original investigations, such as via interviewing the original OICs of the Parrabell cases[605] (which, it is submitted is not accurate: as considered in Section I, the Academic Review Team did seek to do so, but considered it was not possible on the basis of the documents and time available to them);[606] and

b) the failure to "at least" reinvestigate the unsolved cases to ensure those cases were not hate-motivated and allay community concerns about the conduct of the original investigations.[607]

---

[604] Exhibit 6, Tab 258, (SCOI.82365).
[605] Exhibit 6, Tab 255 (SCOI.82368.00001), [158].
[606] Exhibit 1, Tab 2 (SCOI.02632), p. 58.
[607] Exhibit 6, Tab 255 (SCOI.82368.00001), [159].

778. Ms Coakley considered that "given the decision by SFP not to open or re-investigate any of the 88 homicide files, the prospects of success of the project were essentially very limited from the start".[608] She considered a more useful exercise would have involved the triaging of matters and reopening of those cases with the greatest indica of bias crimes and assigning experienced homicide detectives.[609] However, Ms Coakley agreed in oral evidence that the triaging of cases on the basis of possible bias rather than potential productive avenues for reinvestigation could result in the inefficient application of scarce police resources.[610]

779. Associate Professor Lovegrove, while criticising the approaches adopted by SF Parrabell and the Academic Review Team on a number of grounds, does not proffer an alternative. He sets out the types of characteristics that a tool used to assess the presence of bias should possess, but agreed it might be time consuming and very expensive to create, and "in the real world, it would be very involved as a practical exercise to do it properly."[611] Ultimately, Associate Professor Lovegrove gave evidence that it might not be a good idea to create such a tool at all because even if this complex process was followed, there may still be concerns about its underlying reliability and validity.[612]

780. It is uncontroversial that a huge number of resources would have been required to reinvestigate even a third of the 88 cases the subject of SF Parrabell. AC Crandell gave evidence that prior its commencement, he sought for SF Parrabell to engage in a process of reinvestigation rather than review, but even he was not able to obtain the resources required for reinvestigation.[613] It was simply not possible to conduct the process now advocated for by the Inquiry's experts.

781. In the absence of access to such resources for reinvestigation, ultimately none of the Inquiry's experts identified a better approach than that adopted by SF Parrabell or the Academic Review Team. Counsel Assisting seems to imply that instead, the endeavour should never have been embarked upon. However, it is submitted such an option was not realistic: it was not appropriate for NSWPF to in effect throw up its hands and say nothing could be done, and to ignore the concerns of the LGBTIQ community that a large number of homicides said to have been motivated by anti-LGBTIQ bias had gone unsolved. Rather, NSWPF simply did as much as they

---

608 Exhibit 6, Tab 257 (SCOI.82367.00001), [47].
609 Exhibit 6, Tab 257 (SCOI.82367.00001), [48].
610 Transcript, T2740.2-10.
611 Transcript, T2885.1-5.
612 Transcript, T2885.41-T2887.28.
613 Transcript, T658.27-44.

could with the resources they had available; as summarised by AC Crandell: "tell me what can be done with the resources, and I'll go to bat for the resources".[614] Professor Asquith acknowledged that "NSWPF continues to lead Australia on the policing of hate crime, and their willingness to be subject to a series of internal and external reviews is laudable."[615] Credit should be attributed for such efforts rather than seeking to vilify those responsible for what SF Parrabell, and in turn the Academic Review Team, did not (and could not) achieve.

[614] Transcript, T658.43-44.
[615] Exhibit 6, Tab 255 (SCOI.82368.00001), [137].

## Part I: The Parrabell Report

782. As acknowledged by Counsel Assisting, the Parrabell Report is "replete with admirably frank acknowledgments, by AC Crandell and SF Parrabell, both of the discrimination and hostility faced by [the LGBTIQ] community over many years, and of the part played by NSWPF in that state of affairs" (CA, [1365] – [1370]).

783. The Parrabell Report is also "replete" with acknowledgments of the "shocking violence" inflicted on members of the LGBTIQ community, the level of which was described as "elevated, extreme, and often brutal".[616]

### *The purpose of SF Parrabell*

784. As noted earlier in these submissions, the Parrabell Report indicates that SF Parrabell "was developed to show proactivity, from this point in history at least, in the investigation of anti-gay crime".[617]

785. Counsel Assisting takes exception to this observation on two bases:

a) it is said that it did not involve an "investigation" of "anti-gay crime" given it was a paper review; and

b) it is asserted that there was nothing "proactive" about SF Parrabell, given its focus was historical (CA, [1373]).

786. Counsel Assisting's submission in this respect is again infected with hindsight bias, and is more generally misplaced, for a number of reasons:

a) First, each of these criticisms proceeds on a false premise;

(i) there is no logical reason proactivity in the investigation of bias crime could not be demonstrated by taking steps that did not themselves amount to a comprehensive re-investigation of the cases; and

(ii) there is no impediment to a historical review demonstrating proactivity; in addition to the matters considered below, in conducting the SF Parrabell exercise, the

---

[616] Exhibit 1, Tab 2 (SCOI.02632), p. 14; see also the manifold further acknowledgements of violence at pp. 1 – 17.
[617] Ibid, p. 14.

NSWPF exhibited a preparedness to invest very substantial resources to address bias crimes committed against members of the LGBTIQ community.

b) Second, the Parrabell Report did not assert that police were conducting a re-investigation of the cases. Rather, the exercise was described as an "investigative review"[618] in the Parrabell Report. The methodology associated with that review was described in detail in the Academic Report.[619] The Parrabell Report does not suggest that police formally re-investigated the cases.

c) Third, the SF Parrabell review exercise extended to include a consideration of whether there was evidence capable of identifying suspected bias on the part of the original investigator.[620] For the reasons addressed at [629] – [630], bias was not able to be discerned in individual cases. That is only known, however, because the exercise was conducted. At the outset of SF Parrabell, it was at least *possible* that there would have been features of some of the files that *may* have allowed bias to be identified. The Parrabell Report candidly acknowledged that there were "concerns" with the investigations in some cases, but that it was impossible to differentiate between the possible reasons those concerns arose (i.e. it was not possible to determine whether the concerns arose from a failure of investigative diligence, a loss of records, changes in investigative approaches over time, or bias).[621]

d) Fourth, the SF Parrabell review process extended to include a consideration of whether a referral of suspects should be made to the UHT for further Inquiries or Investigation.[622]

e) Fifth, the SF Parrabell exercise included a community relations / outreach component whereby public attention was sought to be drawn to the cases, and communications were engaged in with members of the community and, in particular, ACON.[623] The publicity associated with the SF Parrabell process yielded additional lines of inquiry in three cases.

---

[618] Ibid, p. 19.
[619] Ibid, pp. 67 – 69.
[620] Ibid, pp. 21 – 22.
[621] Ibid, p. 22.
[622] Ibid.
[623] Ibid, p. 57.

In one of those cases – relating to the death of Raymond Keam – those lines of inquiry led police to charge a suspect, who was convicted earlier this month.[624]

f) Sixth, an Academic Review Team was engaged to conduct a review of the findings of SF Parrabell and there was a range of engagement between the SF Parrabell members and the academics aimed at identifying whether the NSWPF could learn from the approach taken by the academics to the identification of bias crime.[625]

g) Seventh, and relatedly, a "significant part" of SF Parrabell was to "make recommendations for improvements to policing".[626] In line with that, some 12 recommendations were made, directed to, among other things, archiving and document management; the approach to the investigation of bias crimes; the need to develop a revised system for the early identification of bias crimes; training; and an expansion of the GLLO program.[627]

***The purpose of the academic review***

787. The purposes of the Academic Review are described in the Parrabell Report as follows:

> *"The purpose of academic review was to provide an independent account of SF Parrabell's systemic validity; where possible, identify evidence of poor or biased police investigations; guide future policing strategies of community engagement; and develop a more suitable bias crime identification process."*[628]

788. Counsel Assisting submits that the second, third, and fourth of these "purposes" were not ultimately pursued (CA, [1383]). The evidence cited by Counsel Assisting in support of this proposition (no doubt as a result of a typographical error) is evidence from Mr Willing, Professor de Lint and Associate Professor Dalton regarding the timing of the release of the Parrabell Report. As to this contention, some observations must be made:

a) The fact that the Academic Review Team did not identify evidence of poor or biased police investigations was not because they were not asked to do so. Rather, they determined

---

[624] 'Caught in Spider's web: Eastern suburbs murder mystery solved', *The Sydney Morning Herald* (Web Page, 7 June 2023) <https://www.smh.com.au/national/nsw/caught-in-spider-s-web-eastern-suburbs-murder-mystery-solved-20230526-p5dbin.html>.
[625] Transcript, T969.32-35.
[626] Exhibit 1, Tab 2 (SCOI.02632), p. 21.
[627] Exhibit 1, Tab 2 (SCOI.02632); Exhibit 6, Tab 39 (SCOI.74223); Exhibit 6, Tab 40 (SCOI.74212); Exhibit 6, Tab 41 (SCOI.74239).
[628] Exhibit 1, Tab 2 (SCOI.02632), p. 14.

that they were not able to discern bias in an academically rigorous way to within the scope of the exercise being conducted. In that respect, the Academic Report observes:

> *Addressing that larger question would require a comparison of the investigatory procedures or efficacy of all homicides in the period against those motivated by anti-gay bias. This would be underpinned by a rigorous, empirical methodology that would begin with a selection of the cases where there is the strongest evidence that the crime was an anti-gay bias crime against a strong control group that possessed like factors excepting that one.*[629]

b) As a result, the Academic Review Team developed their own typology in respect of the assessment of bias crimes. That typology, however, was not something that could practicably be employed in the context of day-to-day policing. Furthermore, AC Crandell did not agree with the typology's reference to anti-paedophile animus.[630] Ultimately, as addressed at Parts B and F, AC Crandell sought the assistance of Dr Birch in relation to the identification of potential alternative approaches to the identification of bias crime by operational police.

***The question answered***

789. Counsel Assisting addresses the fact that the Parrabell Report notes that the exercise was directed to answering a simple question:

> *Is there evidence of a bias crime?*[631]

790. Counsel Assisting then observes that the process adopted by SF Parrabell was in fact, more complex, in view of the existence of four "questions", the first of which is said to have been:

> *Is there sufficient evidence/information to prove beyond a reasonable doubt that there might have been bias crime? (CA, [1392])*

---

[629] Ibid, p. 58.
[630] Exhibit 6, Tab 4 (SCOI.76961), p. 26.
[631] Exhibit 1, Tab 2 (SCOI.02632), p. 21.

791. Contrary to Counsel Assisting's submissions, that "question" does not appear in the BCIF annexed to the Parrabell Report. Instead, the relevant "category" (as opposed to a question) is described as (emphasis added):

> *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.*[632]

792. More importantly, Counsel Assisting omits to make reference to the second category, which is provided for as follows (emphasis added):

> *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.*[633]

793. The four categories, namely, Evidence of Bias Crime, Suspected Bias Crime, No Evidence of Bias Crime and Insufficient Information, are set out at pp. 68 – 69 of the Academic Report. The tables on p. 24 of the Parrabell Report set out the proportion of cases that fell into each of the four categories.

794. When the first two categories set out above are considered in tandem, it is clear that they captured the cases where police had determined that bias may have played a part; in turn, both categories were responsive to the broader question "is there evidence of bias". That question was, according to AC Crandell not "meant to be a definitive account of all the questions that the investigators asked; it was simply something that was very central to the way that I thought about what each investigator should be asking themselves."[634]

***The nature of the Parrabell Report***

795. The Parrabell Report was not an academic research paper, designed to outline the SF Parrabell process in a way that would enable replication and peer review. The Parrabell Report was not submitted to a peer-reviewed journal. It was published on the NSWPF website. As considered in

---

[632] Ibid, p. 122.
[633] Ibid.
[634] Transcript, T1037.1-5.

Part E, it was, in part, a public relations exercise, designed to communicate to the LGBTIQ community and the public at large what SF Parrabell had found.

796. No doubt there could have been some improvements to the Parrabell Report. It is accepted that there are some inaccuracies, for example, in relation to the observation that the Academic Review Team had "endorsed" the "systemic approach" of the police team (CA, [1398]).

797. AC Crandell's role does not ordinarily involve the creation of reports for public consumption;[635] he is not a journalist, a copywriter, a public relations professional, or even an academic. It is unsurprising that there is room for improvement in aspects of the Parrabell Report. A reader's comprehension of the table on p. 24 would, for instance, have been assisted if the definitions of each of the categories were set out on that page, rather than left for the annexures and the Academic Report.

798. The Parrabell Report must be understood in this context. It should not be criticised by reference to standards it was not designed to meet.

799. All told, the Parrabell Report was readable, clearly acknowledged the impacts of the extraordinary violence the LGBTIQ community was subject to and the shortcomings of police in responding to it, and set out the results of the SF Parrabell review process.

***The findings of police***

800. SF Parrabell placed eight cases in the Evidence of Bias Crime category and 19 cases in the Suspected Bias Crime category.[636] In total, police reached a positive finding that bias played a role in 27 of the deaths.

801. 34 cases were placed in the No Evidence of Bias Crime category, while 25 were categorised as Insufficient Information.

802. The definition of the Insufficient Information category made clear that the categorisation as such "may be due to a lack of detail recorded by police or a lack of information supplied by victims and/or witnesses".[637] In this way, it candidly acknowledged that the very reason bias could not be identified may have been attributable to some failing on the part of the police.

---

[635] Transcript, T1021.7-18.
[636] Exhibit 1, Tab 2 (SCOI.02632), p. 24.
[637] Ibid, p. 69.

803. The very existence of the Insufficient Information category stands strongly against Counsel Assisting's assertion that SF Parrabell sought to minimise the prevalence of homicidal bias crime (CA, [817]). SF Parrabell could readily have adopted an approach whereby no distinction was drawn between cases where no bias was found, and cases where a determination as to the role played by bias could not be made because of a lack of information. Such an approach would have created an impression that a positive finding had been reached in the great majority of cases that bias was not involved. That is not what occurred; the way the SF Parrabell results were recorded left open the possibility that bias played a role in 52 of the 86 cases reviewed.

804. As explored in Part F, the close alignment between the positions arrived at by Counsel Assisting in the "tender bundle" cases and that of SF Parrabell further undermines the suggestions at CA, [817].

***The Academic Report***

805. As detailed at [586] of Part F, while police provided some comments to the Academic Review Team in relation to their draft report, they did not have, or seek to have, control over the final contents of the Academic Report.

<u>The methodology of police (as described in the Academic Report</u>

806. The Academic Review Team's consideration of police methodology is addressed at [563] – [581].

807. As is apparent from that consideration, SF Parrabell did not employ the BCIF in any kind of mathematical or "scientific" sense; it was a means by which potentially pertinent factors could be identified and recorded. The ultimate conclusions as reflected in the findings set out in the Parrabell Report were the product of carefully considered judgments made by highly experienced investigators, informed by a range of discussions between the original investigators and the senior investigators.

<u>The Academic Review Team's results</u>

808. As concerns the results of the Academic Review Team's, three key observations should be made:

a) first, as noted above at [769] – [773] of Part H they developed and relied upon a different typology;

b) second, consistent with the evidence (see [563] – [581] of Part F) that the Academic Review Team was not subject to any pressure to align with the findings of police, their findings do not, in fact, correspond to those of SF Parrabell; and

c) third, consistent with the evidence (see [715] – [721] of Part H]) whatever the merit of the "anti-paedophile animus" category employed by the Academic Review Team , that category was to be regarded as a subset of anti-gay bias. [638]

809. There is no evidence to suggest that the Academic Review Team did not exercise their best endeavours to ascertain the presence or absence of bias in each case. No doubt, there were aspects of the academic review process and report that could have been improved. Consistent with the position in relation to SF Parrabell, the Academic Review Team were not undertaking an exercise designed to result in publication in a peer-reviewed academic journal.

810. In any event, SF Parrabell's decision to engage external academic reviewers, and to expose themselves (and the NSWPF) to scrutiny of that type, was commendable.

811. The involvement of the academic reviewers, and the report they produced, underscored the NSWPF's desire to demonstrate it was taking the LGBTIQ community's concerns seriously and was prepared to devote significant resources to addressing them. As noted by the academic reviewers:

> *Whatever the number, this review supports the view that anti-gay bias is no longer forgotten, neglected and sequestered to a remote corner of public and police concern.*[639]

---

[638] Transcript, T2705.35-T2706.26.
[639] Exhibit 1, Tab 2 (SCOI.02632), p. 64.

## Conclusion

812. As observed at the outset of these submissions, the LGBTIQ community has long been the victim of discrimination, intolerance, and violence driven by prejudice. The NSWPF played a central role in that history throughout the 1950s, 60s, 70s and 80s: first as an organisation that contributed to the stigmatisation and marginalisation of LGBTIQ people; second, as a body responsible for the enforcement of discriminatory laws; and third, in failing to create an environment in which members the LGBTIQ community felt protected and able to make reports in response to the extraordinary violence they suffered.

813. Recent years have brought an array of positive changes. The NSWPF is a different organisation to the one it was in the 1980s, or even the 2000s. That is not to say that the organisation is without flaws, but it has made very substantial progress.

814. While itself not without flaws, SF Parrabell and the associated academic review were intended to form a key plank of that progress. SF Parrabell was designed to improve the relationship between the LGBTIQ community and the NSWPF, and to demonstrate to the LGBTIQ community that their concerns about historical violence and the investigations thereof were being treated seriously.

815. Despite this, Counsel Assisting has sought to frame SF Parrabell, together with SF Neiwand and SF Macnamir, as part of a cooperative endeavour *directed* to refuting the suggestion that there had been a significant number of gay-hate homicides in NSW.

816. Notwithstanding the tens of thousands of documents provided by the NSWPF, and the very substantial work conducted by the Inquiry, Counsel Assisting advances these submissions not by reference to concrete evidence, but rather, on the basis of speculative inference.

817. For the reasons set out in these submissions, the grave assertions advanced by Counsel Assisting regarding the alleged coordination of efforts to minimise the suggestion of anti-LGBTIQ homicides must be unequivocally rejected.

818. The NSWPF reiterates its full support for the important work that the Inquiry has been commissioned to undertake and looks forward to considering the Inquiry's report in due course.

**Mark Tedeschi KC**
*Wardell Chambers*

**Anders Mykkeltvedt**
*Maurice Byers Chambers*

**Amber Richards**
*Maurice Byers Chambers*

**28 June 2023**