

SPECIAL COMMISSION OF INQUIRY INTO LGBTIQ HATE CRIMES

SUPPLEMENTARY SUBMISSIONS OF COUNSEL ASSISTING

PUBLIC HEARING 2

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A. INTRODUCTION

1. These submissions are filed on behalf of Counsel Assisting the Inquiry in relation to Public Hearing 2, which was conducted in several stages: 5-13 December 2022 (**December hearing**), 20 February-6 March 2023 (**February/March hearing**), and 20 April, 5 and 15 May 2023 (**April-May hearing**), and 21 and 25-29 September and 3-6 October 2023 (**September/October hearing**).
2. These submissions supplement the principal submissions of Counsel Assisting dated 7 June 2023 (**CAS**). They relate to evidence adduced at the September/October hearing, and to the factors which led to the convening of that hearing, some months after the filing of what were to have been the final written submissions, by both Counsel Assisting and authorised parties, in June 2023.
3. In the September/October hearing, nine witnesses gave oral evidence:
 - a. Detective A/Sergeant (**D A/S**) Cameron Bignell;
 - b. Detective Sergeant (**DS**) Alicia Taylor;
 - c. former Detective Chief Inspector (**DCI**) Stewart Leggat (referred to as Mr Leggat in these submissions);
 - d. former DCI John Lehmann (referred to as Mr Lehmann in these submissions);
 - e. Emma Alberici;
 - f. Georgina Wells;
 - g. DS Penelope Brown;
 - h. former DCI Pamela Young (referred to as Ms Young in these submissions); and
 - i. former Deputy Commissioner Michael Willing (referred to as Mr Willing in these submissions).
4. Each of those witnesses (other than Mr Willing, who had previously provided a statement) also provided one or more written statements, all of which were received into evidence.¹

¹ Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023 (NPL.9000.0026.0007); Exhibit 6, Tab 517, Statement of DS Alicia Taylor, 20 September 2023 (NPL.9000.0033.0001); Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023 (SCOI.85707); Exhibit 6, Tab 513, Statement of John Lehmann, 29 August 2023 (SCOI.85495); Exhibit 6, Tab 524, Statement of Emma Alberici, 25 September 2023 (SCOI.85817); Exhibit 6, Tab 511, Statement of Georgina Wells, 4 September 2023 (NPL.9000.0027.0001); Exhibit 6, Tab 519, Statement of DS Penelope Brown, 20 September 2023 (SCOI.85747); Exhibit 6, Tab 519A, Second statement of DS Penelope Brown, 29 September 2023 (SCOI.85950); Exhibit 6, Tab 521, Second statement of Pamela Young (SCOI.85816).

5. In addition, the Inquiry received a number of witness statements from witnesses who were not also called to give oral evidence, namely Siobhan McMahon, Strath Gordon, Superintendent Craig Middleton, Detective Inspector (**DI**) Paul Grace, Superintendent Andrew Hurst, Detective Senior Constable (**DSC**) Paul Rullo, Sergeant Geoffrey Steer and 1446.² All of those statements are also now in evidence.
6. On 21 September 2023, three additional volumes (volumes 17, 18 and 19) were tendered and became part of Exhibit 6. On 16 October 2023, an additional volume (volume 20) was tendered and became part of Exhibit 6.

² Exhibit 6, Tab 510, Statement of Siobhan McMahon, 1 September 2023 (NPL.9000.0025.0009); Exhibit 6, Tab 512, Statement of Strath Gordon, 5 September 2023 (NPL.9000.0028.0001); Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023 (NPL.9000.0029.0001); Exhibit 6, Tab 508, Statement of DI Paul Grace, 8 September 2023 (NPL.9000.0024.0012); Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst (NPL.9000.0030.0015); Exhibit 6, Tab 520, Statement of DSC Paul Rullo, 22 September 2023 (SCOI.85772); Exhibit 6, Tab 520A, Second statement of DSC Paul Rullo, 25 September 2023 (SCOI.85780); Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023 (SCOI.85731); Exhibit 6, Tab 516, Statement of 1446, 15 September 2023 (NPL.9000.0031.0001).

B. WHY PUBLIC HEARING 2 WAS REOPENED

7. On 28 June 2023, written submissions (**CPS**) were filed on behalf of the NSW Police Force (**NSWPF**) and Mr Willing (**WS**).³ Oral submissions on behalf of Mr Willing had been made on 21 June 2023.
8. The submissions on behalf of those parties raised, for the first time, contentions that various findings and conclusions could not be made because evidence had not been obtained from a large number of witnesses. It was also contended that in some respects procedural unfairness had resulted or might result.

Background

9. It is necessary to set out the relevant history, and procedural framework, against which such contentions (if they are still pressed) would fall to be considered.
10. Under the *Special Commissions of Inquiry Act 1983* (NSW) (**SCOI Act**), the power to summons witnesses is reposed in the Commissioner: s. 14. The SCOI Act does not confer on interested parties a right to call witnesses.
11. Consistent with the SCOI Act, the Inquiry's Practice Guideline 1 has at all relevant times, since its publication on the Inquiry's website in early October 2022, included the following features:
 20. *All witnesses at a public hearing will be called by Counsel Assisting.*
 21. *Any person authorised to appear at a hearing who wishes to have evidence of a witness or witnesses placed before the Commission is to notify Counsel Assisting of the names of such witnesses, and is to provide a signed statement of their expected evidence (if possible in the form of a statutory declaration) as soon as practicable.*
 - ...
 23. *Counsel Assisting will determine whether or not to call the witness. An application may be made directly to the Commissioner to call the witness only after the above procedure has been completed and Counsel Assisting has indicated that the witness will not be called.*
12. At no stage prior to 28 June 2023 did the NSWPF or Mr Willing notify Counsel Assisting that they wished to have evidence of a particular witness or witnesses placed before the Inquiry.
13. However, the Inquiry sought the assistance of the NSWPF in identifying appropriate and necessary witnesses and in preparing written statements from those witnesses in relation to Public Hearing 2.

³ Written submissions were also filed on behalf of Sergeant Geoffrey Steer on 27 June 2023.

14. On 20 September 2022, the Inquiry wrote to the NSWPF to request witness statements from the following persons (**20 September letter**):⁴
- As to Strike Force (SF) Parrabell and its methodology (together with certain other topics): Assistant Commissioner (AC) Anthony Crandell – the senior officer who set up SF Parrabell and wrote its final report;
 - As to the academic review of SF Parrabell: one or both of Dr Willem de Lint, and/or Dr Derek Dalton, of Flinders University;
 - As to various topics relating to Bias Crimes generally, including the Bias Crimes Unit (BCU): Sergeant Geoffrey Steer (former Bias Crimes Co-ordinator), and/or the appropriate other officer; and
 - As to SF Neiwand and its methodology: DS Steven Morgan (the Investigation Supervisor) and/or former DSC Michael Chebl (the Officer in Charge (OIC)) (referred to as Mr Chebl in these submissions).
15. The Inquiry sought these statements because, as far as it was aware, the named individuals would be best placed to give evidence in relation to the matters outlined in that letter, subject to the input that could be provided by the NSWPF. The Inquiry offered the NSWPF choices as to the appropriate individual(s) to provide statements. It did so because it recognised that the NSWPF would be likely to be best able to determine which individual(s) were the appropriate or necessary witnesses in relation to particular topics.
16. Each of the requests for a statement from officers of the NSWPF expressly noted that:⁵
- a. if a topic fell outside the knowledge of the officer, the NSWPF should provide a statement from the appropriate officer to address that topic; and
 - b. if officers considered that other topics were relevant and should be addressed, they should do so.
17. The NSWPF duly provided statements, in response to the Inquiry's 20 September letter, from:
- a. AC Crandell, dated 31 October 2022, in relation to all topics required (including SF Parrabell), with the exception of some topics relating to Bias Crimes which were to be addressed by others;⁶

⁴ Exhibit 6, Tab 533, Letter from Solicitor Assisting the Inquiry to Office of the General Counsel, NSW Police Force, 20 September 2022 (SCOI.82096).

⁵ Exhibit 6, Tab 533, Letter from Solicitor Assisting the Inquiry to Office of the General Counsel, NSW Police Force, 20 September 2022 (SCOI.82096).

⁶ Exhibit 6, Tab 4, Statement of AC Anthony Crandell, 31 October 2022 (SCOI.76961).

- b. Shobha Sharma dated 28 October 2022 and Sergeant Ismail Kirgiz dated 28 November 2022, in relation to some of the Bias Crimes topics;⁷
 - c. Dr de Lint and Dr Dalton, in a joint statement dated 28 October 2022, in relation to the academic review;⁸
 - d. DS Morgan dated 31 October 2022, in relation to SF Neiwand.⁹
18. In relation to SF Neiwand, the NSWPF chose not to provide a statement from Mr Chebl, but only from DS Morgan.
 19. As to Sergeant Steer, a statement from him had been created by 11 October 2022, but the NSWPF advised the Inquiry by letter dated 3 November 2022 that there was “potential for a conflict” between the interests of the Commissioner of Police and those of Sergeant Steer.¹⁰ Accordingly, Sergeant Steer’s statements (both ultimately dated 18 November 2022) were in fact provided by solicitors separately representing Sergeant Steer, rather than by the NSWPF.¹¹
 20. On 22 December 2022, the Inquiry requested a statement from Mr Willing. He was asked to address, “at least”, the 25 topics identified in that letter, including in relation to SF Macnamir, SF Parrabell and SF Neiwand.¹² Mr Willing had been the Commander, Homicide from 2011 to 2017, a six-year period which encompassed virtually the whole duration of all three of these strike forces.
 21. The NSWPF duly provided a statement from Mr Willing (who was no longer a police officer), addressing those topics, dated 30 January 2023.¹³
 22. No suggestion was made by the NSWPF, prior to 28 June 2023, that any of the persons who produced those various statements were not in a position to address all the topics raised, or that statements should also be obtained from other persons.

⁷ Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022 (SCOI.76960); Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 29 November 2022 (SCOI.82035).

⁸ Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 29 October 2022 (SCOI.76959).

⁹ Exhibit 6, Tab 5, Statement of DS Steven Morgan, 31 October 2022 (SCOI.76962).

¹⁰ Exhibit 6, Tab 537, Letter from the Office of the General Counsel, NSW Police Force to Solicitor Assisting the Inquiry, 3 November 2022 (SCOI.86184).

¹¹ Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022 (SCOI.82080); Exhibit 6, Tab 6A, Supplementary Statement of Sergeant Geoffrey Steer, 18 November 2022 (SCOI.82081).

¹² Exhibit 6, Tab 252A, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 22 December 2022 (SCOI.82369.00002).

¹³ Exhibit 6, Tab 252, Statement of Michael Willing, 30 January 2023 (SCOI.82369.00001).

Strike Force Parrabell

23. It was plain from the 20 September letter that the Inquiry was seeking evidence, from AC Crandell and/or other appropriate officer(s), as to the way in which the various SF Parrabell personnel were meant to, and did in fact, carry out their respective tasks.
24. The Inquiry understood AC Crandell to be the officer best placed to give evidence in relation to these and other aspects of SF Parrabell, because he made the decision to establish SF Parrabell, because he was the Commander of the strike force throughout its existence, and because he was the author of the NSWPF part of the Parrabell Report.
25. A statement was duly provided from AC Crandell, dated 31 October 2022, as noted above. No indication was given to the Inquiry that in any respect AC Crandell was unable to address the topics listed in the Inquiry's 20 September letter in relation to SF Parrabell.
26. On 2 December 2022 (one working day before Public Hearing 2 was to commence), the NSWPF advanced written submissions, supplemented on 5 December 2022 by oral submissions, to the effect that several of the topics which AC Crandell had been asked to address (and had addressed in his statement), including the creation of SF Parrabell and its methodology, were outside the Inquiry's Terms of Reference. In a judgment delivered on 6 December 2022, the Commissioner rejected those submissions.
27. In the circumstances summarised above, it could not have been more obvious that the methodology of SF Parrabell, both as proposed and as implemented, was a matter which the Inquiry was considering and on which it sought and required evidence from the appropriate NSWPF officer or officers.
28. Yet the NSWPF claimed, in the CPS, that AC Crandell – the Commander of SF Parrabell – was not able to address the methodology of the strike force. The NSWPF asserted that evidence about such matters was needed from all 16 officers who participated to any extent in the strike force, including but not limited to Superintendent Middleton, DI Grace and/or D A/S Bignell: see for example CPS [508], [510], [513], [520], [542]-[547], [554], [571].
29. The NSWPF also asserted that other witnesses should have been called to give evidence about SF Parrabell, namely Dr Danielle Tyson, Jacqueline Braw and Dr Philip Birch: see for example CPS [650], [661]-[670], [730].
30. If AC Crandell was not able to give comprehensive evidence about SF Parrabell, in particular its proposed and actual methodology, notwithstanding that he was at all times the Commander of the strike force, then the NSWPF ought to have promptly informed the Inquiry of that fact in

response to the 20 September letter, and should have provided statements, from any or all of Superintendent Middleton, DI Grace and D A/S Bignell, and/or from any other officer whose evidence was considered necessary, at the same time as providing that of AC Crandell.

31. The questioning of AC Crandell in December 2022, by Senior Counsel Assisting (and the Commissioner), made it even more clear that the proposed and actual methodology of SF Parrabell, including the form of, changes to, and use of the Bias Crimes Indicator Review Form (BCIF), was being closely examined by the Inquiry.¹⁴ Senior Counsel for the NSWPF also questioned AC Crandell at some length at that time, including about such matters.¹⁵ No submission or suggestion was made that other officers should also give evidence about them.
32. Any suggestion that the NSWPF was not squarely on notice that those matters were likely to be the subject of submissions by Counsel Assisting, both from the 20 September letter, and from the nature and extent of the questioning of AC Crandell in December 2022, should be rejected.
33. Given the stance adopted in the CPS, it is most unfortunate that the NSWPF did not comply with either the requirements of Practice Guideline 1 or the terms of the Inquiry's 20 September letter.

Bias Crimes, Bias Crimes Coordinator and Bias Crimes Unit

34. In his statement of 31 October 2022, at [12] and [13], AC Crandell indicated that he had "no particular knowledge" about matters relating to the BCU (and the Engagement and Hate Crime Unit), and was "not in a position to address" such matters, and that he understood that other members of the NSWPF would do so.
35. As noted above, the NSWPF did provide two other statements dealing with these matters, namely those of Ms Sharma and Sergeant Kirgiz.
36. Two statements of Sergeant Steer were provided to the Inquiry on or about 18 November 2022 by solicitors acting separately for Sergeant Steer. However, the first of those statements had been completed by Sergeant Steer (with the assistance of the NSWPF) by 11 October 2022, prior

¹⁴ See, eg, Transcript of the Inquiry, 7 December 2022, T698.18-699.39, T706.9-708.35, T783.27-784.46, T785.27-786.17, T789.9-794.23, T813.24-816.41 (TRA.00012.00001); 8 December 2022, T829.11-832.25, T840.46-846.12(TRA.00013.00001).

¹⁵ See, eg, Transcript of the Inquiry, 12 December 2022, T1035.2-T1038.30 (TRA.00015.00001).

- to the decision of the NSWPF to arrange for separate representation for him because of the “potential for conflict”.¹⁶
37. That first statement of Sergeant Steer directly addressed the problem of under-resourcing of the Bias Crimes Coordinator and the Bias Crimes Unit: see for example at [12], [16]; see also [39]. Although the contents of Sergeant Steer’s statement, including those paragraphs, were known to the NSWPF by 11 October 2022, the NSWPF chose not to provide statements from witnesses capable of giving evidence about the availability of, or priorities relating to, resources.
 38. Sergeant Steer’s statement did not deal directly with the effective abolition of the Bias Crimes Unit in 2017, or his view that he was forced out at that time. However, those matters were squarely raised in numerous documents included in the tender bundle (which is Exhibit 6 before the Inquiry), and were also the subject of oral evidence from both AC Crandell and Sergeant Steer, in particular, in December 2022.¹⁷
 39. In the CPS, the NSWPF contended, for the first time, that the Inquiry should have adduced evidence from a witness or witnesses (not identified by name) about certain matters, including in particular the following, and that the Inquiry therefore may not make any findings about such matters:
 - a. the availability of resources, and the appropriate distribution of them among the various competing priorities of the NSWPF: see [29] and [56];
 - b. the objectivity of Sergeant Steer, and the accuracy of his opinions in relation to the restructuring of the Bias Crimes Unit in 2017 and his being “forced out” of the Bias Crimes Unit at that time: see [34], [36]; and
 - c. the reasons for the 2017 restructure, from the perspective of “those actually responsible for [it]”: see [36].
 40. If the NSWPF considered that there was a need for witnesses other than AC Crandell, Ms Sharma and Sergeant Kirgiz to give evidence about such matters, then the NSWPF ought to have promptly informed the Inquiry of that fact, having regard to both the 20 September letter and the terms of Practice Guideline 1, and should have provided statements from any officer whose evidence was considered necessary.

¹⁶ Exhibit 6, Tab 537, Letter from the Office of the General Counsel, NSW Police Force to Solicitor Assisting the Inquiry, 3 November 2022 (SCOI. 86184).

¹⁷ See, eg, Transcript of the Inquiry, 6 December 2022, T619.1-629.20 (AC Crandell) (TRA.00011.00001); Transcript of the Inquiry, 12 December 2022, T1053.39-1054.45 (AC Crandell), T1125.21-T1128.1 (Sergeant Steer) (TRA.00015.00001).

41. The questioning of AC Crandell and Sergeant Steer by Senior Counsel Assisting, in December 2022, made amply clear that these matters were being closely examined by the Inquiry.¹⁸ Again, Senior Counsel for the NSWPF also questioned AC Crandell at that time, including about those matters.¹⁹ No suggestion was made, until 28 June 2023, that other officers should also give evidence about them.
42. Again, it is most unfortunate that the NSWPF did not comply with either the requirements of Practice Guideline 1 or the terms of the Inquiry's 20 September letter.

Strike Force Neiwand

43. In its 20 September letter, the Inquiry requested, in relation to SF Neiwand, a statement from DS Morgan (the Investigation Supervisor) and/or Mr Chebl (the OIC).
44. The NSWPF chose to provide only a statement from DS Morgan (dated 31 October 2022), and not to provide a statement from Mr Chebl (either instead or as well).
45. The Inquiry accordingly proceeded on the basis that, in the view of the NSWPF, DS Morgan was the appropriate person to give comprehensive evidence about the work of SF Neiwand, including its methodology and "any interim or final reports" (which, as the evidence revealed, comprised in particular the nine Progress Reports, the three Neiwand Summaries and the Post Operative Assessment).
46. No indication was given, either in correspondence or in the statement of DS Morgan itself, that DS Morgan was in any respect unable to address such topics in a comprehensive way, or that his recollections or views were or might be in any way different from those of Mr Chebl.
47. On 22 December 2022, the topics which the Inquiry requested Mr Willing address included a number of topics on SF Neiwand. The Inquiry took that step having regard *inter alia* to various aspects of the contents of DS Morgan's statement, as well as the oral evidence of AC Crandell in December.
48. The questioning of DS Morgan and Mr Willing by Senior Counsel Assisting, in February 2023, made it very clear that the work and methods of SF Neiwand, including the content of the three

¹⁸ See, eg, Transcript of the Inquiry, 6 December 2022, T619.1-631.31, T652.15-653.47 (AC Crandell) (TRA.00011.00001); Transcript of the Inquiry, 7 December 2022, T727.47-T729.6 (AC Crandell) (TRA.00012.00001); Transcript of the Inquiry, 12 December 2022, T1077.33-1078.8, T1102.27-1103.13, T1125.21-1128.1 (Sergeant Steer) (TRA.00015.00001).

¹⁹ See, eg, Transcript of the Inquiry, 12 December 2022, T1045.55-1046.44, T1048.23-25, T1053.39-1055.43 (AC Crandell) (TRA.00015.00001).

Neiwand Summaries, were being closely examined by the Inquiry and were likely to be the subject of criticism by Counsel Assisting in submissions.

49. However, in the CPS, the NSWPF repeatedly advanced the contention that Mr Chebl should have been called to give evidence, and that in the absence of evidence from him (and, it was seemingly also asserted, every officer in any way involved in SF Neiwand), various findings cannot be made and procedural fairness has not been accorded to him or them: see for example CPS [239], [240], [300], [360], [364], [450].
50. It also appears to be suggested in the CPS, at [242], that former DS Kenneth Bowditch should have been called as a witness in relation to the death of Ross Warren.
51. If at any time the NSWPF considered that a statement should have been obtained from Mr Chebl or anyone else, the NSWPF should have so advised the Inquiry and should have provided the requisite statement or statements. Once again, reference is made to the Inquiry's 2 September letter and to Practice Guideline 1.
52. Again, it is most unfortunate that the NSWPF did not comply with either the requirements of Practice Guideline 1 or the terms of the Inquiry's 20 September letter.

Strike Force Macnamir

53. In its letter of 22 December 2022, the Inquiry requested that Mr Willing also address, in his statement, a number of topics relating to SF Macnamir. Those topics included:²⁰
 6. *The background to and reasons for the establishment of Strike Force Macnamir.*
 7. *Mr Willing's role in connection with the establishment of Strike Force Macnamir.*
 11. *A summary of the work of Strike Force Macnamir from its inception to its conclusion.*
54. The Inquiry expected that Mr Willing would likely have sufficient knowledge of and involvement in SF Macnamir to address such matters. That assumption was reinforced by parts of Mr Willing's statement when it was received, such as paragraphs 47 and 48.
55. The questioning of Mr Willing by Senior Counsel Assisting, in February 2023, made it very clear that the approach adopted by SF Macnamir to the reinvestigation of the death of Scott Johnson, between February 2013 and November 2017, including whether the strike force was committed

²⁰ Exhibit 6, Tab 252A, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 22 December 2022 (SCOI.82369.00002).

to favouring the suicide theory,²¹ was being closely examined by the Inquiry and was likely to be the subject of submissions by Counsel Assisting.

56. However, a recurring theme in the CPS was that the Inquiry did not call evidence from a number of officers in relation to SF Macnamir, in particular Ms Young, DS Brown, Mr Leggat, DSC Rullo, 1446, Mr Lehmann and DS Taylor: see for example the following paragraphs of the CPS:
- a. As to *Australian Story*: [112]-[115];
 - b. As to the 2013 Issue Paper: [135], [278];
 - c. As to the Unsolved Homicide Team (UHT)'s assessment of the Scott Johnson case: [96], [101], [103];
 - d. As to the overlap between SF Macnamir and SF Neiwand: [130], [132], [148];
 - e. As to the conduct of SF Macnamir: [160]-[161], [178], [185], [186], [198]-[201]; and
 - f. As to *Lateline*: [205], [226], [234].
57. Mr Willing has also made submissions, in relation to the *Lateline* interview, that various findings could not be made because the Inquiry had not obtained evidence from a number of witnesses, including in particular Ms Young, DS Brown, Ms Wells and Ms Alberici: see for example WS [14], [52]-[56], [66].
58. Mr Willing gave oral evidence on 20 and 21 February 2023, and again on 15 May 2023, on topics including *Lateline*. He was questioned closely about those matters, both by Counsel Assisting and by the Commissioner: see for example the exchanges excerpted at CAS [436] and [443]. It was apparent from these exchanges that the veracity of aspects of his account was in issue.
59. If at any time the NSWPF, or Mr Willing, considered that evidence should have been obtained from any of the individuals referred to above at [56], they should have so advised the Inquiry, and should have provided the requisite statement or statements: see Practice Guideline 1. It is most unfortunate that the NSWPF, and in this respect Mr Willing, did not do so.

The “straw man” submissions

60. In the CPS, the NSWPF has frequently attributed to Counsel Assisting submissions and/or proposed findings in the CAS which Counsel Assisting simply did not make or propose. Mr Willing has also done so. Having set up these straw men, the NSWPF and Mr Willing then

²¹ See, eg, Transcript of the Inquiry, 20 February 2023, T1625.8-28, T1626.23-27, T1676.26-47, T1701.27-38 (TRA.00023.00001); 21 February 2023, T1869.8-26 (TRA.00024.00001).

proceeded to attempt to knock them down. Both the misattributions, and the purported responses to them, should be rejected.

61. Among many examples, the following are among the more egregious:
- a. The NSWPF has repeatedly claimed that Counsel Assisting had submitted that there was “an elaborate conspiracy”, involving both police and academic witnesses, and a “conspiratorial” coordination between SF Parrabell, SF Macnamir and SF Neiwand: see for example CPS [15], [18], [144], [155] and [423]. No such submission was made by Counsel Assisting. The term “conspiracy” appears nowhere in the CAS. The only submissions in which such language is used are those of the NSWPF and Mr Willing.
 - b. Mr Willing has also claimed that Counsel Assisting was alleging “conspiracies” in relation to matters relating to Mr Willing: see for example WS [19], [20]. Again, no such submission was made by Counsel Assisting.
 - c. It is striking that, while wrongly attributing “conspiracy theories” to Counsel Assisting, Mr Willing himself blatantly asserted that Ms Young, DS Brown and Ms Alberici were involved in a “covert and sophisticated plan”, notwithstanding that none of those persons had been afforded, by Mr Willing, any opportunity to respond to such allegations. Reference is made to WS [43]-[45], and to the oral submissions on behalf of Mr Willing on 21 June 2023.²²
 - d. At CPS [147], the NSWPF alleged that the submission at CAS [359] that Mr Willing shared Ms Young’s views as to “defeating the Johnson family by opposing and preventing a finding of homicide” amounted to an assertion that Mr Willing “sought to pervert the course of justice”. No such submission was made by Counsel Assisting, either expressly or impliedly.
 - e. In a letter dated 27 September 2023 from his solicitors to the Inquiry, it was asserted on behalf of Mr Willing that Counsel Assisting had submitted that Mr Willing had “lied” when he said that his telephone conversation with Ms Young at about 5pm on 13 April 2015 took place before/after the studio interview between Ms Young and Ms Alberici on that afternoon.²³ Counsel Assisting made no such submission. On the contrary, Counsel Assisting proceeded on the assumption, favourable to Mr Willing, that he had been mistaken when he first gave evidence on this point in February 2023, and that the correct

²² See Transcript of the Inquiry, 21 June 2023, T4373-5, T4416.31-4417.13, T4439.43-4440.3 (TRA.00063.00001).

²³ Exhibit 6, Tab 535, Letter from Arnold Bloch Liebler to Solicitor Assisting the Inquiry, 27 September 2023, 2 (SCOI.85984).

position was as he testified, quite differently, in May 2023 (based on his dot points): see CAS [430]-[435]; [436]-[451].

- f. At CPS [113], the NSWPF claimed that Counsel Assisting had alleged that Mr Lehmann lied on national television. No such submission was made by Counsel Assisting.
- g. At CPS [135(b)] and [278], it seems to be asserted that Counsel Assisting had submitted that the views expressed by Mr Lehmann in the 2013 Issue Paper were not his honest views. No such submission was made by Counsel Assisting. To the contrary, it is the fact that those were his honest views which may give rise to concern.

Strike Forces Macnamir, Parrabell and Neiwand

- 62. In his oral address on 30 June 2023, Senior Counsel for the NSWPF contended that it was not until the receipt of the CAS on 7 June 2023 that the NSWPF realised that there was a suggestion of what Senior Counsel called “a grand conspiracy” to “understate the incidence of gay hate crimes”.²⁴
- 63. In response to that contention, the following points may be made:
 - a. First, as noted above at [61a], nowhere in the submissions of Counsel Assisting is there any contention of any such “conspiracy”.
 - b. Secondly, on 15 November 2022, summons NSWPF35 had required production by the NSWPF of documents including, at paragraph 6:²⁵

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

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

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

- c. Thirdly, in the Inquiry’s letter of 22 December 2022, among the topics on which the evidence of Mr Willing was sought was:
 - 24 *Mr Willing’s involvement in, and/or knowledge of, communications or co-operation between or among Strike Force Neiwand, Strike Force Macnamir and Strike Force Parrabell between October 2015 and June 2018, including but not limited to: ...*

²⁴ Transcript of the Inquiry, 30 June 2023, T4775.9-25 (TRA.00071.00001).

²⁵ Exhibit 6, Tab 280A, Summons to produce to NSWPF (summons NSWPF35), 15 November 2022, 2 (SCOI.86183).

(c) *the provision of information and/or findings and/or interim or final conclusions by one Strike Force to the other, including the reasons for doing so and the dates and details thereof.*

d. Fourthly, each of AC Crandell, Mr Willing and DS Morgan was questioned at some length by Senior Counsel Assisting about possible links and confluences between and/or among Strike Forces Macnamir, Neiwand and Parrabell.²⁶ The Commissioner also asked questions on those topics.²⁷

64. Any suggestion that the NSWPF was not plainly on notice, at least from the 15 November 2022 summons, the 22 December 2022 letter, and the nature and extent of the questioning of those witnesses in December 2022 and February 2023, that those matters were likely to be the subject of submissions by Counsel Assisting, should be rejected.

The NSWPF as a model litigant

65. The NSWPF is bound by obligations as a model litigant. Although the Inquiry is not ‘litigation’, those bound by model litigant obligations are required to observe those obligations in proceedings generally.²⁸ Those obligations require the NSWPF not to cause unnecessary delay and to “act with complete propriety, fairly and in accordance with the highest professional standards”.²⁹ It could hardly be doubted that the expectation of the community generally would accord with this standard.

66. The NSWPF’s failure to inform the Inquiry at the earliest available opportunity that it considered that further persons needed to be called to give evidence has resulted in unnecessary delay and in considerable additional time and expense for both the Inquiry and interested parties.

²⁶ See, eg, Transcript of the Inquiry, 6 December 2022, T672.33-39, T678.6-11, T678.6-11 (AC Crandell) (TRA.00011.00001); 7 December 2022, T764.47-765.4 (AC Crandell) (TRA.00012.00001); 20 February 2023, T1627.8-1628.18, T1730.40-1731.11, T1732.40-47, T1740.18-21 (Mr Willing) (TRA.00023.00001); 21 February 2023, T1763.44-1764.2, T1868.28-6 (Mr Willing) (TRA.00024.00001); 22 February 2023, T1890.16, T1920.12-27 (DS Morgan) (TRA.00025.00001); 23 February 2023, T1940.17-18, T1942.20, T1944.43 (DS Morgan) (TRA.00026.00001).

²⁷ See, eg, Transcript of the Inquiry, 6 December 2022, T677.19-21, T688.42-689.7, T689.42-690.11 (TRA.00011.00001); 7 December 2022, T696.30-697.9, T763.24-40, T764.18-38 (AC Crandell) (TRA.00012.00001); 21 February 2023, T1870.36-1871.41 (Mr Willing) (TRA.00024.00001); 22 February 2023, T1901.28-36, T1902.16-47, T1908.17-29 (DS Morgan) (TRA.00025.00001); 23 February 2023, T1940.20-26, T1942.9-20, T1948.44-1949.1 (DS Morgan) (TRA.00026.00001); 27 February 2023, T2207.6-9 (DS Morgan) (TRA.00028.00001); 20 April 2023, T3433.43-3434.22 (Mr Willing) (TRA.00044.00001).

²⁸ See Exhibit 6, Tab 534, NSW Department of Premier & Cabinet, *M2016-03 Model Litigant Policy for Civil Litigation and Guiding Principles for Civil Claims for Child Abuse*, cl 1.2 (SCOI.86186).

²⁹ Exhibit 6, Tab 534, NSW Department of Premier & Cabinet, *M2016-03 Model Litigant Policy for Civil Litigation and Guiding Principles for Civil Claims for Child Abuse*, cl 3.1 (SCOI.86186).

67. The stance adopted by the NSWPF (and to a lesser extent by Mr Willing), at this late stage of this Inquiry's operation, was wide-ranging in scope and had significant implications for the work of the Inquiry, and particularly Public Hearing 2.

Procedural fairness

68. Nearly all the individuals in respect of whom it has been submitted either that they should have been called as witnesses, or that they should be given notice of possible findings which may be "adverse to their interests", are serving or former police officers, or other former or current members of staff of the NSWPF.
69. As to procedural fairness, five individuals were cited by the NSWPF, namely Ms Young, DS Brown, 1446, Mr Chebl, and Mr Lehmann: see CPS [113], [115], [350]-[351] (regarding Mr Lehmann); [199b], [205f] (regarding Ms Young); [186b], [199c] (regarding DS Brown and 1446); [201] (regarding Ms Young and DS Brown); and [364] (regarding Mr Chebl and other personnel involved in the SF Neiwand investigations).³⁰ By contrast, Mr Willing's contention was that the absence of evidence from certain witnesses resulted in a potential injustice for Mr Willing himself: WS [14(c)], [69]. These procedural fairness submissions related to SF Macnamir and SF Neiwand, but not to SF Parrabell.³¹

Principles

70. It may be readily accepted that the requirements of procedural fairness apply to this Inquiry.
71. Neither the SCOI Act, nor the Terms of Reference, contain any directions as to the "practice and procedure to be followed" which might be understood as directly imposing requirements of procedural fairness.³² However, to exclude the application of procedural fairness, express statutory language would usually be required.³³ As Mason CJ, Deane and McHugh JJ observed in *Annetts v McCann* (1990) 170 CLR 596 at 598:³⁴

When a statute confers power upon a public official to destroy, defeat or prejudice a person's rights, interests or legitimate expectations, the rules of natural justice regulate the exercise of that power unless they are excluded by plain words of necessary intendment.

³⁰ In addition, the NSWPF submitted that it would be "a serious breach of procedural fairness" to make adverse findings as to Mr Willing's credibility: see CPS [107].

³¹ At CPS [542], it is said that "speculative criticism as to the possible impact of the changes [to the constituent documents] is, in the absence of such evidence [from relevant Parrabell officers], both unfair and inutile".

³² See *Special Commissions of Inquiry Act 1983* (NSW), s. 5.

³³ *Annetts v McCann* (1990) 170 CLR 596 at 598.

³⁴ *Annetts v McCann* (1990) 170 CLR 596 at 598. See also *Commissioner of Police v Tanos* (1958) 98 CLR 383 at 396 (Dixon CJ and Webb J), observing that intention of the legislature is not to be assumed or spelled out from "indirect references, uncertain inferences or equivocal consideration".

72. Moreover, there is a clear line of authority that establishes that the principles of procedural fairness apply to commissions of inquiry.³⁵ That authority suggests that a duty to observe procedural fairness may be implied as a condition of the exercise of statutory powers and functions which are capable of adversely affecting the rights and interests of persons or organisations.³⁶
73. However, what procedural fairness requires in a given context is not fixed. Rather, procedural fairness represents “a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case”.³⁷ The content of that obligation in an Inquiry context is different from that which applies in judicial proceedings.³⁸
74. It has been recognised that the “fundamental obligation of the inquirer” in a commission of inquiry is to “give a person, whose interests might be affected by the decision of the inquirer, a reasonable opportunity to be heard before the decision which may affect those interests is made”.³⁹ In particular, this means that the Commissioner cannot lawfully make any finding adverse to the interests of a person “without first giving them an opportunity to answer the matters put against them and to put submissions as to the findings or recommendations that might be made”.⁴⁰
75. In essence, this imposes two requirements on the Inquiry:
- a. to provide notice to a person, whose interests might be adversely affected by a proposed finding of the Commissioner, of the “nature and content of adverse material”;⁴¹ and

³⁵ *Mahon v Air New Zealand Ltd* [1984] AC 808; *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564; *Annetts v McCann* (1990) 170 CLR 596; *Re Royal Commission on Thomas Case* [1980] 1 NZLR 602; *Ferguson v Cole* (2002) 121 FCR 402 (Branson J).

³⁶ *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 578, 592. See also *Annetts v McCann* (1990) 170 CLR 596 at 598 (Mason CJ, Deane and McHugh JJ); *Plaintiff S10/2011 v Minister for Immigration and Citizenship* (2012) 246 CLR 636 at [97] (Gummow, Hayne, Crennan and Bell JJ).

³⁷ *Kioa v West* (1985) 159 CLR 550 at 585 (Mason J)

³⁸ Hall, P M, *Investigating Corruption and Misconduct in Public Office – Commissions of Inquiry – Powers and Procedures* (Lawbook Co, 2nd ed, 2019) 550–551: “A commissioner conducting an inquiry... does so as an investigator and as such is not bound to adopt the judicial model or mode of proceeding. The functions he or she is required to perform and the matters required to be investigated may call for quite different procedures and a different approach to those observed in inter partes litigation. Accordingly, in general the principles of procedural fairness must be observed, their content must accommodate and facilitate the due discharge of the responsibilities that rest with a commission of inquiry.”

³⁹ *Lawrie v Lawler* [2016] NTCA 3 at [180].

⁴⁰ *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 581; see also *Annetts v McCann* (1990) 170 CLR 596 at 600–601; *NCSC v News Corp Ltd* (1984) 156 CLR 296 at 314–315.

⁴¹ *Lawrie v Lawler* [2016] NTCA 3 at [181]; *Commissioner for the Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576 at 591–2.

- b. to give that person an opportunity to provide information or make submissions against the making of that proposed finding.
76. However, two matters in particular need to be emphasised.
77. First, these duties are enlivened only in respect of a person whose interests may be “adversely affected” by a proposed finding. They are not owed to every person who has some connection with, or may have knowledge of, a matter at issue, unless an “adverse” finding is proposed about that person.
78. Courts take a broad, open-ended approach to determining the kinds of “interests” which attract the protection of procedural fairness.⁴² The threshold is relatively low, in that “some clear form of possible adverse affectation” may suffice.⁴³
79. Nonetheless, where no adverse finding is proposed about a person, the question whether to obtain evidence from that person is purely a forensic decision for the Commissioner, in whom the power to call witnesses is solely reposed.⁴⁴ In such circumstances the question whether, in the absence of evidence from that person, a finding is open to be made by the Commissioner, is one of sufficiency of evidence, and does not involve any possible denial of procedural fairness.
80. Secondly, a person must be affected as an individual for procedural fairness to apply. As Deane J held in *Kioa v West*, each of the challenged orders in that case “directly affected the rights, interest and status of the person ... in respect of whom it was made and *against whom as an individual* it was directed” (emphasis added).⁴⁵ A distinction often drawn in this regard is between a decision affecting an individual, and a decision affecting a group or class of which an individual is a member (including the public at large).⁴⁶

⁴² It is accepted that courts take a broad, open-ended approach to determining the kinds of ‘interests’ which attract the protection of procedural fairness: Mark Aronson, Matthew Groves and Greg Weeks, *Judicial Action of Administrative Action and Government Liability* (7th ed, Thomson Reuters, 2021), [8.60]; see also *Plaintiff M61/2010E v Commonwealth (Offshore Processing Case)* (2010) 243 CLR 319; [2010] HCA 41 at [75].

⁴³ *CLM18 v Minister for Home Affairs* (2019) 272 FCR 639; [2019] FCAFC 170 at [55] (Perram J).

⁴⁴ *Special Commissions of Inquiry Act 1983* (NSW), s. 14. As Dr Stephen Donaghue KC notes in the context of Royal Commissions and commissions of inquiry generally, “Commission legislation does not confer a right on interested persons to call witnesses to give further evidence to a commission. This is not surprising, as if such a right existed a hearing ‘might become so protracted as to render it practically futile’”: *Royal Commissions and Permanent Commissions of Inquiry* (Butterworths, 2001) 190, quoting *NCSC v News Corp Ltd* (1984) 156 CLR 296 at 313-314 (Gibbs CJ).

⁴⁵ *Kioa v West* (1985) 159 CLR 550 at 632.

⁴⁶ *Kioa v West* (1985) 159 CLR 550 at 620 per Brennan J; *Castle v Director General State Emergency Service* [2008] NSWCA 231 at [6] (Basten JA), dissenting as to outcome but not as to the relevant statement of principle.

Application of the principles

81. None of the findings or conclusions which the NSWPF contends have been proposed by Counsel Assisting affects an interest held by any of those officers as individuals. It has not been submitted, for example, that any of those officers lied or engaged in misconduct. That would evidently affect the officer's personal reputation, which has been recognised as an interest which enlivens obligations of procedural fairness.⁴⁷
82. The proposed findings or conclusions, to the extent that Counsel Assisting have advanced them, are of a different nature. Each is to the effect that a group of NSWPF officers of which the relevant officer was a member, acting in the execution of their duties and on behalf of the NSWPF as a 'strike force', held a collective attitude, and/or sought and/or produced a particular result or consequence.
83. With respect to Mr Chebl, the NSWPF repeatedly assert that Counsel Assisting made a "decision" not to call him: see for example CPS [363], [364], [392]. As outlined above, such assertions are simply wrong.
84. It is contended on behalf of the NSWPF that Mr Chebl, personally, had been the subject of "strident criticism" and "allegations ... in an entirely public form" without being given an opportunity to respond: CPS [360]. However, the relevant criticisms made by Counsel Assisting, for example at CAS [576] and [635]-[641], are of SF Neiwand as a whole rather than of Mr Chebl. Moreover, Counsel Assisting were at pains to make clear in the CAS that (as was put to DS Morgan) it was DS Morgan, as the Investigation Supervisor, who was ultimately responsible for the direction, and decisions, and written records, of SF Neiwand, including in particular the three Neiwand Summaries. The NSWPF now concedes, *inter alia*, that the criticisms of Operation Taradale in those Neiwand Summaries were "unjustified": CPS [395].
85. It is submitted that, to the extent that Counsel Assisting made submissions or proposed findings relating to the conduct of SF Neiwand or SF Macnamir, they were not directed to impugning any individual officer's personal reputation, or to the probity of any one individual. Rather, they concerned those two Strike Forces collectively. In some circumstances, it may be necessary to receive evidence from specific individual officers within a group such as a strike force, in order to generate a sufficiently detailed picture of the conduct of the group. However, procedural fairness does not *require* that those individuals be called before a finding about the strike force's conduct can be made.

⁴⁷ See *Annetts v McCann* (1990) 170 CLR 596 at 608–609 (Brennan J); *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 578 (Mason CJ, Dawson, Toohey and Gaudron JJ), 592 (Brennan J).

86. For all the above reasons, namely the history of the correspondence and provision of statements, the terms of Practice Guideline 1, the proper application of the principles of procedural fairness, and the investigative rather than adversarial nature of an inquiry such as this, it is submitted that if the submissions of the NSWPF and/or Mr Willing as to the need to call witnesses and as to procedural fairness are pressed, they are misconceived and should be rejected.

The Inquiry's practical approach to these matters

87. If the evidence before the Inquiry as at June 2023 was insufficient for the Commissioner to make certain findings, as the submissions on behalf of the NSWPF and Mr Willing assert, that is a result of the conduct of the NSWPF and Mr Willing, for the reasons outlined above. That is a very unsatisfactory situation.
88. A key purpose of this Inquiry is to discover the truth in relation to matters which fall within the Terms of Reference. It would be inconsistent with that purpose either for the Commissioner to make findings on the basis of insufficient evidence, or for the Commissioner to decline to make findings if any such insufficiency (if it exists) could be addressed by supplementary evidence.
89. For the reasons outlined above, it is submitted there was no such insufficiency as at June 2023.
90. However, from a practical perspective, Counsel Assisting have endeavoured to ensure that any of the individuals referred to in the submissions of the NSWPF or Mr Willing, who wished to give evidence or to make a submission, would be given every opportunity to do so.
91. The following paragraphs summarise what has been done in that regard. The details are more comprehensively set out in **Annexure A** to these submissions.
92. First, on 10 August 2023, the Inquiry wrote to the NSWPF and requested that the NSWPF provide statements from nine of the individuals referred to in the submissions of the NSWPF, and also from a witness or witnesses capable of addressing the Bias Crimes-related matters referred to above at [39] (**10 August letter**).⁴⁸ All of those individuals were current or former police officers, namely:
- a. A witness or witnesses able to speak to the accuracy or otherwise of Sergeant Steer's claims that he was 'forced out' of the BCU in 2017, and the circumstances in which the BCU was restructured at that time;

⁴⁸ Exhibit 6, Tab 424, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 10 August 2023, [79] (SCOI.85244).

- b. Superintendent Middleton;
 - c. DI Grace;
 - d. D A/S Bignell;
 - e. Mr Leggat;
 - f. Mr Lehmann;
 - g. Ms Young;
 - h. DS Brown;
 - i. DSC Rullo; and
 - j. Mr Chebl.
93. The Inquiry requested that such statements address any matters in respect of which the NSWPF has submitted there is insufficient evidence for the Commissioner to make findings, and/or that procedural fairness requires that the individuals in question be given an opportunity to provide evidence or be heard.⁴⁹
94. The NSWPF eventually provided statements from four of those ten individuals: Superintendent Middleton, DI Grace and D A/S Bignell (all of whose evidence relates to SF Parrabell), and Superintendent Hurst (whose evidence related to some but not all of the matters referred to above in relation to the Bias Crimes Unit).
95. As to the other six current or former police officers from whom the Inquiry had requested statements (former officers Mr Leggat, Mr Lehmann, Ms Young, and Mr Chebl, and current officers DS Brown and DSC Rullo), the NSWPF eventually informed the inquiry that it was not in a position to represent any of them because of the possibility of a “conflict of interest”.⁵⁰ The nature of such asserted possible conflict has not been disclosed.
96. All of those six individuals were involved, to greater or lesser extent, in either or both of SF Macnamir and SF Neiwand.

⁴⁹ Exhibit 6, Tab 424, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 10 August 2023, [80] (SCOI.85244).

⁵⁰ Exhibit 6, Tab 450, Letter from the Office of the General Counsel, NSW Police Force to Solicitor Assisting the Inquiry, 1 September 2023 (SCOI.85669).

97. Five of those individuals (Mr Leggat, Mr Lehmann and Ms Young, DS Brown and DSC Rullo) subsequently provided witness statements to the Inquiry, assisted by their own lawyers. One, Mr Chebl, responded that for various reasons he did not intend to do so.⁵¹
98. In addition, the Inquiry requested and obtained a further statement from Sergeant Steer (partly in reply to that of Superintendent Hurst).
99. Secondly, although the Inquiry specifically did not request that the NSWPF provide statements from any of the more than 30 other individuals and groups the subject of the submissions of NSWPF or Mr Willing, the Inquiry's 10 August letter also notified the NSWPF that, if it considered that any of those additional individuals should also provide a statement, the NSWPF should arrange for that to be done.
100. Such statements were in due course received by the Inquiry, via the NSWPF, from five such persons.
101. In addition, the Inquiry sought and obtained a statement from Ms Alberici.
102. Thirdly, the Inquiry itself wrote to 40 of the individuals identified in the submissions of NSWPF and Mr Willing, including all nine of those from whom the Inquiry had initially requested the NSWPF to provide statements. In those letters, the Inquiry explained the circumstances giving rise to the sending of such a letter, identified the relevant parts of the submissions affecting the person in question, and invited the person to make any statement or submission which they might wish to make.⁵²
103. Of those 40 individuals, 37 are present or former police officers or staff of the NSWPF.
104. Of the 40 individuals contacted by the Inquiry:
 - a. 17 did not respond;
 - b. Nine responded to say that they could not, or did not wish to, make a statement or submissions; and
 - c. 14 provided statements (being those referred to at [94], [97], [100] and [101]).
105. In addition, as referred to at [94] and [98], the Inquiry also received two additional statements from Superintendent Hurst and Sergeant Steer in relation to the BCU issues.

⁵¹ Exhibit 6, Tab 467D, Letter from Solicitor Assisting the Inquiry to Lina Chebl, 18 September 2023 (SCOI.85718); Exhibit 6, Tab 467E, Email from Lina Chebl to Solicitor Assisting the Inquiry, 19 September 2023 (SCOI.85726).

⁵² See, eg, Exhibit 6, Tab 467A, Letter from Solicitor Assisting the Inquiry to Cameron Bignell, 21 August 2023 (SCOI.85558); Exhibit 6, Tab 474A, Letter from Solicitor Assisting the Inquiry to Alicia Taylor, 22 August 2023 (SCOI.85502).

106. All of those statements have been tendered and received in evidence, as outlined above.
107. Further, the Inquiry summonsed, but did not obtain further statements from, Mr Willing and DS Morgan. Mr Willing gave evidence at the September/October hearing.
108. In relation to the various separate categories of persons from whom, according to the CPS, evidence should have been obtained, the position ultimately reached is summarised in the following paragraphs. Again, the details are more comprehensively set out in Annexure A to these submissions.
109. In relation to 13 individuals identified in the CPS and WS as having not being called to give evidence (but from whom the Inquiry did not require the NSWPF to provide a statement):⁵³
- a. The Inquiry wrote to all 13 persons, inviting statements and/or submissions;
 - b. Two witnesses did not respond;⁵⁴
 - c. Five witnesses responded and said that they did not wish to, or could not, make a statement;⁵⁵
 - d. Six witnesses provided a statement;⁵⁶
 - e. Of those six witnesses who provided a statement, four were ultimately summonsed to appear before the Inquiry and gave oral evidence at the September/October hearing.

Junior Strike Force Parrabell officers

110. In relation to the 18 junior SF Parrabell officers identified by the NSWPF:⁵⁷
- a. The Inquiry wrote to 13 of the 18 officers (the other five officers having already been contacted by the Inquiry);⁵⁸
 - b. 12 of the 13 officers did not respond;
 - c. The partner of one officer contacted the Inquiry to advise that the officer was unable to provide a response;⁵⁹ and

⁵³ Being, [REDACTED] 1446, DS Alicia Taylor, Georgina Wells, Emma Alberici, former DS Kenneth Bowditch, Jacqueline Braw, former Commissioner Michael Fuller, Strath Gordon, Siobhan McMahon, former Detective Acting Superintendent Chris Olen, Zdenka Vaughan, Dr Philip Birch and Dr Danielle Tyson.

⁵⁴ Being, Mr Olen and Ms Vaughan.

⁵⁵ Being, Mr Bowditch, Ms Braw, Mr Fuller, Dr Birch and Dr Tyson.

⁵⁶ Being, [REDACTED] 1446, DS Taylor, Ms Wells, Ms Alberici, Mr Gordon and Ms McMahon.

⁵⁷ Being, Craig Middleton, Paul Grace, Jo-Anne Kenworthy, Geoffrey Steer, Andrew Agostino, Hugh Brandon, Cameron Bignell, Chelsea Bennetts, Christopher Borg, Adam Churchill, Renee Cochrane, Kathleen Collins, Sarah Fleming, Jody Gibbons, Rebecca Parish, Timothy Ryan Brad Yusuf and Ashley Grimes.

⁵⁸ The Inquiry had already written to Superintendent Middleton, DI Grace and D A/S Bignell. Sergeant Steer was an interested party in Public Hearing 2 and the Inquiry had already received a statement from Ms Kenworthy.

⁵⁹ See Exhibit 6, Tab 501C, Email from Daniel Parker to Solicitor Assisting the Inquiry, 20 September 2023 (SCOI.85774).

- d. None of the 13 officers provided a statement.

Other Strike Force Neiwand officers

111. In relation to the nine SF Neiwand officers identified by the NSWPF:⁶⁰

- a. The Inquiry wrote to five of the nine officers (the other four officers had already been contacted by the Inquiry);⁶¹
- b. Three of the five officers did not respond;
- c. Two of the five officers responded and said that they did not wish to make a statement;⁶² and
- d. None of the five officers provided a statement.

Other groups referred to in the CPS

112. On the basis that obtaining statements from all such persons might lead to the Inquiry becoming “so protracted as to render it practically futile,”⁶³ in the view of the Inquiry, it was not necessary to write to other groups of individuals referred to in the CPS, such as those noted below:

- a. officers who worked on SF Welsford or otherwise were able to speak to the ultimate charging and conviction of Scott White – cf CPS [103];
- b. “Those assisting the State Coroner” at the third inquest in relation to the death of Scott Johnson – cf CPS [199(c)];
- c. “others” who shared the views of Ms Young and DS Brown – cf CPS [201]; and
- d. “others” in State Crime Command – cf CPS [207].

The position that has now been reached

113. It is submitted that, to the extent – if any – that the contentions of the NSWPF or Mr Willing, as to witnesses who should have been called and/or procedural fairness, may have been regarded (as at June 2023) as giving rise to any such concerns, that is no longer so:

- a. All the individuals in respect of whom submissions were made about procedural fairness have given written statements and have also been called to give oral evidence;
- b. All the individuals, in respect of whom it was asserted that certain findings could not be made without their giving evidence, have now done so, either by written statements or in

⁶⁰ Being, Christopher Olen, Stewart Leggat, Penelope Brown, Michael Chebl, Tamer Kilani, Katherine Tierney, Jon Oldfield, Craig Crouch and Bianca Comina.

⁶¹ Being, Mr Olen, Mr Leggat, DS Brown and Mr Chebl.

⁶² Being, Mr Oldfield and Ms Comina.

⁶³ Dr Stephen Donaghue KC, *Royal Commissions and Permanent Commissions of Inquiry* (Butterworths, 2001) 190, quoting *NCSC v News Corp Ltd* (1984) 156 CLR 296 at 313-314 (Gibbs CJ). See also *National Companies and Securities Commission v News Corporation Ltd* (1984) 156 CLR 296.

oral evidence or both; or, having being offered the opportunity to make a submission or statement, have declined to do so (in some cases, on the basis that they did not feel that they could provide the Inquiry with any relevant evidence).

114. To those submissions there is one notable exception, namely Mr Chebl. He expressly declined to provide a written statement or to give oral evidence, on health-related grounds which are the subject of confidential documentary exhibits.

C. ADDITIONAL EVIDENCE – BIAS CRIME

115. In the CPS, as noted at [39] above, the NSWPF contended that the Inquiry should have adduced evidence from a witness or witnesses (not identified by name) about the following matters:
- a. the availability of resources, and the appropriate distribution of them among the various competing priorities of the NSWPF: see CPS [29] and [56];
 - b. the objectivity of Sergeant Steer, and the accuracy of his opinions in relation to the restructuring of the Bias Crimes Unit in 2017 and his being “forced out” of the Bias Crimes Unit at that time: see CPS [34], [36];
 - c. the reasons for the 2017 restructure, from the perspective of “those actually responsible for [it]”: see CPS [36].
116. In its 10 August letter, one of the statements requested by the Inquiry from the NSWPF was a statement from “a witness or witnesses able to speak to” such matters.⁶⁴
117. After multiple rounds of correspondence with the NSWPF (see Annexure A), the NSWPF eventually provided an unsigned statement by Superintendent Andrew Hurst on 12 September 2023, and a signed statement on 19 September 2023 (**Hurst statement**).⁶⁵
118. However, in that statement Superintendent Hurst addressed only one of the three matters about which complaint was made in the CPS, namely Sergeant Steer’s being “forced out” of the BCU in 2017.
119. Superintendent Hurst was Acting Commander of Operational Programs, the Command which included the BCU, for a six week period in 2017, from 28 April to 10 June.⁶⁶ Otherwise, as appears from his statement, Superintendent Hurst had no association with or knowledge of the BCU whatsoever, before or after that short period.⁶⁷
120. Indeed, Superintendent Hurst expressly stated:⁶⁸
- I am unable to comment on the circumstances for the BCU’s restructure such that it was transferred to the FPIU. During this time, the NSWPF was undergoing a re-engineering process. I am unable to comment on the rationale for the re-engineering process,*

⁶⁴ Exhibit 6, Tab 424, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 10 August 2023, [79a] (SCOI.85244).

⁶⁵ Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst, 19 September 2023 (NPL.9000.0030.0015).

⁶⁶ Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst, 19 September 2023, [21] (NPL.9000.0030.0015).

⁶⁷ See Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst, 19 September 2023, [9]-[22] (NPL.9000.0030.0015).

⁶⁸ Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst, 19 September 2023, [44] (NPL.9000.0030.0015).

121. The position accordingly is that, having complained that evidence had not been adduced concerning these matters from someone who knew about them, the choice made by the NSWPF – when asked to provide such evidence – was to produce a statement from a witness who had no knowledge about those very topics.
122. In those circumstances, it is submitted, there is no reason why Sergeant Steer’s unchallenged evidence on those matters should not be accepted.
123. On the one topic on which he did give evidence, the question of Sergeant Steer being “forced out”, Superintendent Hurst denied that that was so.⁶⁹ His evidence was that Sergeant Steer (along with other BCU members) did not want to work at Hurstville where the BCU (once having been absorbed into the Fixated Persons Investigation Unit (**FPIU**)) was henceforth going to be located, having hitherto been based at Parramatta. He referred to the Transfer Application form lodged by Sergeant Steer, in which Sergeant Steer: requested a transfer to Hawkesbury; said it was not feasible for him to travel to Hurstville; and said he had no interest in the new role that had been established within the FPIU.⁷⁰
124. However, Sergeant Steer provided a third statement, dated 19 September 2023, which in part responded to that of Superintendent Hurst.⁷¹ Sergeant Steer’s evidence was that, while the relocation to Hurstville was a factor in his decision, it was by no means the only one, and by no means the main one.
125. Sergeant Steer considered that Superintendent Hurst “tried his best to look after the [BCU] in a difficult circumstance”. He said he agreed “in general” with the Hurst Statement, with the specific exception, however, of Superintendent Hurst’s assertion that he (Sergeant Steer) was not “forced out”.⁷²
126. In his third statement, Sergeant Steer outlined a history of hostile behaviour towards him, in his role as Bias/Hate Crime Coordinator, by very senior officers, including: then Deputy Commissioner Owens in 2009;⁷³ then AC Michael Fuller in 2015;⁷⁴ and the Commander of the Terrorism Intelligence Unit and other senior officers in 2016.⁷⁵

⁶⁹ Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst, 19 September 2023, [43] (NPL.9000.0030.0015); see also [32]-[41].

⁷⁰ Exhibit 6, Tab 514, Statement of Superintendent Andrew Hurst, 19 September 2023, [40] (NPL.9000.0030.0015).

⁷¹ Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023 (SCOI.85731).

⁷² Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [41] (SCOI.85731).

⁷³ Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [5]-[8] (SCOI.85731).

⁷⁴ Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [12]-[15] (SCOI.85731).

⁷⁵ Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [17]-[19] (SCOI.85731).

127. Sergeant Steer gave evidence that “[a]fter 7 years of trying to introduce hate crimes to the NSW Police and constant resistance and pushback [he] was tired of fighting”.⁷⁶

128. He said that his decision to leave “broke down to several key factors”, namely:⁷⁷

- a. it was apparent to him that it was “untenable for [him] to remain in the role”, because since the departure of former Deputy Commissioner Nick Kaldas⁷⁸ (whom he regarded as “a major supporter of the work of the [BCU]”)⁷⁹, there was no longer an “advocate at the higher levels” for the BCU,⁸⁰ and the environment he worked in was “even more hostile and toxic”;
- b. he was informed by “several senior officers” that he was “not popular with the new regime”;
- c. it appeared to him that “the issues around hate crimes were not about hate crimes anymore but had become a personality conflict” between him and “several senior officers”;
- d. after the incident with then AC Fuller in 2015, he felt that while he remained in the role, the work of the BCU would suffer;
- e. he “was warned that [he] was not in favour with the new Commissioner” (i.e. Mr Fuller, who was appointed Commissioner of Police in March 2017);
- f. given the “lack of understanding about hate crimes” by the senior management of the NSWPF, and “the toxic environment hate crimes had devolved to”, he felt that there would be “minimal chance of correcting the false assumptions about hate crimes and what the [BCU] did” and “advanc[ing] the direction of bias crimes” within the NSWPF;
- g. the psychological impact of the work, and the toxic environment it had become, was impacting his life negatively; and
- h. international colleagues in the field of bias crimes advised him that “the work would destroy [him] if [he] was not supported”.

129. Sergeant Steer concluded that:⁸¹

⁷⁶ Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [29] (SCOI.85731).

⁷⁷ Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [30]-[35] (SCOI.85731).

⁷⁸ Former Deputy Commissioner Kaldas will be referred to as Mr Kaldas in these submissions.

⁷⁹ Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [20] (SCOI.85731).

⁸⁰ Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [20] (SCOI.85731).

⁸¹ Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [35] (SCOI.85731).

I felt that I was not supported, that there was no chance of that situation changing and that it was a fight I could not win, so I made the decision to leave.

130. He said that the “distance” factor (relating to the move from Parramatta to Hurstville) was only “the final straw”.⁸² He also said that in discussions with Superintendent Hurst he had raised the issues relating to working from Hurstville, but not “the previous history nor my decision-making process”.⁸³
131. It may be noted that in his Transfer Application, the “Reason for Application” box was filled in by Sergeant Steer as follows:⁸⁴

The Bias Crimes Unit has been transferred to Fixated Persons Investigation Unit and the work undertaken by the Bias Crimes unit will cease. Given the location of FPIU at Hurstville it is not feasible for me to travel to Hurstville and I have no interest in the new role that has been established.

132. Thus, the distance/Hurstville factor was only one of three reasons stated in the Transfer Application, the other two being:
- a. that the work of the BCU would cease; and
 - b. that (in those circumstances) Sergeant Steer had no interest in “the new role”.
133. As Sergeant Steer noted in his third statement, in his previous evidence to the Inquiry he had pointed out that “the unit was told that we were not doing hate crimes, only working on left-wing and right-wing groups”.⁸⁵ That was the “new role”, in which he had no interest, to which he was referring in the Transfer Application.⁸⁶
134. None of the interested parties made an application for Sergeant Steer to be called to give further oral evidence: see Practice Guideline 1 at [20]–[24]. The evidence given in his third statement stands unchallenged. Nothing in the Hurst statement detracts from it, given that, on his own evidence as well as that of Sergeant Steer, it is clear that Superintendent Hurst had no knowledge of any of the factors (other than the move to Hurstville) which led to Sergeant Steer’s decision.
135. It is submitted that Sergeant Steer’s evidence as to the reasons for his departure from the BCU should be accepted.

⁸² Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [28] (SCOI.85731).

⁸³ Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [41] (SCOI.85731).

⁸⁴ Exhibit 6, Tab 518A, Transfer Application Form of Sergeant Geoffrey Steer, 8 June 2017 (NPL.0217.0001.0001).

⁸⁵ Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [28] (SCOI.85731).

⁸⁶ Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023, [41] (SCOI.85731).

D. ADDITIONAL EVIDENCE – STRIKE FORCE MACNAMIR

June 2012–February 2013

136. On 27 June 2012, Coroner Forbes returned an open finding in the second Scott Johnson inquest, and referred the matter to “Cold Cases”: CAS [303]–[306].
137. In October/November 2012, members of the UHT gave consideration to the case. Mr Willing gave evidence that the UHT gave the case a “zero solvability” rating: CAS [311]–[318].
138. Two written records of that consideration, not previously in evidence, were produced by the NSWPF in August and September 2023. They are:
- a. a “Case Screening Form” completed by then DSC Taylor (first produced to the Inquiry by the NSWPF, undated and unsigned, on the morning of DS Taylor’s oral evidence on 25 September 2023);⁸⁷ and
 - b. a “Review Prioritisation Form” dated 2 November 2012 conducted by Mr Lehmann, DS Richardson, DS Brown and DSC Tse (first produced to the Inquiry by the NSWPF on 9 August 2023).⁸⁸
139. It emerged in evidence during the September/October hearing that the case screening process would be carried out first, by a review officer such as DS Taylor, and that the “prioritisation” exercise would then follow, by more senior officers.⁸⁹ DS Taylor herself was not familiar with the Review Prioritisation Form.⁹⁰
140. In her Case Screening Form, DS Taylor made recommendations that included giving consideration both to a monetary reward, and also to undertaking:⁹¹
- an investigation targeting known persons of interest who have been charged with offences against homosexuals in the Northern Beaches area over the period of Scott Johnson’s death which may produce further lines of inquiry and enable covert opportunities to gather information.*
141. DS Brown gave evidence that she agreed with those recommendations.⁹²

⁸⁷ Exhibit 6, Tab 399A, Review of an Unsolved Homicide Case Screening Form – Death of Scott Johnson, undated (SCOI.85777).

⁸⁸ Exhibit 6, Tab 399, Review Prioritisation Form – Death of Scott Johnson, 2 November 2012 (NPL.0209.0001.0087).

⁸⁹ Transcript of the Inquiry, 25 September 2023, T6054.35-6055.16 (TRA.00090.00001).

⁹⁰ Transcript of the Inquiry, 25 September 2023, T5918.46–5919.2 (TRA.00090.00001).

⁹¹ Exhibit 6, Tab 399A, Review of an Unsolved Homicide Case Screening Form – Death of Scott Johnson, undated (SCOI.85777).

⁹² Transcript of the Inquiry, 3 October 2023, T6478.3-30 (TRA.00095.00001).

142. Nevertheless, in the subsequent Review Prioritisation Form, Mr Lehmann and his colleagues (including DS Brown) gave the case “nil priority”. The case was scored as 14 out of a possible 60 points.⁹³ According to the form, a score of 15 or less equated to “nil priority”, which term was described on the form as leading to the consequence of “close or suspend case”.⁹⁴
143. As Mr Lehmann accepted, the structure of the Review Prioritisation Form was such that where there was not already a known suspect, and where there was no physical evidence which might be susceptible to the utilisation of new technology, the scores for both those parts of the form would necessarily be zero (out of a total of a possible 30). In such a case – of which Scott Johnson’s was one – it was impossible for the case to achieve a priority ranking higher than 30, and hence the priority for such a case would be unlikely to be better than “low”.⁹⁵
144. Pausing there, as is now apparent, the categorisation of the case by the UHT in November 2012 was not “zero solvability” but rather, “nil priority”. Plainly the two expressions do not have an identical meaning. However, the evidence of both Mr Lehmann⁹⁶ and Ms Young⁹⁷ was to the effect that in practice they were regarded as substantially similar.
145. As to whether a “nil priority” ranking meant that a case would be “closed or suspended” (as the form indicated), each of Mr Lehmann,⁹⁸ DS Brown,⁹⁹ and Ms Young¹⁰⁰ gave evidence that “unsolved” cases were never literally “closed”. Mr Lehmann said that “closed” was “a poor word choice”, and that the reality was that the case “would become an inactive case and probably wouldn’t be proactively investigated any time soon”.¹⁰¹ Ms Young said that if a case was categorised as “nil priority”, it would be suspended, which she agreed meant that no work would be done on it unless and until a new piece of information was obtained.¹⁰²

February 2013: *Australian Story*

146. The *Australian Story* broadcast of 11 February 2013, and the emails passing among Steve Johnson, Mr Lehmann, former Detective Acting Superintendent (DAS) Olen (referred to as

⁹³ Exhibit 6, Tab 399, Review Prioritisation Form – Death of Scott Johnson, 2 November 2012, 4 (NPL.0209.0001.0087).

⁹⁴ Exhibit 6, Tab 399, Review Prioritisation Form – Death of Scott Johnson, 2 November 2012, 4 (NPL.0209.0001.0087).

⁹⁵ Transcript of the Inquiry, 26 September 2023, T6060.4-6061.39 (TRA.00091.00001).

⁹⁶ Transcript of the Inquiry, 26 September 2023, T6059.34-6060.2 (TRA.00091.00001).

⁹⁷ Transcript of the Inquiry, 5 October 2023, T6643.37-6644.3 (TRA.00097.00001).

⁹⁸ Transcript of the Inquiry, 26 September 2023, T6057.29-30 (TRA.00091.00001).

⁹⁹ Transcript of the Inquiry, 3 October 2023, T6479.22-6480.10 (TRA.00095.00001).

¹⁰⁰ Transcript of the Inquiry, 5 October 2023, T6644.20 (TRA.00097.00001).

¹⁰¹ Transcript of the Inquiry, 26 September 2023, T-6057.3-43 (TRA.00091.00001).

¹⁰² Transcript of the Inquiry, 5 October 2023, T6644.17–31 (TRA.00097.00001).

Mr Olen in these submissions) and Ms Young in January-February 2013, are referred to at CAS [319]–[329].

147. Contrary to what is asserted at CPS [113], and contrary to Mr Lehmann’s apparent understanding based on that CPS submission,¹⁰³ no submission was made by Counsel Assisting that Mr Lehmann had “lied on national television about the status of a murder investigation”. However, it is submitted that the view adopted by Mr Willing, as to the effect of what Mr Lehmann said, remains appropriate: CAS [328].
148. Mr Lehmann gave evidence that what he said on *Australian Story* was not intended to convey the impression that there was some sort of investigation underway, although he acknowledged it might have done so. He said he “wasn’t thinking about the impression that [his] words would have left on people viewing that program”.¹⁰⁴
149. It is submitted that such evidence strains credulity. Why else was he appearing on the programme? Inevitably the impression created by the words he chose to use would have been that work was actively being done on the case, when that was simply not so.

February 2013: establishment of SF Macnamir

150. In addition to what appears at CAS [331]–[339], the following submissions are now made.
151. It is now clear from Ms Young’s statement of 22 September 2023, and the emails and other documents cited in it,¹⁰⁵ that:
- a. By about 7 February 2013, the NSWPF had come to the view that it needed to “investigate the issues raised by the [Johnson] family” for reasons which included an awareness that *Australian Story* would be broadcast on the following Monday night (11 February 2013);
 - b. According to Mr Olen, that decision (to investigate) was not because the NSWPF had “capitulated to the ‘hype’”;
 - c. SF Macnamir was created by the NSWPF, evidently in accordance with that decision, at 12:26pm on 11 February 2013, ie some hours before *Australian Story* went to air that night; and

¹⁰³ Exhibit 6, Tab 513, Statement of John Lehmann, 29 August 2023, [41] (SCOI.85495).

¹⁰⁴ Transcript of the Inquiry, 26 September 2023, T6071.19–6074.41 (TRA.00091.00001).

¹⁰⁵ Exhibit 6, Tab 521, Second statement of Pamela Young, 22 September 2023, [25]–[32] (SCOI.85816).

- d. The meeting with Minister Gallacher took place the following day, 12 February 2013, at about 5:00pm.
152. Thus SF Macnamir was created, by the NSWPF, more than 24 hours prior to the meeting involving Minister Gallacher.
153. That sequence of events may have some significance when consideration is given to Ms Young's description of the then-Minister as "kowtowing" to the Johnson family at the meeting. The decision to instigate SF Macnamir had been taken and implemented, by the NSWPF, prior to any meeting between the Minister and the Johnson family.

The conduct of SF Macnamir, and the suicide theory

154. Ms Young's 445-page statement (**the Young coronial statement**), and Mr Willing's evidence in relation to it, are considered at CAS [363]–[381].
155. Both Ms Young¹⁰⁶ and DS Brown¹⁰⁷ maintained that SF Macnamir, and in particular the Young coronial statement, merely assembled the available evidence in relation to all three possibilities (suicide, homicide or misadventure), rather than favouring the suicide theory or indicating that suicide was more likely. It is again submitted that, as a matter of objective analysis of that statement, that is simply not so. It is submitted that the real position, as Mr Willing acknowledged, was as set out at CAS [374]–[376] and [380]–[381].
156. Ms Young was asked if she had "any regrets about the stance taken by Macnamir in resisting the Johnson family's attempts to establish that the death was a homicide" (emphasis added).¹⁰⁸ Her answer was revealing (emphasis added):¹⁰⁹
- No regrets. ... SF Macnamir did show that it was not likely to be a marauding gang gay hate crime, which is was what the Johnson campaign mainly focused on.*
157. DS Brown gave a similar unprompted answer when asked a similar question. In acknowledging that Scott Johnson did die as result of homicide, DS Brown emphasised that "it's not a gay hate homicide".¹¹⁰
158. It is submitted that those answers tend to support the submissions at CAS [354]–[359], as to both Ms Young and Mr Willing wishing to "defeat" the Johnson family by resisting a finding of homicide, particularly one of gay hate homicide.

¹⁰⁶ Transcript of the Inquiry, 5 October 2023, T6663.17-41 (TRA.00097.00001).

¹⁰⁷ Transcript of the Inquiry, 3 October 2023, T6484.15-27 (TRA.00095.00001).

¹⁰⁸ Transcript of the Inquiry, 5 October 2023, T6663.17-19 (TRA.00097.00001).

¹⁰⁹ Transcript of the Inquiry, 5 October 2023, T6663.20-23 (TRA.00097.00001).

¹¹⁰ Transcript of the Inquiry, 3 October 2023, T6489.36-44 (TRA.00095.00001).

159. In that regard, Ms Young denied that the language in her text exchanges with Mr Willing on 14 April 2015 (the day after the *Lateline* broadcast), in which they both emphasised their determination not to “let them [the Johnsons] win”, reflected a desire to defeat the Johnsons.¹¹¹ It is submitted that her denial is implausible and should be rejected. The submissions at CAS [354]–[359] are reiterated.
160. At CAS [350]–[353], reference was made to Ms Young’s answer to Ms Alberici’s question on 10 April 2015, “What’s changed since the last coronial inquest that would warrant another one?”. Her answer included: “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” (emphasis added).¹¹²
161. Ms Young denied that she wanted to test the proposition that gangs had been involved in gay hate violence (as found by Coroner Milledge).¹¹³ Ms Young’s explanation for the language that she used (“put to the test”) was that by reviewing Operation Taradale and its methodology in the course of SF Macnamir, she “wanted the body of the work, [she] wanted the facts, the information, the intelligence ... to learn about the gangs operating in Sydney in a coastal area similar to where Scott had been found”.¹¹⁴
162. It is submitted that that evidence is not persuasive and should not be accepted. What Ms Young and SF Macnamir sought to “put to the test” was indeed – as Ms Young actually said to Ms Alberici – the “findings” of Operation Taradale; that is, that the deaths of Mr Russell and Mr Warren were homicides, by gay-hate assailants. SF Neiwand, in due course, pursued that same approach.

The *Lateline* broadcast

163. Matters relating to *Lateline* are discussed at CAS [382]–[491]. These submissions do not recapitulate what appears there, but seek only to highlight some additional matters arising from the September/October hearing.
164. For the September/October hearing, each of Ms Wells, Ms McMahon and Mr Gordon (the relevant NSWPF media personnel) provided statements. Each of them said that their account of relevant events, as given in their Ashurst interviews of April 2015 (already in evidence prior

¹¹¹ Transcript of the Inquiry, 5 October 2023, T6661.30-6662.21 (TRA.00097.00001).

¹¹² Exhibit 6, Tab 342, Transcript of recorded interview between Emma Alberici and DCI Pamela Young in the Lateline Studio, 10 April 2015, T20.24-25, T20.37-45 (NPL.2017.0004.0549).

¹¹³ Transcript of the Inquiry, 5 October 2023, T6665.24-6668.10 (TRA.00097.00001).

¹¹⁴ Transcript of the Inquiry, 5 October 2023, T6667.36-42 (TRA.00097.00001).

to June 2023), was accurate. Their statements contained evidence to similar effect as those Ashurst interviews. Ms Wells also gave oral evidence.

The origins of the media strategy

165. Ms Young said that towards the end of 2014 or in early 2015, as the prospect of a third inquest into the death of Scott Johnson loomed, she formed the idea of developing a NSWPF media strategy.¹¹⁵ She anticipated that the Johnson family would make comments in the media which would be critical of the NSWPF and their investigative efforts on the case, and she wanted NSWPF to be prepared to put ‘its side of the story’ to the press.¹¹⁶
166. Ms Young said that her strategy involved her “be[ing] interviewed by talk[ing] to” and “be[ing] asked questions by” the media, on the record.¹¹⁷ She said that she raised this with Mr Willing at about this time (late 2014/early 2015), and that he had responded by saying that he liked the idea.¹¹⁸
167. Once she knew Mr Willing was open to the idea, Ms Young discussed the subject with DS Brown.¹¹⁹
168. Mr Willing agreed that he and Ms Young had had discussions, at that time, around the need to “correct the record” and for “police to have a voice about the extent and thoroughness of the investigations that were being conducted”.¹²⁰ He did not agree that those initial discussions had included reference to going on the record.¹²¹
169. DS Brown suggested to Ms Young that Ms Alberici (whom DS Brown knew from a series of fundraising events) may be a suitable journalist.¹²²
170. Ms Young met with Ms Alberici for the first time, with DS Brown, on 30 January 2015.¹²³ Ms Young said that she mentioned the 30 January 2015 meeting with Ms Alberici to Mr Willing after it had occurred, and that she indicated during that conversation that she was “impressed by [Ms Alberici’s] enthusiasm to actually do some journalism on the whole matter”.¹²⁴

¹¹⁵ Exhibit 6, Tab 521, Second statement of Pamela Young, 22 September 2023, [93] (SCOI.85816); Transcript of the Inquiry, 5 October 2023, T6680.1–24 (TRA.00097.00001).

¹¹⁶ Transcript of the Inquiry, 5 October 2023, T6680.34-6681.4 (TRA.00097.00001).

¹¹⁷ Transcript of the Inquiry, 5 October 2023, T6681.24-32 (TRA.00097.00001).

¹¹⁸ Transcript of the Inquiry, 5 October 2023, T6681.44-45 (TRA.00097.00001).

¹¹⁹ Exhibit 6, Tab 521, Second statement of Pamela Young, 22 September 2023, [95] (SCOI.85816).

¹²⁰ Transcript of the Inquiry, 6 October 2023, T6789.35-38 (TRA.00098.00001).

¹²¹ Transcript of the Inquiry, 6 October 2023, T6790.32-36 (TRA.00098.00001).

¹²² Transcript of the Inquiry, 5 October 2023, T6682.8-17 (TRA.00097.00001).

¹²³ Exhibit 6, Tab 521, Second statement of Pamela Young, 22 September 2023, [95] (SCOI.85816).

¹²⁴ Transcript of the Inquiry, 5 October 2023, T6682.32-47 (TRA.00097.00001).

171. Mr Willing did not give evidence on this subject at the September/October hearing.
172. Ms Young also said there were other conversations between herself, DS Brown and Mr Willing “about the studio interview” in advance of 13 April 2015.¹²⁵ Mr Willing denied this.¹²⁶
173. However, while it is clear that Ms Young and Mr Willing were talking about the proposed strategy from at least January 2015, the first documented record of involvement of the NSWPF Media Unit in the strategy, so far as the available evidence indicates, is not until 1 April 2015.¹²⁷

The media strategy as recorded, and the “Media Policy”

174. The document which ultimately set out the media strategy in written form was the email of 7 April 2015 (**7 April 2015 email**) from Ms Wells to Detective Chief Superintendent Kerlatec and Acting AC Kenneth Finch (who will be referred to as Mr Kerlatec and Mr Finch in these submissions, respectively). Its terms included (emphasis added):¹²⁸

... [W]e would like to provide a background briefing to the ABC and The Australian prior to Monday so they can take a look at the report [ie the 445-page Young coronial statement] and have a chat to police about what's in it. The briefing would be for background information only and off the record. ...

If and when the statement is made public, we would be happy to go on the record then, plus address any media requests from all media ...

I have discussed this strategy with Strath and he supports and approves it from a PAB perspective.

175. Ms Young regarded the terms of that email as confirming what she understood to have already been agreed with Mr Willing, namely that, if on 13 April 2015 the State Coroner did not make a non-publication order over her statement, she was thereupon authorised to give an on the record studio interview to Ms Alberici.¹²⁹

¹²⁵ Transcript of the Inquiry, 5 October 2023, T6769.14-20 (TRA.00097.00001).

¹²⁶ Transcript of the Inquiry, 6 October 2023, T6791.8-24 (TRA.00098.00001).

¹²⁷ Exhibit 6, Tab 372, Email correspondence from Georgina Wells to Strath Gordon, 14 April 2015 (NPL.0138.0002.3306); Exhibit 6, Tab 382, Record of interview with Michael Willing, 24 April 2015, 1-2 (NPL.0147.0001.0005); Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, undated, 1 (NPL.2017.0001.0029).

¹²⁸ Exhibit 6, Tab 347, Email correspondence from Georgina Wells to John Kerlatec and Kenneth Finch, 7 April 2015 (NPL.0138.0001.0037).

¹²⁹ Exhibit 6, Tab 521, Second statement of Pamela Young, 22 September 2023, [102] (SCOI.85816); Transcript of the Inquiry, 5 October 2023, T6743.43-6744.23 (TRA.00097.00001).

176. The evidence of Mr Willing, Ms Wells, Ms McMahon and Mr Gordon was that that was not so; rather, according to each of them, before any such on the record interview there would have had to be further authorisation procedures.¹³⁰
177. The NSWPF Media Policy, in force as at 13 April 2015, is now in evidence.¹³¹ Section 3.2.3 provided that “Participation in live interviews on current affairs style shows and major news bulletins is restricted to the Commissioner, Deputy Commissioners, Corporate Spokespeople, Assistant Commissioners, and personnel authorised and appropriately trained for that environment”.
178. Ms Young did not remember whether she had seen the Media Policy, as at the first half of 2015.¹³² However, she considered that she was “personnel authorised and appropriately trained” for the purpose of section 3.2.3 of the Media Policy; she had been authorised by Mr Willing by the 7 April 2015 email, and she was trained for that environment because “[she] knew the case better than anybody else”.¹³³
179. Ms Young accepted, in answer to Senior Counsel for the NSWPF, that the Media Policy did require her to get permission in order to go on the record and do an in-studio interview on national television. Her position was that she had “deferred ... whatever permissions or authority was required to Mick Willing”.¹³⁴

Obtaining approval for the strategy

180. The 7 April 2015 email expressly notes that the proposed strategy had already been approved by Mr Gordon, the Director of Public Affairs.
181. Mr Willing agreed that the 7 April 2015 email appears to have been sent as a courtesy to Mr Kerlatec and Mr Finch, for the purpose of keeping them informed about the anticipated media engagement.¹³⁵ The email does not request that either of the two addressees reply to the email, nor is there any evidence that either of them did so.
182. There is no doubt that on Wednesday, 8 April 2015 the strategy was approved by both Mr Kaldas and Mr Kerlatec, in meetings at which Mr Willing was present. The 7 April 2015 email itself

¹³⁰ Exhibit 6, Tab 511, Statement of Georgina Wells, 4 September 2023, [18]-[20] (NPL.9000.0027.0001); Exhibit 6, Tab 512, Statement of Strath Gordon, 5 September 2023, [18]-[21] (NPL.9000.0028.0001); Exhibit 6, Tab 510, Statement of Siobhan McMahon, 1 September 2023, [24] (NPL.9000.0025.0009); Transcript of the Inquiry, 6 October 2023, T6801.15-27 (Mr Willing) (TRA.00098.00001).

¹³¹ Exhibit 6, Tab 527, NSWPF Media Policy, May 2013, 8 [3.2.3] (NPL.0226.0001.0001).

¹³² Transcript of the Inquiry, 5 October 2023, T6671.47 (TRA.00097.00001).

¹³³ Transcript of the Inquiry, 5 October 2023, T6674.7-18 (TRA.00097.00001).

¹³⁴ Transcript of the Inquiry, 5 October 2023, T6733.34-47 (TRA.00097.00001).

¹³⁵ Transcript of the Inquiry, 6 October 2023, T6782.34-6783.12 (TRA.00098.00001).

seems not to have been specifically the subject of those meetings, at which (according to Mr Willing) the discussions were more general.¹³⁶

183. The only real issue, in the end, is precisely what it was that was the subject of such approval.
184. The evidence of each of the media personnel (Mr Gordon, Ms Wells and Ms McMahon), and also of Mr Willing, is steadfastly that an on the record studio interview with *Lateline* was not “approved” by the 7 April 2015 email. As outlined above at [176], according to them, that would have required further steps by way of authorisation.
185. However, as Mr Willing acknowledged, the 7 April 2015 email itself contains no such qualification.¹³⁷
186. Mr Willing could not recall whether the NSWPF going on the record (if the Young coronial statement was made public) was a part of his discussions with Mr Kerlatec and Mr Kaldas.¹³⁸ However, it is submitted that the contents of Mr Kaldas’ text message to Ms Young on 14 April 2015, after the *Lateline* broadcast, is a strong indication that he did not see any problem with Ms Young having given an on the record studio interview without any further authorisation steps.¹³⁹
187. In her Ashurst interview, Ms Wells asserted that Ms Young had asked her whether, once her statement was released, the “backgrounder” she had given would become “on the record”. According to Ms Wells, she had responded, “No, there needs to be a separate interview”.¹⁴⁰ Ms Young’s evidence was that no such conversation ever took place.¹⁴¹ In her oral evidence, Ms Wells maintained that there had been such a conversation and that it would have taken place on or about 1 April 2015.¹⁴²

Providing the Young coronial statement to Emma Alberici

188. Ms Young provided the Young coronial statement to Ms Alberici at some time on or after 17 February 2015 (the date on which DS Brown printed it out and put it on Ms Young’s desk): CAS [409].

¹³⁶ CAS [404]; Exhibit 6, Tab 380, Handwritten diary entries, April 2015 (NPL.0138.0009.0185); Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, undated, 2 (NPL.2017.0001.0029); Transcript of the Inquiry, 6 October 2023, T6783.14- 6785.18 (TRA.00098.00001).

¹³⁷ Transcript of the Inquiry, 6 October 2023, T6786.2-6 (TRA.00098.00001).

¹³⁸ Transcript of the Inquiry, 6 October 2023, T6785.44 (TRA.00098.00001).

¹³⁹ Exhibit 6, Tab 393, Email from Pamela Young to Pamela Young, 17 April 2015 (NPL.0138.0001.0044).

¹⁴⁰ Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, 3 (NPL.0147.0001.0001).

¹⁴¹ Exhibit 6, Tab 521, Second statement of Pamela Young, 22 September 2023, [108] (SCOI. 85816).

¹⁴² Transcript of the Inquiry, 29 September 2023, T6340.14-6341.10(TRA.00094.00001).

189. Mr Willing’s evidence on 15 May 2023 was that he did not know Ms Young had done this; that had he known, it would have “stopped the backgrounding strategy ... then and there”; and that the conduct of Ms Young and DS Brown in this regard was “completely inappropriate and wrong”: CAS [410].
190. DS Brown’s evidence was that there was nothing secret or problematic about providing this statement to Ms Alberici, and she had no concerns about it.¹⁴³ DS Brown described Ms Young as cognisant of police hierarchy,¹⁴⁴ and as someone who was not likely to do anything that was unauthorised or secretive.¹⁴⁵ Mr Willing also described Ms Young as “very hierarchical” – by which he accepted he meant she was “acutely aware of and alive to” and “followed” the chain of command, and a “responsible and careful officer”.¹⁴⁶
191. DS Brown’s understanding was that, if Ms Young was satisfied that Ms Alberici was a suitable choice as one of the journalists to whom the statement would be given, Ms Young intended to do so. She understood, further, that Mr Willing had the same approach, from what both Ms Young and Mr Willing had said. She had been party to conversations between Ms Young and Mr Willing, and from those conversations it was her belief that if Ms Young did decide to provide the statement to Ms Alberici, she would be doing so with the approval of Mr Willing.¹⁴⁷
192. Ms Young said that when she provided it to Ms Alberici, she did not consider herself in breach of any NSWPF policy or other requirement, because Mr Willing had approved “the scoping of this idea”.¹⁴⁸ She said that she was eager to give Ms Alberici sufficient time to read the statement, which was lengthy.¹⁴⁹ She did not recall indicating to Mr Willing that she was about to deliver the statement to Ms Alberici, but thought that she was implicitly authorised to take this step, as in her view the delivery of the statement was necessary to progress the media strategy, which she considered had already been approved by Mr Willing.¹⁵⁰
193. The language of the 7 April 2015 email does indicate that the provision of Ms Young’s statement to the two chosen journalists was a central part of the media strategy. Mr Willing agreed that this was the case, but he qualified this by reference to “taking them through” the statement rather than providing it to them.¹⁵¹ Notwithstanding that qualification, and notwithstanding

¹⁴³ Transcript of the Inquiry, 3 October 2023, T6490.35–46 (TRA.00095.00001).

¹⁴⁴ Exhibit 6, Tab 519, Statement of DS Penelope Brown, 19 September 2023, [3] (SCOI.85747).

¹⁴⁵ Transcript of the Inquiry, 3 October 2023, T6504.5–10 (TRA.00095.00001).

¹⁴⁶ Transcript of the Inquiry, 6 October 2023, T6809.27-42 (TRA.00098.00001).

¹⁴⁷ Transcript of the Inquiry, 3 October 2023, T6492.19–6493.45 (TRA.00095.00001).

¹⁴⁸ Transcript of the Inquiry, 5 October 2023, T6684.7-11 (TRA.00097.00001).

¹⁴⁹ Transcript of the Inquiry, 5 October 2023, T6684.11-15 (TRA.00097.00001).

¹⁵⁰ Transcript of the Inquiry, 5 October 2023, T6684.33-40 (TRA.00097.00001).

¹⁵¹ Transcript of the Inquiry, 6 October 2023, T6781.41-6782.-8 (TRA.00098.00001).

that Ms Young evidently provided the statement to Ms Alberici well before April 2015, it is submitted that Mr Willing's evidence as to his regarding the provision of the statement to Ms Alberici as "completely inappropriate and wrong" is unconvincing at best.¹⁵² If the evidence of Ms Young and DS Brown on this point is accepted, Mr Willing's evidence cannot stand.

Communications prior to 13 April 2015

194. Ms Alberici gave evidence that her understanding was, from her first meeting with Ms Young onwards, that Ms Young:¹⁵³

was not there to be a "leaker". She wanted to be a whistle blower on behalf of her colleagues ... she thought of herself as protecting the legitimacy of the police conduct in this matter, against the convenient blame shifting by politicians. Not only had she not 'gone rogue' [a description used by senior counsel for Mr Willing about Ms Young], she was defending the police, and the correctness of its conduct on behalf of victims.

195. Ms Alberici's evidence was that she (emphasis added):¹⁵⁴

had minor dealings with Police media who called me to check that I had everything I needed to conduct the interview with Pamela Young for Lateline.

196. Ms Alberici appeared to suggest that this could have been as early as the time at which she was provided with the statement (sometime after 17 February 2015).¹⁵⁵ No other evidence suggests this timing is likely.

197. In Ms Alberici's email of 8 April 2015 to ABC colleagues, she recorded that (emphasis added):¹⁵⁶

Police have asked me if it's OK for The Australian to be given an interview Monday with Pamela Young also. I have spent the last hour in conversation with them all, and have had them agree that The Australian can't publish until Tuesday.

198. Ms Alberici agreed that "them all" was a reference to police media personnel and added that it was also "the superiors – probably Mick Willing, just on and off the phone".¹⁵⁷

199. In Ms Alberici's view, it would have been apparent to all of those with whom she was speaking that what was involved was an interview that would be for broadcast, given that hers was a television show and that an interview for broadcast was necessary "for it to have impact".¹⁵⁸

¹⁵² Transcript of the Inquiry, 6 October 2023, T6782.10-32 (TRA.00098.00001).

¹⁵³ Exhibit 6, Tab 524, Statement of Emma Alberici, 25 September 2023, 3 (answer to question 3) (SCOI.85817).

¹⁵⁴ Exhibit 6, Tab 524, Statement of Emma Alberici, 25 September 2023, 3 (answer to question 4) (SCOI.85817).

¹⁵⁵ Transcript of the Inquiry, 28 September 2023, T6230.21-43 (TRA.00093.0001).

¹⁵⁶ Exhibit 6, Tab 348, Email correspondence between Emma Alberici and Lisa Whitby, 8 April 2015, 1 (SCOI.82992).

¹⁵⁷ Transcript of the Inquiry, 28 September 2023, T6239.28-31 (TRA.00093.00001).

¹⁵⁸ Transcript of the Inquiry, 28 September 2023, T6239.36-46 (TRA.00093.00001).

200. The evidence of Ms Alberici as to telephone contact with police media personnel, prior to 13 April 2015, about a *Lateline* interview with Ms Young, is in conflict with the evidence of Ms Wells, Ms McMahon and Mr Gordon. All of those police media witnesses were adamant that they knew nothing of a studio interview with *Lateline* until the evening of 13 April 2015 at the earliest.¹⁵⁹
201. While Ms Wells accepted that she may have had contact with Ms Alberici on one occasion, she thought that this would have been on either 10 or 13 April 2015, and of very brief duration.¹⁶⁰ Ms Wells said that she did not have any phone conversation with Ms Alberici on 8 April 2015, as referred to in Ms Alberici's internal ABC email of that date, and that any phone conversation she did have with Ms Alberici would have lasted about 30 seconds.¹⁶¹
202. In notes made by Mr Gordon on 21 April 2015, he said that in the 5:00pm phone call on 13 April 2015, Ms Young informed Mr Willing that she "had done the studio interview" (emphasis added).¹⁶² When Ms Wells was questioned about this on 29 September 2023, she said that despite what Mr Gordon had written (which she accepted must have been based on what she had told him) that was not what she had told him.¹⁶³
203. Subsequently, late on 6 October 2023, after the evidence in Public Hearing 2 had concluded, the NSWPF served a second statement of Mr Gordon.¹⁶⁴ In that statement Mr Gordon states that his reference to a "studio interview", in his April 2015 notes, is "an error", and that (as his first statement asserts) he had not approved a formal studio interview.¹⁶⁵
204. Ms Alberici also gave evidence that she had conversations with Mr Willing, both before and after Ms Young's *Lateline* interview. She said:¹⁶⁶
- He encouraged Ms Young to do the interview, and he presumably liaised with Police Media. I spoke to him in preparation for the interviews both before and after.*
205. Ms Alberici said that either Ms Young or DS Brown had given her Mr Willing's number and that she had called him.¹⁶⁷ She said that Mr Willing's views were consistent with those of "Penny

¹⁵⁹ Exhibit 6, Tab 511, Statement of Georgina Wells, 4 September 2023, [18] (NPL.9000.0027.0001); Exhibit 6, Tab 512, Statement of Strath Gordon, 5 September 2023, [15] (NPL.9000.0028.0001); Exhibit 6, Tab 510, Statement of Siobhan McMahon, 1 September 2023, [23] (NPL.9000.0025.0009).

¹⁶⁰ Transcript of the Inquiry, 29 September 2023, T6314.41-6315.15 6356.16-20 (TRA.00094.00001).

¹⁶¹ Transcript of the Inquiry, 29 September 2023, T6357.34-46 (TRA.00094.00001).

¹⁶² Exhibit 6, Tab 374, Email correspondence from Strath Gordon to Strath Gordon, 21 April 2015 (NPL.0138.0004.5545).

¹⁶³ Transcript of the Inquiry, 29 September 2023, T6333.33-6334.38 (TRA.00094.00001).

¹⁶⁴ Exhibit 6, Tab 512A, Second statement of Strath Gordon, 6 October 2023 (NPL.9000.0038.0001).

¹⁶⁵ Exhibit 6, Tab 512A, Second statement of Strath Gordon, 6 October 2023, [9]-[10] (NPL.9000.0038.0001).

¹⁶⁶ Exhibit 6, Tab 524, Statement of Emma Alberici, 25 September 2023, 4 (answer to question 8) (SCOI.85817).

¹⁶⁷ Transcript of the Inquiry, 28 September 2023, T6231.39-41 (TRA.00093.0001).

and Pam”, in the sense that the Johnson matter had been prioritised in way that was “unusual”.¹⁶⁸ She did not think Mr Willing said anything about what he wanted Ms Young to say on television, but “the understanding was [that] he was supportive of her and, in fact, encouraging, I would have thought, of her appearance on Lateline”.¹⁶⁹

206. Ms Alberici agreed that in her conversations with Mr Willing prior to the broadcast, he knew “that there was going to be a sit-down interview which would go to air”, and that her discussions with him were on that basis.¹⁷⁰ She said he never said anything to the effect that Ms Young was only authorised to give a background briefing off the record, or that she was not authorised to give a public interview.¹⁷¹

13 April 2015 – morning

207. Ms Young said that there was no conversation with Mr Willing, on the morning of 13 April 2015, about authorisation to do a “doorstop” interview after the State Coroner’s decision was known: cf CAS [422]. Ms Young said no such authorisation was necessary.¹⁷²

13 April 2015 – afternoon

208. Ms Young did in fact do such a doorstop interview: CAS [425]. In her statement, she said that she did that doorstop with Ms Alberici.¹⁷³ However, Ms Alberici was doubtful that that was so,¹⁷⁴ and in her oral evidence, on reflection, Ms Young agreed it may not have been Ms Alberici.¹⁷⁵
209. In the oral submissions made on behalf of Mr Willing, it was heavily insinuated that Ms Young and Ms Alberici (and perhaps DS Brown) had deliberately orchestrated a situation whereby only Ms Alberici would be outside the court when Ms Young emerged.¹⁷⁶ The evidence of each of Ms Young, Ms Alberici and DS Brown was that no such thing had occurred.¹⁷⁷ On the evidence now available, such insinuations are unsustainable.

¹⁶⁸ Transcript of the Inquiry, 28 September 2023, T6231.43-6232.2 (TRA.00093.0001).

¹⁶⁹ Transcript of the Inquiry, 28 September 2023, T6232.9-13 (TRA.00093.0001).

¹⁷⁰ Transcript of the Inquiry, 28 September 2023, T6232.15-23 (TRA.00093.0001).

¹⁷¹ Transcript of the Inquiry, 28 September 2023, T6232.25-29 (TRA.00093.0001).

¹⁷² Transcript of the Inquiry, 5 October 2023, T6694.10-27 (TRA.00097.00001).

¹⁷³ Exhibit 6, Tab 521, Second statement of Pamela Young, 22 September 2023, [117] (SCOI.85816).

¹⁷⁴ Transcript of the Inquiry, 28 September 2023, T6249.28-6250.10, T6256.37-47 (TRA.00093.0001).

¹⁷⁵ Transcript of the Inquiry, 5 October 2023, T6693.11-35 (TRA.00097.00001).

¹⁷⁶ Transcript 21 June 2023, T4426.35-4428.2 (TRA.00063.00001).

¹⁷⁷ Transcript of the Inquiry, 28 September 2023, T6256.29-6257.7 (Ms Alberici) (TRA.00093.0001); Transcript of the Inquiry, 3 October 2023, T6496.6-6497.35 (DS Brown) (TRA.00095.00001); Transcript of the Inquiry, 5 October 2023, T6693.11-6695.37 (Ms Young) (TRA.00097.00001).

210. Even though Ms Young undoubtedly did do this doorstep interview, the evidence of both Mr Willing and Ms Wells is that she expressly told each of them that she had not done so because there were no media left when she emerged.¹⁷⁸
211. Ms Young, when pressed about this, said she did not remember.¹⁷⁹ It is submitted that the weight of the evidence, including near-contemporary evidence,¹⁸⁰ shows plainly that Ms Young did say these things to both Mr Willing and Ms Wells. In doing so she was untruthful, but that is what Mr Willing and Ms Wells were told.

The 5pm telephone conversation between Ms Young and Mr Willing

212. The 5:00pm telephone conversation was discussed at CAS [430]–[451].
213. As there outlined, Mr Willing gave two different accounts of this conversation, first on 20 February 2023 and later on 15 May 2023.
214. On the former occasion, he accepted that Ms Young had rung him on the way to the ABC and said, “I’m about to go and speak to Emma Alberici”. He also said that she might have told him that she was likely to use the word “kowtowing” if she was asked about the (former) Police Minister, and that his response might have been to laugh.¹⁸¹
215. However, on 15 May 2023, Mr Willing said that when Ms Young rang at about 5:00pm, what she told him was that she “had recorded an interview” with Ms Alberici (emphasis added).¹⁸² This different account was in accord with Mr Willing’s “dot points”, prepared for his Ashurst interview on 24 April 2015.¹⁸³
216. The submissions at CAS [436]–[459] did not turn on whether the telephone conversation occurred when Ms Young was on her way to (ie before), or had already recorded (ie after), the *Lateline* interview. The gravamen of those submissions was that Mr Willing’s evidence, given in answer to questions from the Commissioner, that it was “a shock and a surprise” to see Ms Young on television that night, at all,¹⁸⁴ was untrue.

¹⁷⁸ CAS [426], [454]; Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, undated, 3 (NPL.2017.0001.0029); Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, 3 (NPL.0147.0001.0001); Transcript of the Inquiry, 29 September 2023, T6323.6-10 (Ms Wells) (TRA.00094.00001).

¹⁷⁹ Transcript of the Inquiry, 5 October 2023, T6694.45-6695.37 (TRA.00097.00001).

¹⁸⁰ Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, undated, 3 (NPL.2017.0001.0029); Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, 3 (NPL.0147.0001.0001).

¹⁸¹ Transcript of the Inquiry, 20 February 2023, T1720.28-1721.19 (TRA.00023.00001).

¹⁸² Transcript of the Inquiry, 15 May 2023, T3770.35-43, T3776.2-11 (TRA.00051.00001).

¹⁸³ Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, undated, 3 (NPL.2017.0001.0029).

¹⁸⁴ Transcript of the Inquiry, 20 February 2023, T1712.18-23 (TRA.00051.00001).

217. Those submissions are maintained. However, the evidence of Ms Young and DS Brown now gives rise to further issues.

218. In her statement, Ms Young said:¹⁸⁵

While driving, I returned a call from Michael Willing, and we had a three-way conversation on speaker phone. I briefed him on what had happened at the coronial hearing, including that a non-publication order was not made, and that we were on our way to the ABC for the pre-recorded interview. Inter alia, I said words to the effect of, "If I am asked, I will be tempted to use the word 'kowtowing' when describing the police minister". Michael Willing's reaction was to laugh.

219. In her oral evidence, Ms Young expanded on this evidence, including as follows:

- a. She said the words she spoke were: "Now that my statement is [on the] public record, Penny and I are on the way to the ABC to do the interview".¹⁸⁶
- b. She said that Mr Willing said, "Fine. You're going – okay, thanks for telling me".¹⁸⁷
- c. She did not use any expression like "off the record".¹⁸⁸
- d. She did not tell him that the interview was going to be broadcast because he knew it was, and she did not need to tell him.¹⁸⁹
- e. She told him she was on her way to the ABC to do an interview with Emma Alberici of *Lateline*.¹⁹⁰
- f. She said to him, "If I am asked, I will be tempted to use the word 'kowtowing' when describing the Police Minister".¹⁹¹
- g. She said that in response, Mr Willing laughed,¹⁹² and that she interpreted the laugh as encouragement.¹⁹³

220. Ms Young said that she understood all of these arrangements to be in accordance with the agreed media strategy, namely that if the statement was released, she was at liberty to give media interviews on the record.¹⁹⁴

¹⁸⁵ Exhibit 6, Tab 521, Second statement of Pamela Young, 22 September 2023, [119] (SCOI.85816).

¹⁸⁶ Transcript of the Inquiry, 5 October 2023, T6698.7-9 (TRA.00097.00001).

¹⁸⁷ Transcript of the Inquiry, 5 October 2023, T6698.33-34 (TRA.00097.00001).

¹⁸⁸ Transcript of the Inquiry, 5 October 2023, T6698.36-38 (TRA.00097.00001).

¹⁸⁹ Transcript of the Inquiry, 5 October 2023, T6698.40-6699.17 (TRA.00097.00001).

¹⁹⁰ Transcript of the Inquiry, 5 October 2023, T6700.1-7 (TRA.00097.00001).

¹⁹¹ Transcript of the Inquiry, 5 October 2023, T6699.19-26 (TRA.00097.00001).

¹⁹² Transcript of the Inquiry, 5 October 2023, T6699.28-36 (TRA.00097.00001).

¹⁹³ Transcript of the Inquiry, 5 October 2023, T6699.38-40 (TRA.00097.00001).

¹⁹⁴ Transcript of the Inquiry, 5 October 2023, T6700.21-32 (TRA.00097.00001).

221. DS Brown, in her statement, referred to a note in her Duty Book, which she had made either later on 13 April 2015, or by no later than 16 April 2015.¹⁹⁵ That note reads, relevantly, as follows:¹⁹⁶

Travel to ABC studios with DCI Young., on (sic) route to ABC studios, DCI Young made a telephone call to Commander Willing on loud speaker – DCI Young advised Commander Willing of interview with journalist Emma Alberici & stated if she was asked she would say that she felt the MP @ the time kowtow to the request of the Johnson family.

222. DS Brown said in her statement that “DCI Young made no secret of her view in relation to the matter involving the Minister of Police. This was common knowledge within the Homicide office and to the best of my knowledge and belief, Mr Willing.”¹⁹⁷

223. In her oral evidence, DS Brown expanded on this evidence, including as follows:

- a. She said that the words Ms Young spoke were: “I’m on the way to the ABC to do the interview with Emma Alberici”, or something close to that.¹⁹⁸
- b. When asked what Mr Willing’s reaction was, DS Brown said that Mr Willing knew Ms Young was going to *Lateline* that day to give an interview, because they (Ms Young and Mr Willing) had spoken about it, in conversations in the hallway when she (DS Brown) had been present.¹⁹⁹
- c. Neither Ms Young nor Mr Willing had said anything about the interview being “off the record”.²⁰⁰
- d. She recalled the conversation because it was no secret that Ms Young thought that the Police Minister at the time kowtowed to the family.²⁰¹

224. DS Brown said that she made a record of this phone call because she knew using the word ‘kowtowing’ “would be controversial”.²⁰²

225. DS Brown was not the subject of any disciplinary action by the NSWPF following Ms Young’s interview on *Lateline*.²⁰³

¹⁹⁵ Transcript of the Inquiry, 3 October 2023, T6502.37-6503.12 (TRA.00095.00001).

¹⁹⁶ Exhibit 6, Tab 519, Statement of DS Penelope Brown, 20 September 2023, 12 (SCOI.85747).

¹⁹⁷ Exhibit 6, Tab 519, Statement of DS Penelope Brown, 20 September 2023, [26] (SCOI.85747).

¹⁹⁸ Transcript of the Inquiry, 3 October 2023, T6500.37-47, 6501.37-44 (TRA.00095.00001).

¹⁹⁹ Transcript of the Inquiry, 3 October 2023, T6501.2-27 (TRA.00095.00001).

²⁰⁰ Transcript of the Inquiry, 3 October 2023, T6501.29-35 (TRA.00095.00001).

²⁰¹ Transcript of the Inquiry, 3 October 2023, T6500.29-35 (TRA.00095.00001).

²⁰² Transcript of the Inquiry, 3 October 2023, T6503.14–20 (TRA.00095.00001).

²⁰³ Transcript of the Inquiry, 3 October 2023, T6508.10-27 (TRA.00095.00001).

226. After Ms Young was accused of doing an unauthorised interview by some within the NSWPF, DS Brown gave evidence that she told Mr Willing that she found this unfair.²⁰⁴
227. When Mr Willing gave evidence on this topic for a third time, on 6 October 2023, he gave a third version of what Ms Young had said. This time he said that Ms Young may have said both that “I’m about to go and speak to Emma Alberici” and also that “I’ve recorded an interview.”²⁰⁵
228. That evidence should be rejected. Moreover, if Ms Young had indeed said both things, then what (on Mr Willing’s third version) was Ms Young referring to when she said, “I’m about to go and speak to Emma Alberici”? What else could it be but a *Lateline* interview – even if, on this eleventh hour suggestion by Mr Willing, her other remark (that she had recorded an interview) was a reference to the doorstep (a doorstep which Ms Young had told Mr Willing had not occurred)?
229. The submissions at CAS [449] are maintained. Further:
- a. The evidence of Ms Young and DS Brown as to the 5:00pm telephone call should be accepted. DS Brown’s contemporaneous note is clear, and her evidence overall was frank and straightforward.
 - b. The text message Mr Willing sent State Coroner Barnes at 8:11pm on 13 April 2015²⁰⁶ also points strongly to the probability that Mr Willing was aware of the real nature of the *Lateline* interview. It is implausible that Mr Willing would have sent the State Coroner a text message at that hour merely to inform him that a routine “doorstop” interview (or part of such an interview) were likely to be broadcast on *Lateline*.²⁰⁷
 - c. Similarly, if (as Mr Willing conceded was possible) Ms Young told him she might use the word “kowtowing” about the former Minister, it is extremely unlikely that she would have felt the slightest need to do so if all she was about to do was something “off the record”.²⁰⁸
 - d. Mr Willing’s evidence in May 2023 about the 5:00pm telephone call was inaccurate at best, as were his April 2015 dot points.
 - e. The evidence would now permit the inference to be drawn – as was squarely put to Mr Willing (and which he denied)²⁰⁹ – that Mr Willing gave the account that he did, in both

²⁰⁴ Transcript of the Inquiry, 3 October 2023, T6526.18–42 (TRA.00095.00001).

²⁰⁵ Transcript of the Inquiry, 6 October 2023, T6792.35-6793.8 (TRA.00098.00001).

²⁰⁶ Exhibit 6, Tab 366, Text message sent from Michael Willing to State Coroner Michael Barnes, 13 April 2015 (SCOI.47469).

²⁰⁷ Transcript of the Inquiry, 6 October 2023, T6812.153-29 (TRA.00098.00001).

²⁰⁸ Transcript of the Inquiry, 6 October 2023, T6796.4-35 (TRA.00098.00001).

²⁰⁹ Transcript of the Inquiry, 6 October 2023, T6795.43-6796.2 (TRA.00098.00001).

the dot points and in his evidence on 15 May 2023, so as to give himself the opportunity of suggesting that he thought that in the 5:00pm conversation Ms Young was referring only to a “doorstop” outside the Court earlier in the day.

230. There is no doubt that Ms Young addressed topics during the *Lateline* interview that went beyond the scope of the Young coronial statement: CAS [483]. In particular, those topics included her criticisms of the conduct of former Minister Gallacher and the Johnson family.
231. Ms Young refused to accept that that was so, beyond acknowledging that the use of the particular word “kowtowing” went beyond the statement.²¹⁰ Her evidence to the effect that, in some arcane way, the substance of those criticisms could be discerned or distilled from the actual contents of her statement should be rejected.

Tuesday 14 April 2015

232. Prior to the September/October hearing, Mr Willing had not mentioned any contact by him with Ms Young, after the evening of 13 April 2015 when *Lateline* went to air, until about the middle of the next day on 14 April 2015, when he telephoned her about the media release which was going to use the word “inopportune”.²¹¹
233. As outlined at CAS [478]–[484], Mr Willing did say that on the morning of 14 April 2015 he at first had the impression that the Commissioner of Police (Andrew Scipione) was “relaxed” about the interview.
234. However, Ms Young has now given evidence that at about 9:00am on 14 April 2015, Mr Willing telephoned her (something he had not previously mentioned) and that he not only passed on to her that Commissioner Scipione was “fairly relaxed” about the interview, but also said that he himself (Mr Willing) thought the interview was “good”, and that her participation in the interview was “good”.²¹²
235. When this was put to Mr Willing, namely that he had told Ms Young at 9:00am on 14 April 2015 that he himself thought the interview was “good”, and that her participation in it was “good”, he did not deny it.²¹³

²¹⁰ Transcript of the Inquiry, 5 October 2023, T6700.41-6702.37 (TRA.00097.00001).

²¹¹ Exhibit 6, Tab 382A, Document titled ‘Mick Willing Notes’, undated, 3-4 (NPL.2017.0001.0029).

²¹² Exhibit 6, Tab 521, Second statement of Pamela Young, 22 September 2023[124] (SCOI.85816); Transcript of the Inquiry, 5 October 2023, T6702.47-6703.30 (TRA.00097.00001).

²¹³ Transcript of the Inquiry, 6 October 2023, T6796.43-6798.20 (TRA.00098.00001).

236. Later in the day, prior to the release of the public statement at around 3:20pm that described Ms Young's remarks as "inopportune", Mr Willing called Ms Young again and said that the "media worm had turned ... the worm was not in the place they had hoped."²¹⁴
237. On 14 April 2015, and in the days following, Ms Young received numerous text messages and emails from NSWPF officers, including senior officers, in support of her *Lateline* interview.²¹⁵ Among those senior officers were Mr Kaldas and Mr Finch.
238. Mr AC Finch wrote to Ms Young, "Don't let this get on top of you. You have a lot of support and that has not diminished."²¹⁶
239. A text message exchange between Ms Young and Mr Kaldas on the evening of 14 April 2015, included the following:²¹⁷
- Ms Young: The Johnson family have written to the CoP asking that I be taken off the case due to a comment I made on Lateline last night (Mon) that the former police minister gave them priority over other victim families*
- Mr Kaldas: Pam, you have my support 150%" ... Love your work. Do not back down, you are in the right, you're entitled to support. Pls let me know if they attempt to move you out. This happened because of the cowardice of Cath Burn [Deputy Commissioner Catherine Burn], AS [Commissioner Andrew Scipione] and Jenko [Assistant Commissioner (State Crime Command) Mark Jenkins] not going with u or supporting u as they should have. Gallacher has no morals whatsoever.*
240. Ms Young responded by email early on 15 April 2015, in which she said:²¹⁸
- To be honest they have already backed away from me (Mick Willing to CoP) with a public statement that my comments (all of them) were "inopportune" while in private they tell me they support me.*
- Ms Young gave evidence that in referring to "they", she meant Mr Willing, Mr Finch and "perhaps" Mr Kerlatec.²¹⁹
241. The views of Mr Kaldas about former Minister Gallacher are unmistakably clear, both from the text message cited above, and from a subsequent email of 8 August 2014, sent by Mr Kaldas to

²¹⁴ Transcript of the Inquiry, 5 October 2023, T6703.38-42 (TRA.00097.00001).

²¹⁵ See, eg, Exhibit 6, Tab 521, Second statement of Pamela Young, 22 September 2023, [128]-[135], Annexure PY17, Annexure PY18 (SCOI.85816); Exhibit 6, Tabs 389 (NPL.0138.0001.0015), 390 (NPL.0138.0001.0039), 391 (NPL.0138.0001.0041), 392 (NPL.0138.0001.0043), 393 (NPL.0138.0001.0044), 394 (NPL.0138.0001.0104), 395 (NPL.0138.0001.0129), 396 (NPL.0138.0001.0166), 397 (NPL.0138.0001.0184) and 398 (NPL.0138.0001.0193).

²¹⁶ Exhibit 6, Tab 521, Second statement of Pamela Young, 22 September 2023, Annexure PY17(SCOI. 85816).

²¹⁷ Exhibit 6, Tab 393, Email from Pamela Young to Pamela Young, 17 April 2015 (NPL.0138.0001.0044).

²¹⁸ Exhibit 6, Tab 395, Email from Pamela Young to Naguib Kaldas, 15 April 2015 (NPL.0138.0001.0129).

²¹⁹ Transcript of the Inquiry, 5 October 2023, T6705.30-33 (TRA.00097.00001).

recipients including Mr Willing and AC Jenkins, in which he said (referring to the 12 February 2013 meeting involving Mr Gallacher):²²⁰

Mick, Mark, please keep me posted regarding this issue. It sounds like it is on track with the Coroner finally assuming responsibility, but I want to monitor what happens next, and ensure that we never go back to the inappropriate behaviour condoned and encouraged by previous minister. Ever.

Ms Young said that she considered that the “inappropriate behaviour” cited by Mr Kaldas related directly to the meeting with Mr Gallacher and the Johnson family.²²¹

242. The submissions at CAS [503], including the reference to “others in State Crime Command”, are maintained.

After 14 April 2015

243. Ms Alberici gave evidence that in 2017 she had coffee with Mr Willing and they discussed what had happened to Ms Young. She stated that Mr Willing had said the following to her:²²²

I am so sorry about what happened to Pam. I wanted her to do the interview so that the general public could see that we were not homophobic and not negligent and that the Johnson family were insufferable.

I thought that once it was public, and the scandalous misdirection of investigation resources was exposed, the political pressure would stop. I had no idea the Commissioner would be as enraged as he was about the interview and Pam got the blame, unfortunately.

244. While agreeing that they met for coffee, and that he said he felt sorry for Ms Young, Mr Willing strongly denied saying this to Ms Alberici.²²³

General

245. Both Ms Young and DS Brown were asked for their responses to allegations made, in written and oral submissions on behalf of Mr Willing, that they had deceptively conspired to conceal from the NSWPF Ms Young’s participation in the *Lateline* broadcast. Each of them denied such allegations outright.²²⁴

²²⁰ Exhibit 6, Tab 521, Second statement of Pamela Young, 22 September 2023, Annexure PY11 (SCOI.85816).

²²¹ Transcript of the Inquiry, 5 October 2023, T6652.40–T6653.1 (TRA.00097.00001).

²²² Exhibit 6, Tab 524, Statement of Emma Alberici, 25 September 2023, 4 (answer to question 8) (SCOI.85817).

²²³ Transcript of the Inquiry, 6 October 2023, T6787.10-6788.1 (TRA.00098.00001).

²²⁴ Transcript of the Inquiry, 3 October 2023, T6506.11-6509.41 (DS Brown) (TRA.00095.00001); Transcript of the Inquiry, 5 October 2023, T6707.3-6708.47 (Ms Young) (TRA.00097.00001).

246. Ms Alberici, for her part, also flatly rejected allegations made on behalf of Mr Willing that she had been in any way privy to any such concealment or deception.²²⁵ Her evidence was that Mr Willing was fully aware at all times that there was to be a broadcast studio interview.²²⁶

Submissions

247. The recollections of the various witnesses about the events leading up to the *Lateline* broadcast on 13 April 2015 display many disagreements and conflicts. Some of those may not be able to be resolved on the available evidence.
248. However, having regard to the matters outlined above and in CAS, the following submissions are made:
- a. While it may be that prior to 13 April 2015 the NSWPF media personnel did not know, or did not realise, that a studio interview with *Lateline* was envisaged, the evidence of DS Brown, Ms Alberici and Ms Young points to the overwhelming likelihood that Mr Willing did know that.
 - b. It is highly likely that officers senior to Mr Willing, including Mr Kaldas, also knew.
 - c. As to the state of Mr Willing's knowledge about the proposed studio interview, both he and Ms Young have adopted entrenched opposing public positions for years. The evidence of both of them, it is submitted, is in many respects unreliable. However, those factors do not apply to the evidence of DS Brown. Her evidence, which it is submitted was, in general, frank and straightforward, is damning of Mr Willing's position.
 - d. Ms Alberici's evidence should for the most part be accepted. Regard needs to be had to her candidly favourable, indeed laudatory, views of Ms Young and DS Brown. And in some respects (especially as to dates and times) her evidence may be unreliable. However, she also gave her evidence directly and non-evasively, and she impressed overall as a witness of truth.
 - e. Ms Young and DS Brown did not, as alleged on behalf of Mr Willing, deliberately deceive Mr Willing or the NSWPF, or conceal Ms Young's intention to give a *Lateline* interview, for broadcast, if the Young coronial statement was released.

²²⁵ Transcript of the Inquiry, 28 September 2023, T6255.9-14, 6256.29-6257.7 33 (TRA.00093.00001).

²²⁶ Transcript of the Inquiry, 28 September 2023, T6239.36-6240.3, T6254.35-42 (TRA.00093.00001).

SF Macnamir: reactions to the findings of State Coroner Barnes

249. DS Brown gave evidence that Mr Olen’s perception (then a DCI), as described in his email of 1 December 2017,²²⁷ that she and then [1446] were “pretty upset” by State Coroner Barnes’ findings on 30 November 2017, was incorrect.²²⁸
250. DS Brown said, in substance, that she was not upset but rather “physically and mentally exhausted”,²²⁹ or “perplexed”.²³⁰
251. [1446] said that she was “upset”, but that part of the reason for that was the “combination of the emotional toll of the culmination of hard work on the matter” and the “specificity of the finding that it was a gay hate crime involving two or more people”. She thought there was “no evidence to support such a specific finding”.²³¹ According to [1446] she “would have been upset to some degree regardless of the determination made” because of the nature of the investigation, and that she was “not hoping for any particular outcome”.²³²

²²⁷ Exhibit 6, Tab 311, Email correspondence between Christopher Olen, Jason Dickinson and Scott Cook, 1 December 2017 (NPL.0115.0002.8325).

²²⁸ Exhibit 6, Tab 519, Statement of DS Penelope Brown, 20 September 2023, [34]–[36] (SCOI.85747); Transcript of the Inquiry, 3 October 2023, T6488.32–6489.1 (TRA.00095.00001).

²²⁹ Exhibit 6, Tab 519, Statement of DS Penelope Brown, 20 September 2023, [33] (SCOI.85747).

²³⁰ Exhibit 6, Tab 519, Statement of DS Penelope Brown, 20 September 2023, [32] (SCOI.85747); Transcript of the Inquiry, 3 October 2023, T6489.3-10 (TRA.00095.00001).

²³¹ Exhibit 6, Tab 516, Statement of [1446], 15 September 2023, [32] (NPL.9000.0031.0001).

²³² Exhibit 6, Tab 516, Statement of [1446], 15 September 2023, [34] (NPL.9000.0031.0001).

E. ADDITIONAL EVIDENCE – STRIKE FORCE NEIWAND

The establishment of SF Neiwand

252. According to the initial Terms of Reference of October 2015,²³³ the original Investigation Supervisor was Mr Lehmann, and the original OIC was DS Brown.
253. By February 2016 or soon thereafter, DS Morgan was the Investigation Supervisor, and Mr Chebl was the OIC.²³⁴ They remained in those roles until the conclusion of SF Neiwand in early 2018.
254. Mr Lehmann went on sick leave in October 2016 and did not return.²³⁵ According to his evidence in the September/October hearing, notwithstanding what was stated in the Terms of Reference, he was not ever the Investigation Supervisor, but rather the “Investigations Coordinator”, from October 2015 to October 2016.²³⁶ He said that an Investigation Supervisor was the “team leader... directly involved in the investigation”, whereas the Investigations Coordinator was the “oversight-er (sic) or manager of that team”.²³⁷
255. Mr Leggat joined the UHT on 13 March 2017, some five months after Mr Lehmann had left, and was assigned to SF Neiwand as “Coordinator”.²³⁸ He said he was not told why SF Neiwand had been established.²³⁹ He said that DS Morgan and Mr Chebl “had been working on SF Neiwand for some time prior to my arrival in the UHT”²⁴⁰ and that the investigation was “well underway”.²⁴¹ Mr Leggat seems to have remained as “Coordinator” of SF Neiwand until its conclusion in late 2017/early 2018.²⁴²
256. The evidence as to the reasons why SF Neiwand was established, at the point in time that it was, is discussed in CAS [572]–[595].
257. As at 7 June 2023, the date of the CAS, there was in evidence the Case Screening Form of 25 October 2012 completed by DS Taylor (then DSC). Mr Lehmann, as “Coordinator”, certified

²³³ Exhibit 6, Tab 16, Strike Force Neiwand Previous Terms of Reference, 26 October 2015 (SCOI.76962.00001).

²³⁴ Exhibit 6, Tab 285, Email from Steven Morgan to Sebastian Herft, 26 February 2016 (NPL.0115.0004.3512); Exhibit 6, Tab 17, Strike Force Neiwand Terms of Reference, 30 June 2016, 1 (SCOI.74884).

²³⁵ Transcript of the Inquiry, 26 September 2023, T6007.38 (TRA.00091.00001); Exhibit 6, Tab 513, Statement of John Lehmann, 29 August 2013, [44] (SCOI.85495).

²³⁶ Transcript of the Inquiry, 26 September 2023, T6039.23-41, T6041.3-8, 6079.30-6080.15 (TRA.00091.00001).

²³⁷ Transcript of the Inquiry, 26 September 2023, T6080.2-7 (TRA.00091.00001).

²³⁸ Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [21], [28] (SCOI.85707).

²³⁹ Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [27] (SCOI.85707).

²⁴⁰ Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [29] (SCOI.85707).

²⁴¹ Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [34] (SCOI.85707).

²⁴² See Exhibit 6, Tab 176, Post Operational Assessment – Strike Force Neiwand, 22 February 2018, 15 (SCOI.76962.00007), which bears Mr Leggat’s signature.

- on 14 August 2013 that he agreed with her recommendations as recorded in that Case Screening Form.²⁴³
258. Those recommendations included (after describing Operation Taradale as having been “meticulously undertaken”) that there was an opportunity – partly because of the long time that had passed since the covert work previously carried out by Operation Taradale – to engage the known persons of interest identified by Taradale, in relation to the “murder” of Mr Warren and Mr Russell, “via an undercover operation”.²⁴⁴
259. On 22 June 2023, after the CAS had been filed, the NSWPF produced to the Inquiry three “Review Prioritisation Forms”, one each for the cases of Mr Mattaini, Mr Warren and Mr Russell. Each was signed by Mr Lehmann, as having carried out the “Prioritisation Assessment”. Two were dated 14 August 2013, and one was dated 15 August 2013.²⁴⁵
260. For Mr Mattaini and Mr Warren, the priority rating given by Mr Lehmann was “low”, while for Mr Russell it was “medium”.²⁴⁶
261. Those ratings, on all the evidence before the Inquiry, would ordinarily have had the consequence that none of the three cases was likely to be the subject of review or reinvestigation in the near future. Mr Lehmann’s evidence was substantially to that effect.²⁴⁷
262. Yet, some two years later in October 2015, Mr Willing decided to establish SF Neiwand: CAS [578].
263. Mr Leggat, as noted above at [255], said he was not told why SF Neiwand was set up.
264. Mr Lehmann agreed that, as stated in the Issue Paper of 4 May 2016,²⁴⁸ it was he who “created SF Neiwand [in October 2015] to reinvestigate the three deaths”.²⁴⁹

²⁴³ Exhibit 6, Tab 162B, NSWPF Review of an Unsolved Homicide Case Screening Form – John Russell, Ross Warren and Gilles Mattaini signed by DSC Alicia Taylor and DCI John Lehmann, 14 August 2013, 34 (NPL.0135.0001.0001).

²⁴⁴ Exhibit 6, Tab 162B, NSWPF Review of an Unsolved Homicide Case Screening Form – John Russell, Ross Warren and Gilles Mattaini signed by DSC Alicia Taylor and DCI John Lehmann, 14 August 2013, 33-34 (NPL.0135.0001.0001).

²⁴⁵ Exhibit 6, Tab 162C, NSWPF Review Prioritisation Form – Gilles Mattaini, 15 August 2013 (NPL.0131.0001.2190); Exhibit 6, Tab 162D, NSWPF Review Prioritisation Form – John Russell, 14 August 2013 (NPL.0131.0001.2552_E); Exhibit 6, Tab 162E, NSWPF Review Prioritisation Form – Ross Warren, 14 August 2013 (NPL.0131.0001.2912).

²⁴⁶ Exhibit 6, Tab 162C, NSWPF Review Prioritisation Form – Gilles Mattaini, 15 August 2013, 4 (NPL.0131.0001.2190); Exhibit 6, Tab 162D, NSWPF Review Prioritisation Form – John Russell, 14 August 2013, 4 (NPL.0131.0001.2552_E); Exhibit 6, Tab 162E, NSWPF Review Prioritisation Form – Ross Warren, 14 August 2013, 4 (NPL.0131.0001.2912).

²⁴⁷ Transcript of the Inquiry, 26 September 2023, T6057.3-43 (TRA.00091.00001).

²⁴⁸ Exhibit 6, Tab 291, NSWPF Issue Paper by DCI Christopher Olen, 4 May 2016 (NPL.0115.0001.0009_E).

²⁴⁹ Transcript of the Inquiry, 26 September 2023, T6079.12-23 (TRA.00091.00001).

265. However, he said he could not remember why SF Neiwand was set up. He said that he would “certainly say that it was out of the norm. It wouldn't have been a case that would have been high on the unit's priority for selecting investigations”.²⁵⁰ He said “there wasn't anything new or startling in relation to evidence or suspects or information that would have led to that establishment of that strike force. So I would think that was unusual ...”.²⁵¹ He did not know why Mr Willing made that decision at that time (October 2015).²⁵²
266. DS Brown, however, did have a recollection about why SF Neiwand was set up. She said, when asked that question, “There must have been some media around at the time. ... There was ... was it an SBS documentary?”.²⁵³
267. When reminded that an SBS documentary was indeed in the wind, and that it was understood in 2015 that it would probably be broadcast the next year (2016), DS Brown agreed that rang a bell with her.²⁵⁴ She agreed that Mr Willing “would have set it up so as to get ahead of the media curve”.²⁵⁵
268. That evidence is consistent with the evidence of DS Morgan in his email of 26 February 2016 (“the Boss wants to be able to say ...”): see CAS [592], [593].²⁵⁶

The conduct of SF Neiwand

269. On 1 February 2016, DS Brown (then still the OIC) sent an email to other SF Neiwand personnel, including Mr Lehmann, that attached the spreadsheet listing 116 persons of interest identified by Operation Taradale: CAS [587], [588].
270. DS Brown said that it was only as a result of this Inquiry that she has become aware that in fact SF Neiwand did not look at those persons of interest at all. That was surprising to her.²⁵⁷ She said the decision not to focus on persons of interest was the type of decision that was up to the Investigation Supervisor (who was DS Morgan).²⁵⁸
271. Mr Lehmann gave evidence that he understood the purpose of SF Neiwand was to investigate and identify persons responsible for the deaths of Mr Russell, Mr Warren, and Mr Mattaini.²⁵⁹

²⁵⁰ Transcript of the Inquiry, 26 September 2023, T6081.42-45 (TRA.00091.00001).

²⁵¹ Transcript of the Inquiry, 26 September 2023, T6082.3-9 (TRA.00091.00001).

²⁵² Transcript of the Inquiry, 26 September 2023, T6082.11-21 (TRA.00091.00001).

²⁵³ Transcript of the Inquiry, 3 October 2023, T6514.15-20 (TRA.00095.00001).

²⁵⁴ Transcript of the Inquiry, 3 October 2023, T6514.22-31 (TRA.00095.00001).

²⁵⁵ Transcript of the Inquiry, 3 October 2023, T6514.33-35 (TRA.00091.00001).

²⁵⁶ Exhibit 6, Tab 285, Email from Steven Morgan to Sebastian Herft, 26 February 2016 (NPL.0115.0004.3512).

²⁵⁷ Transcript of the Inquiry, 3 October 2023, T6519.18–27 (TRA.00095.00001).

²⁵⁸ Transcript of the Inquiry, 3 October 2023, T6519.29–6520.22 (TRA.00095.00001).

²⁵⁹ Transcript of the Inquiry, 26 September 2023, T6039.31-41 (TRA.00091.00001).

Like DS Brown, he said that it came as news to him that SF Neiwand deliberately chose not to investigate the possibility that these men were murdered by gay hate assailants, and that the strike force did not actually investigate the known persons of interest at all.²⁶⁰

272. Mr Leggat was not aware of DS Brown's spreadsheet. He agreed that a deliberate decision was made that SF Neiwand would focus on victimology and not gay hate homicide.²⁶¹ He ultimately conceded that in relation to all three cases, SF Neiwand did not investigate the possibility of homicide at the hands of gay hate assailants at all.²⁶²

273. Mr Leggat accepted that he "could have asked those conducting SF Neiwand to change that decision" but he did not do so.²⁶³ He accepted the advice he was given and "agreed with the decision".²⁶⁴ Mr Leggat went on further to say that:²⁶⁵

In making the decision to undertake such a wide scale operation, the decision to deploy such resources must be made while weighing up the probative value of the evidence that might have been collected by such an operation. The decision not to pursue the targeting of the Taradale POIs had been made prior to my involvement with SF Neiwand. At the time I joined the UHT, I did not regard the targeting of the Taradale POIs to be an effective deployment of the resources of the UHT.

274. When he was asked why, upon receiving the advice that it was not feasible to investigate the known persons of interest, he did not bring a stop to SF Neiwand, Mr Leggat said that he "saw other lines of inquiry that they could conduct".²⁶⁶ Mr Leggat accepted that those "lines of inquiry" amounted to "looking at the backgrounds of [Mr Mattaini, Mr Warren and Mr Russell] to see whether anything randomly might turn up".²⁶⁷

275. Given Mr Leggat's stated concern about the resource constraints of the UHT, the decision to deploy limited UHT resources in such a way was remarkable to say the least. But further, the "lines of inquiry" that were actually conducted by SF Neiwand, as outlined in CAS [648] – [661], were almost entirely unrelated to homicide at all, in all three cases. They were substantially directed to criticising Operation Taradale and DS Page, and rejecting the findings of Coroner Milledge. The use of limited UHT resources in that way is even more extraordinary.

²⁶⁰ Transcript of the Inquiry, 26 September 2023, T6040.3-43 (TRA.00091.00001).

²⁶¹ Transcript of the Inquiry, 25 September 2023, T5968.9-12 (TRA.00090.00001).

²⁶² Transcript of the Inquiry, 25 September 2023, T5969.45-T5970.1 (TRA.00090.00001)

²⁶³ Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [39] (SCOI.85707).

²⁶⁴ Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [39] (SCOI.85707).

²⁶⁵ Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [40] (SCOI.85707).

²⁶⁶ Transcript of the Inquiry, 25 September 2023, T5965.9-10 (TRA.00090.00001).

²⁶⁷ Transcript of the Inquiry, 25 September 2023, T5965.35-46 (TRA.00090.00001).

276. As noted above, the NSWPF chose not to provide a statement from Mr Chebl, who was the OIC of SF Neiwand from early in 2016 until its conclusion in early 2018. DS Morgan, the Investigation Supervisor throughout that period, did give evidence, both by statement and by oral evidence.
277. In the CPS, it was asserted that Counsel Assisting made a “decision” not to adduce evidence from Mr Chebl: CPS [363], [364], [392]. As observed earlier in these submissions, that is simply wrong. The NSWPF also submitted that the absence of evidence from Mr Chebl meant both that certain findings or conclusions could not be reached, and that procedural fairness had not been accorded to him: see [43] – [52] above.
278. To those submissions in the CPS, specifically with respect to Mr Chebl and SF Neiwand, the following further responses are made.
279. First, as outlined above, Mr Chebl (in respect of whom the NSWPF informed the Inquiry it might have a conflict of interest)²⁶⁸ has been afforded the opportunity to make a statement and/or to make submissions. He has chosen not to do either.
280. Secondly, the evidence of Mr Lehmann and Mr Leggat, both former DCIs, reinforces the submissions made by Counsel Assisting as to the Investigation Supervisor (in this case DS Morgan) having overall responsibility for a strike force such as SF Neiwand: CAS [671]–[679], [782].
281. According to Mr Lehmann,²⁶⁹ the Investigation Supervisor on a strike force:
- a. is the team leader;
 - b. has a hands-on role, actively and closely involved with the work of the strike force;
 - c. oversees the team and the work they are undertaking;
 - d. is expected to have direct involvement in how the investigation runs, and in directing the tasks and activities of the staff members involved, including the OIC; and
 - e. as to documents produced by the strike force, such as summaries or progress reports, even if drafted by the OIC, is expected to read them, review them, check them, and make sure that he or she also agrees with them.
282. According to Mr Leggat,²⁷⁰ the Investigation Supervisor, in this case DS Morgan, would:

²⁶⁸ Exhibit 6, Tab 437, Letter from the Office of the General Counsel, NSW Police Force to Solicitor Assisting the Inquiry, 25 August 2023 (SCOI.85258).

²⁶⁹ Transcript of the Inquiry, 26 September 2023, T6080.12-6081.15 (TRA.00091.00001).

²⁷⁰ Transcript of the Inquiry, 25 September 2023, T5951.10-22; 5952.5-23 (TRA.00090.00001).

- a. oversight the investigation to ensure that the OIC is on the right track;
 - b. “verify the product” that goes through e@gle.i, meaning read the product and ensure it makes sense;
 - c. be required to be across the investigation itself, so he or she could feed the relevant information back to the Investigations Coordinator;
 - d. be expected to take an active and close interest in what is going on;
 - e. review any decisions which the OIC might have in mind, which the OIC would be required to “run past” the Investigation Supervisor; and
 - f. be expected to carefully read and review and check any review documents or summary documents which the OIC might draft, before endorsing them.
283. Mr Leggat gave evidence that (subject to the possibility of referring something to a superior) it was DS Morgan’s call as Investigation Supervisor, not that of Mr Chebl as OIC, as to how SF Neiwand would approach its task and the issues, including the change of direction away from investigating the possibility of homicide at the hands of gay hate assailants.²⁷¹
284. As to the Neiwand Summaries (addressed at CAS [671]–[679]), Mr Leggat confirmed that, as Investigation Supervisor, DS Morgan should have read, reviewed, checked and endorsed what Mr Chebl wrote.²⁷² He said that he, as Coordinator, had assumed that DS Morgan had done so, in part because he (Mr Leggat) had to have regard to those Summaries when writing his part of the Post-Operational Assessment.²⁷³
285. Mr Leggat considered that he himself did not need to check that DS Morgan had actually done so, because, since DS Morgan had approved the Summaries on the e@gle.i system, Mr Leggat was entitled to make that assumption.²⁷⁴
286. The submissions made at CAS [671]–[679] and [782] are maintained. DS Morgan’s attempts to minimise his involvement in and responsibility for SF Neiwand, which are in effect embraced in the CPS, should be rejected.
287. As to why the Coroners Court was not informed of the conclusions of SF Neiwand, Mr Leggat said that he had intended to approach the State Coroner’s Office to ascertain their views on SF

²⁷¹ Transcript of the Inquiry, 25 September 2023, T5970.3-39 (TRA.00090.00001).

²⁷² Transcript of the Inquiry, 25 September 2023, T5971.7-11 (TRA.00090.00001).

²⁷³ Transcript of the Inquiry, 25 September 2023, T5971.13-14 (TRA.00090.00001).

²⁷⁴ Transcript of the Inquiry, 25 September 2023, T5971.24-44 (TRA.00090.00001).

Neiwand's findings, but he wanted to wait until the new State Coroner was appointed because any further inquest would be conducted at their direction.²⁷⁵ Mr Leggat said:²⁷⁶

That the reference [to the State Coroner] was not made is deeply regrettable. However, it was only the product of oversight...

288. Mr Leggat admitted that, now that he knew the true position about the unwarranted conclusions arrived at by SF Neiwand, it was highly likely that it would have been an embarrassment for the NSWPF if DS Morgan's views had been ventilated before the new Coroner.²⁷⁷ He agreed that, "pretty much", "it was luck that saved [the police] in the end".²⁷⁸
289. Mr Leggat conceded that the families should also have been told about the findings of SF Neiwand.²⁷⁹ He could not provide an explanation for why the public generally were never told about the results of SF Neiwand.²⁸⁰

²⁷⁵ Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [47]-[50] (SCOI.85707).

²⁷⁶ Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [60] (SCOI.85707).

²⁷⁷ Transcript of the Inquiry, 25 September 2023, T5983.4-19 (TRA.00090.00001).

²⁷⁸ Transcript of the Inquiry, 25 September 2023, T5983.21-23 (TRA.00090.00001).

²⁷⁹ Transcript of the Inquiry, 25 September 2023, T5983.40-5985.7 (TRA.00090.00001).

²⁸⁰ Transcript of the Inquiry, 25 September 2023, T5986.26-5987.20 (TRA.00090.00001).

F. ADDITIONAL EVIDENCE – STRIKE FORCE PARRABELL

Introduction

290. The various aspects of SF Parrabell – including its origins, the methodology used by the NSWPF officers, the methodology used by the academics, and the Parrabell Report itself, are the subject of lengthy discussion at CAS [783]–[1433].
291. For the September/October hearing, in relation to SF Parrabell, three witnesses (Superintendent Middleton, DI Grace and D A/S Bignell) provided written statements.²⁸¹ D A/S Bignell also gave oral evidence.
292. None of the numerous other persons, from whom it was suggested in the CPS that evidence should have been obtained in relation to SF Parrabell (including, *inter alia*, Dr Tyson, Ms Braw and Dr Birch), availed themselves of the opportunity to provide a statement.
293. The evidence now provided by Superintendent Middleton, DI Grace and D A/S Bignell related largely, although not exclusively, to the methodology adopted and implemented by the strike force. These supplementary submissions are also directed largely to that topic.
294. The accounts of each of the three officers as to how the work of the strike force was actually carried out were substantially, although not entirely, consistent with each other.
295. These supplementary submissions focus mainly on the written and oral evidence of D A/S Bignell. As is now apparent, it was actually D A/S Bignell, alone, who single-handedly filled out every one of the BCIFs.²⁸² None of the other investigators played any part in that exercise whatsoever,²⁸³ and the review panel”, which comprised Superintendent Middleton and DI Grace as well as D A/S Bignell) and met each month to conduct a final review and assessment of the completed BCIFs,²⁸⁴ made very few changes to any of those BCIFs as drafted by D A/S Bignell.²⁸⁵

²⁸¹ Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023 (NPL.9000.0029.0001); Exhibit 6, Tab 508, Statement of DI Paul Grace, 8 September 2023 (NPL.9000.0024.0012); Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023 (NPL.9000.0026.0007).

²⁸² Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [61] (NPL.9000.0026.0007); Transcript of the Inquiry, 21 September 2023, T5811.19-24, T5831.42-47 (TRA.00089.00001).

²⁸³ See each of Superintendent Middleton and DI Grace’s accounts of the exercise at Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [67]-[68] (NPL.9000.0029.0001); Exhibit 6, Tab 508, Statement of DI Paul Grace, 8 September 2023, [64]-[65], [67]-[68] (NPL.9000.0024.0012).

²⁸⁴ As described by Superintendent Middleton in Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [68] (NPL.9000.0029.0001); see also Exhibit 6, Tab 508, Statement of DI Paul Grace, 8 September 2023, [67]-[68] (NPL.9000.0024.0012) (describing the process of “review team meeting[s]”).

²⁸⁵ Transcript of the Inquiry, 21 September 2023, T5820.38-5821.7 (TRA.00089.00001).

296. In that regard, the evidence of these three officers is remarkable. According to each of them, in particular as emerges most clearly from the evidence of D A/S Bignell, the methodology actually used by the strike force was quite different from:
- a. what had been put forward by AC Crandell in his written and oral evidence;²⁸⁶
 - b. what was asserted in the NSWPF letter of 19 May 2023 (as summarised at CAS [872]) **(19 May 2023 letter)**;²⁸⁷ and
 - c. what was contended for in the CPS.²⁸⁸
297. Among other things, neither AC Crandell in his evidence, nor the 19 May 2023 letter, described a three-stage process (triage, BCIF, review), or stated that all BCIFs were filled out solely by D A/S Bignell (with no participation in that exercise at all by the other investigators). It presumably follows that AC Crandell did not know any of these things. It presumably also follows that neither did the author of the 19 May 2023 letter.
298. If so, that is both remarkable in itself, and highly unsatisfactory from the perspective of the Inquiry. Had this evidence been brought forward earlier, as it should have been (see Part B above), a great deal of time on the part of both the Inquiry and interested parties, including the NSWPF, would have been saved, and resources could have been better allocated.
299. The true position regarding SF Parrabell's methodology, as now revealed by the evidence of these three officers, would appear not to have been communicated, or not communicated accurately, to the academic reviewers: CAS [1197] – [1199].
300. That unfortunate state of affairs is highlighted and exacerbated by the evidence of D A/S Bignell that at no time prior to about August 2023 had he ever been asked to provide his recollection of these matters in connection with this Inquiry.²⁸⁹ Given the terms of the Inquiry's letter of 20 September 2022 (see [14] above), that is both astounding, and most unfortunate.

²⁸⁶ See, eg, Exhibit 6, Tab 4, Statement of AC Anthony Crandell, 31 October 2022, [85] (SCOI.76961); see also Transcript of the Inquiry, 7 December 2022, T726.2-38; T752.22-754.22 (TRA.00011.00001); Transcript of the Inquiry, 8 December 2022, T860.17-46; T862.21-864.34 (TRA.00013.00001); Transcript of the Inquiry, 9 December 2022, T992.15-37 (TRA.00014.00001); and Transcript of the Inquiry, 12 December 2022, T1030.17-1031.16; T1035.18-20 (TRA.00015.00001).

²⁸⁷ Exhibit 6, Tab 386, Letter from the Office of the General Counsel, NSW Police Force to Solicitor Assisting the Inquiry, 19 May 2023 (SCOI.83388).

²⁸⁸ See for example CPS [539]-[542], [552], [555]-[556], [560]-[561], [602], [604]; see also [488]-[490], [520].

²⁸⁹ Transcript of the Inquiry, 21 September 2023, T5779.11-5870.15 (TRA.00089.00001).

Reasons for establishment of SF Parrabell

301. D A/S Bignell was asked about why SF Parrabell was created against the background of Sue Thompson's "list of 88". On that topic, his evidence included the following exchange:²⁹⁰

Q. you just have no idea why the police wanted to check the list themselves and review them?

A. Not definitively, no. I can draw certain assumptions as to why –

...

Q. ... what did you draw?

A. That the list of 88 names that was out there, that was in the community, was, in fact, being, I suppose, advocated that it was, you know, a short-falling of police, that's all of these people died as a result of gay bias, and so, you know, there's an issue with in the State of New South Wales of gay bias, and that we needed to look at each of those cases and make a determination whether or not that was the case.

Q. Because there was a view inside the police that those accusations were wrong?

A. I suppose, yes.

Q. That's what you knew, didn't you?

A. That's my opinion, yes.

Dates and documents

302. The evidence of Superintendent Middleton, DI Grace and D A/S Bignell, together with evidence previously available, establishes, among other things, the following:

- a. In about May 2015, DI Grace prepared the Investigation Plan;²⁹¹
- b. From on or around 30 August 2015, D A/S Bignell was attached to SF Parrabell, initially on a full-time basis;²⁹²
- c. Superintendent Middleton and DI Grace were not full time on SF Parrabell, nor were they located in the same room as the investigators;²⁹³
- d. The first version of the BCIF known to D A/S Bignell was that attached to the Investigation Plan;²⁹⁴
- e. In about April 2016, DI Grace drafted the Induction Package;²⁹⁵

²⁹⁰ Transcript of the Inquiry, 21 September 2023, T5881.31-5882.23 (TRA.00089.00001).

²⁹¹ Exhibit 6, Tab 508, Statement of DI Paul Grace, 8 September 2023, [47] (NPL.9000.0024.0012).

²⁹² Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [24] (NPL.9000.0026.0007).

²⁹³ Transcript of the Inquiry, 21 September 2023, T5782.23-35 (TRA.00089.00001).

²⁹⁴ Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [44] (NPL.9000.0026.0007).

²⁹⁵ Exhibit 6, Tab 508, Statement of DI Paul Grace, 8 September 2023, [48] (NPL.9000.0024.0012).

- f. The second version of the BCIF known to D A/S Bignell was generated after Sergeant Steer's presentation in June 2016;²⁹⁶
- g. Apart from that presentation, D A/S Bignell did not otherwise interact with Sergeant Steer in any substantial way;²⁹⁷
- h. By about September 2016 (five months after the Investigation Plan came into existence, and prior to the Coordinating Instructions coming into existence), all the investigators other than D A/S Bignell had left SF Parrabell;²⁹⁸
- i. In about October 2016, DI Grace drafted the Coordinating Instructions;²⁹⁹
- j. By November/December 2016 the bulk of the work of the strike force was completed;³⁰⁰ and
- k. The third version of the BCIF known to D A/S Bignell was generated in about January 2017.³⁰¹

Methodology of SF Parrabell

303. The evidence of Superintendent Middleton, DI Grace and D A/S Bignell establishes, among other things, that there was a three-stage process, which was essentially as follows:³⁰²
- a. Triage – during which the investigators would gather together all the documents they could locate in relation to a particular case and provide them to D A/S Bignell;
 - b. Filling out of the BCIF for each case – which D A/S Bignell did single-handedly;
 - c. Review – monthly meetings of DCI Middleton, DI Grace and D A/S Bignell at which the draft BCIFs prepared by D A/S Bignell would be discussed and finalised.

²⁹⁶ Transcript of the Inquiry, 21 September 2023, T5848.17-23 (TRA.00089.00001)

²⁹⁷ Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [30]-[33] (NPL.9000.0026.0007).

²⁹⁸ Exhibit 6, Tab 68, Email from Craig Middleton to Anthony Crandell, 7 September 2016 (SCOI.74312); Transcript of the Inquiry, 21 September 2023, T5786.14-T5787.21 (TRA.00089.00001).

²⁹⁹ Exhibit 6, Tab 508, Statement of DI Paul Grace, 8 September 2023 [49] (NPL.9000.0024.0012).

³⁰⁰ Transcript of the Inquiry, 21 September 2023, T5781.7-11 (TRA.00089.00001).

³⁰¹ Transcript of the Inquiry, 21 September 2023, T5787.41-5788.21 (TRA.00089.00001); Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [46] (NPL.9000.0026.0007).

³⁰² Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [48]-[69] (NPL.9000.0026.0007); Exhibit 6, Tab 508, Statement of DI Paul Grace, 8 September 2023, [62]-[69] (NPL.9000.0024.0012); Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [67]-[68] (NPL.9000.0029.0001). See also Transcript of the Inquiry, 21 September 2023, T5793.13-31; T5804.14-5818.43; T5820.5-5821.7 (TRA.00089.00001).

304. D A/S Bignell said that he did not “refer back” to any of the Investigation Plan, Induction Package or Coordinating Instructions “on a regular basis”.³⁰³ Indeed, to his knowledge the constituent documents did not play much of a part in SF Parrabell at all.³⁰⁴ He said that the Investigation Plan and Coordinating Instructions were wrong in certain respects in terms of their description of how SF Parrabell operated and the methodology employed by it.³⁰⁵
305. According to D A/S Bignell the difference between the various constituent documents did not have any material impact on SF Parrabell, because the investigators largely relied on verbal briefings and instructions from him, which covered the “triage review” process and included changes made to the BCIF.³⁰⁶
306. As to standard of proof, D A/S Bignell had to use his “common sense” to work out what was meant by terms such as “it appears likely” or “it appears unlikely” or “there is evidence”.³⁰⁷ In his view “it was a pretty big threshold to meet to class something as having evidence of bias, so I was certainly very mindful of that in conducting my review and completing those forms”.³⁰⁸
307. In oral evidence, D A/S Bignell clarified that for him to find “evidence of bias crime”, the death would “almost definitively” need to be as a result of such a bias.³⁰⁹ He conceded that the result of applying this high standard would be that not many cases would be classified as “evidence of bias crime”.³¹⁰
308. He also agreed that when the standard of “beyond reasonable doubt” was introduced into the BCIF, there was an even higher threshold for “evidence of bias crime”, although later said that it did not actually change how he determined the classification.³¹¹

The first stage – triage

309. With only two exceptions, each case had one investigator assigned to it.³¹²
310. D A/S Bignell’s evidence was that in cases where there was extensive material located in the archives, that suggested to him that the archives possessed the full extent of the material

³⁰³ Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [37], [39]-[40] (NPL.9000.0026.0007).

³⁰⁴ Transcript of the Inquiry, 21 September 2023, T5850.6-9 (TRA.00089.00001).

³⁰⁵ Transcript of the Inquiry, 21 September 2023 T5845.28-30 (Coordinating Instructions), T5830.45-5831.40 (Investigation Plan) (TRA.00089.00001).

³⁰⁶ Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [47] (NPL.9000.0026.0007).

³⁰⁷ Transcript of the Inquiry, 21 September 2023, T5835.3-12 (TRA.00089.00001).

³⁰⁸ Transcript of the Inquiry, 21 September 2023, T5835.18-21 (TRA.00089.00001).

³⁰⁹ Transcript of the Inquiry, 21 September 2023, T5835.42-T5836.4 (TRA.00089.00001).

³¹⁰ Transcript of the Inquiry, 21 September 2023, T5836.13-33 (TRA.00089.00001).

³¹¹ Transcript of the Inquiry, 21 September 2023, T5836.35-42, T5837.12-27 (TRA.00089.00001).

³¹² Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [51], [55] (NPL.9000.0026.0007).

available for a particular case.³¹³ He said that his understanding was based on his experience as a police officer, and his hope that all the material had been provided.³¹⁴

311. He was unaware of the fact that in relation to historical cases, it was known, at least within the UHT, that many briefs of evidence and case file documents had not been stored or archived in the proper manner.³¹⁵ He ultimately conceded that it “could have been the case” that SF Parrabell may not have obtained all of the documents available for each particular case.³¹⁶
312. Once all the available material had been collected for a particular case, the allocated investigator reviewed every document and extracted anything regarded by that investigator as relevant to the question of LGBTIQ bias. The investigator would make a copy of the documents so selected, return the originals to the case file, and upload a digital copy to e@gle.i. When uploading the material to e@gle.i., the investigator would also enter an overview of each document. Once all material had been reviewed, the investigator would prepare a summary or synopsis of the case.³¹⁷
313. D A/S Bignell said that the investigators were given a copy of the BCIF and expected to familiarise themselves with the indicators and what type of material could be responsive to each of them.³¹⁸ D A/S Bignell said that he and the investigators all worked in a common area and there were many “informal discussions” regarding what materials should be included, with investigators often running specific documents past him for his opinion.³¹⁹
314. In D A/S Bignell’s opinion the investigators (in accordance with his request to them) were over-inclusive in terms of what documents they included as relevant. For this reason, D A/S Bignell did not go back to the original files himself to check the work of the investigators.³²⁰

The second stage – the BCIFs

315. D A/S Bignell was the only one who completed the BCIFs. It was his role, alone, to review whatever material the investigators had extracted, and to “populate the BCIF for each case”.³²¹
316. D A/S Bignell said that after each change to the BCIF (ie from the first version to the second version in about June 2016, and from the second version to the third version in about January

³¹³ Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [54] (NPL.9000.0026.0007).

³¹⁴ Transcript of the Inquiry, 21 September 2023, T5794.41-T5795.22 (TRA.00089.00001).

³¹⁵ Transcript of the Inquiry, 21 September 2023, T5797.13-35; see also T5798.45-5799.4 (TRA.00089.00001).

³¹⁶ Transcript of the Inquiry, 21 September 2023, T5802.30-35 (TRA.00089.00001).

³¹⁷ Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [56], [57] (NPL.9000.0026.0007).

³¹⁸ Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [58] (NPL.9000.0026.0007).

³¹⁹ Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [59] (NPL.9000.0026.0007).

³²⁰ Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [59]-[60] (NPL.9000.0026.0007).

³²¹ Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [61] (NPL.9000.0026.0007).

2017), all cases were reviewed by reference to that changed form.³²² In his oral evidence, he clarified that those “reviews” were carried out by him personally, alone,³²³ and that (as to the last of the changes) all that happened was that the existing text of the BCIF responses was simply transferred across from one version of the document to the next.³²⁴

The third stage – review

317. Once a month, D A/S Bignell would meet with Superintendent Middleton and DI Grace to discuss the BCIFs which he had completed.³²⁵ According to both D A/S Bignell, and Superintendent Middleton, these meetings often involved “robust discussion”.³²⁶
318. Superintendent Middleton and DI Grace would be given a completed BCIF, and all the material that had been relied on by D A/S Bignell to complete that form. D A/S Bignell would bring hard copies of this material to the meeting, and would refer to it if necessary.³²⁷
319. D A/S Bignell gave evidence that, of all the 80-plus cases, changes were made by the review committee to the BCIFs (as filled in by him) in only a handful of cases, and even those changes were “pretty minor” such as “spelling or grammatical issues”.³²⁸
320. D A/S Bignell was taken to both the 19 May 2023 letter, and some parts of the transcript of the evidence of AC Crandell in relation to the methodology of SF Parrabell. He acknowledged that, in both instances, some of what had been asserted was not correct.³²⁹

Conclusion

321. Prior to August 2023, as noted above, no-one had asked D A/S Bignell to set out his recollections or understanding about how SF Parrabell had undertaken its work;³³⁰ that is: not at the time when AC Crandell prepared his statement (October 2022);³³¹ not at the time AC Crandell gave evidence to the Inquiry (December 2022);³³² and not at the time when detailed correspondence was exchanged between the Inquiry and the NSWPF about the various versions of the BCIFs

³²² Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [62]-[63] (NPL.9000.0026.0007).

³²³ Transcript of the Inquiry, 21 September 2023, T5811.19-24 (TRA.00089.00001).

³²⁴ Transcript of the Inquiry, 21 September 2023, T5849.30-36 (TRA.00089.00001).

³²⁵ Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [64], [66]-[68] (NPL.9000.0026.0007).

³²⁶ Exhibit 6, Tab 509, Statement of D A/S Cameron Bignell, 8 September 2023, [68] (NPL.9000.0026.0007); Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [68(5)] (NPL.9000.0029.0001).

³²⁷ Transcript of the Inquiry, 21 September 2023, T5814.1-20 (TRA.00089.00001).

³²⁸ Transcript of the Inquiry, 21 September 2023, T5820.21-5821.7 (TRA.00089.00001).

³²⁹ Transcript of the Inquiry, 21 September 2023, T5824.14-5827.40; T5853.43-5859.45 (TRA.00089.00001).

³³⁰ Transcript of the Inquiry, 21 September 2023, T5779.11-30 (TRA.00089.00001).

³³¹ Transcript of the Inquiry, 21 September 2023, T5779.32-46 (TRA.00089.00001).

³³² Transcript of the Inquiry, 21 September 2023, T5780.1-8 (TRA.00089.00001).

used by SF Parrabell, with the Inquiry seeking clarification as to when and why the BCIFs changed (May 2023).³³³

322. As submitted above, the fact that D A/S Bignell was not consulted at an earlier stage by the NSWPF or AC Crandell has resulted in a considerable waste of time and public resources. Having regard to the Inquiry's letter of 20 September 2022 and of Practice Guideline 1, the NSWPF as a model litigant should have provided the Inquiry with full and accurate evidence at the earliest available opportunity. In particular, if the evidence of D A/S Bignell was important to understanding the methodology of SF Parrabell, as asserted by the NSWPF in the CPS and as now revealed to be so, then the NSWPF should have so informed the Inquiry, and provided the evidence of D A/S Bignell, 12 months ago.

³³³ Transcript of the Inquiry, 21 September 2023, T5780.10-15 (TRA.00089.00001).

See Exhibit 6, Tab 385, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 10 May 2023 (SCOI.83387); Exhibit 6, Tab 386, Letter from the Office of the General Counsel, NSW Police Force to Solicitor Assisting the Inquiry, 19 May 2023 (SCOI.83388).

G. ADDITIONAL EVIDENCE – OVERLAP AND OTHER MATTERS

General

324. In this part of these supplementary submissions, some aspects of the evidence in the September/October hearing are noted which are or may be relevant to matters such as the reasons for the establishment of SF Macnamir, SF Parrabell and SF Neiwand and/or the manner in which each was conducted.

Awareness and impact of media coverage

325. In the September/October hearing, a number of witnesses gave evidence about the awareness of NSWPF officers of the criticisms being levelled at the NSWPF in the media, especially from early 2013 onwards, in relation to its response to alleged gay hate homicides from around the 1970s to the early 2000s.

326. D A/S Bignell, DS Taylor, Mr Leggat, Mr Lehmann, DS Brown and Ms Young gave evidence about their awareness of media coverage concerning the “list of 88”, including articles published in the Sydney Morning Herald by Paul Sheehan in March 2013 (**the Paul Sheehan articles**) and Rick Feneley in July 2013 (**the Rick Feneley articles**).

327. D A/S Bignell said he learned about the media articles “almost immediately” after joining SF Parrabell but had not heard of them previously.³³⁴ He could not recall anyone expressing their opinion about the articles (including their veracity) to him.³³⁵

328. DS Taylor recalled seeing articles in the media in around 2013 that referred to a significant number of gay hate murders in the 1970s and 1980s, some of which remained unsolved. She recalled reading one article in particular, published on 13 February 2013 in the *Sydney Morning Herald* called “Gays hunted for sport, says dead man’s family”, which concerned the death of Scott Johnson;³³⁶ but did not recall other articles shown to her,³³⁷ or the Rick Feneley articles.³³⁸ DS Taylor did not recall any UHT officers, including Ms Young and Mr Lehmann, or Mr Willing expressing their views regarding the veracity or exaggeration of these claims.³³⁹ She herself had

³³⁴ Transcript of the Inquiry, 21 September 2023, T5782.43 -T5783.21; T5822.15-33 (TRA.00089.00001).

³³⁵ Transcript of the Inquiry, 21 September 2023, T5822.40-5823.12 (TRA.00089.00001).

³³⁶ Transcript of the Inquiry, 25 September 2023, T5897.20-5898.10 (TRA.00090.00001).

³³⁷ Transcript of the Inquiry, 25 September 2023, T5898.12-35-5898.35 (TRA.00090.00001).

³³⁸ Transcript of the Inquiry, 25 September 2023, T5901.10-22 (TRA.00090.00001).

³³⁹ Transcript of the Inquiry, 25 September 2023, T5898.37-5899.16, 5890.5-9, 5903.22-5904.36 (TRA.00090.00001).

- no views about their accuracy.³⁴⁰ She was not aware of the 2013 Issue Paper or the views expressed therein.³⁴¹
329. Mr Leggat said that he was not aware of the Paul Sheehan articles,³⁴² or of an article published in the *Sydney Morning Herald* in February 2013 which reported on a suggested link between the death of Scott Johnson and the three Taradale cases at Bondi.³⁴³
330. Ms Young recalled the Rick Feneley articles, but did not recall being aware of the Paul Sheehan articles at the time they were published.³⁴⁴
331. DS Taylor gave evidence that she did not hear Ms Young or Mr Lehmann say anything in her presence about the numbers of gay hate murders being exaggerated or overstated.³⁴⁵
332. DSC Rullo said that the views of Mr Lehmann and Ms Young did not influence his work on SF Macnamir or SF Neiwand, and that he had not seen any document produced by Mr Lehmann and Ms Young.³⁴⁶
333. In relation to the 2013 Issue Paper, Ms Young said she agreed with the view that only eight of the 30 allegedly unsolved deaths were probable or possible gay hate crimes.³⁴⁷ She also agreed that the suggestion of 30 unsolved deaths was an “exaggeration”.³⁴⁸ She said the reference to SF Macnamir being close to completion was erroneous.³⁴⁹ Ms Young said that she and Mr Lehmann did not express their views, as contained in the 2013 Issue Paper, orally to UHT staff, because it had “no direct relevance” to them; the report was “heading up the hill” and she “doubted” if anyone else in the UHT had read it.³⁵⁰
334. DS Brown said she was aware of media articles in July 2013 which suggested that there had been 80 or more gay hate deaths since the 1970s and that up to 30 of those were unsolved.³⁵¹ She agreed that this media attention “caused a splash”, in the sense that it “it wasn’t correct and it needed to be clarified... The information – this is my opinion – was concerning because it was producing fear in the community”.³⁵²

³⁴⁰ Transcript of the Inquiry, 25 September 2023, T5900.23-26 (TRA.00090.00001).

³⁴¹ Transcript of the Inquiry, 25 September 2023, T5900.28-T5904.16 (TRA.00090.00001).

³⁴² Transcript of the Inquiry, 25 September 2023, T5937.17-25 (TRA.00090.00001).

³⁴³ Transcript of the Inquiry, 25 September 2023, T5937.9-15 (TRA.00090.00001).

³⁴⁴ Transcript of the Inquiry, 5 October 2023, T6656.12-40 (TRA.00097.00001).

³⁴⁵ Transcript of the Inquiry, 25 September 2023, T5900.9 (TRA.00090.00001).

³⁴⁶ Exhibit 6, Tab 520, Statement of Detective Senior Constable Paul Rullo, 22 September 2023, [44] (SCOI.85772).

³⁴⁷ Transcript of the Inquiry, 5 October 2023, T6657.20-27 (TRA.00097.00001).

³⁴⁸ Transcript of the Inquiry, 5 October 2023, T6659.11-22 (TRA.00097.00001).

³⁴⁹ Transcript of the Inquiry, 5 October 2023, T6658.15-6659.9 (TRA.00097.00001).

³⁵⁰ Transcript of the Inquiry, 5 October 2023, T6657.47-6658.13, 6659.29-37 (TRA.00097.00001).

³⁵¹ Transcript of the Inquiry, 3 October 2023, T6466.10-6467.3 (TRA.00095.00001).

³⁵² Transcript of the Inquiry, 3 October 2023, T6471.44-6472.12 (TRA.00095.00001).

335. DS Brown also gave evidence that she was aware that a couple of months later, the 2013 Issue Paper was prepared.³⁵³ She said that the views of Mr Lehmann and Ms Young carried considerable weight within the UHT,³⁵⁴ but that neither Mr Lehmann nor Ms Young spoke to her about their views as expressed in the Issue Paper.³⁵⁵
336. Mr Lehmann gave evidence that media articles came to his notice in 2013 which alleged numerous historic unsolved homicides motivated by gay hate.³⁵⁶ He recalled “a number of articles” concerning gay hate crimes, some said to be unsolved, including articles concerning the Scott Johnson case and possible links with the “Bondi/Milledge cases”. He did not recall specific articles.³⁵⁷
337. Mr Lehmann agreed that it would be “fair to say” that such media claims about gay hate murders, particularly those said to be unsolved, were “getting serious attention within the Homicide and Unsolved Homicide areas” of NSWPF.³⁵⁸ He agreed that there was a widely held view within the NSWPF that they needed to do something to respond to the negative publicity arising from the articles.³⁵⁹
338. When asked whether the media attention from this period was a catalyst for the 2013 Issue Paper, Mr Lehmann stated that “the main catalyst was a list provided to [him] by Sue Thompson”.³⁶⁰
339. Mr Lehmann said that his conclusions in that paper were “based purely on the fact that at the time of writing that report, [he] did not have evidence available to [him], that indicated to [him] that homicide was involved in many of those cases”.³⁶¹
340. Mr Lehmann also said that the views expressed in the 2013 Issue Paper by him and Ms Young were also held and shared within very senior levels of police, because these views “went up the chain”.³⁶²

³⁵³ Transcript of the Inquiry, 3 October 2023, T6467.5-13 (TRA.00095.00001).

³⁵⁴ Transcript of the Inquiry, 3 October 2023, T6467.35-6468.1 (TRA.00095.00001).

³⁵⁵ Transcript of the Inquiry, 3 October 2023, T6471.38-42 (TRA.00095.00001).

³⁵⁶ Exhibit 6, Tab 513, Statement of John Lehmann, 29 August 2023, [27] (SCOI.85495).

³⁵⁷ Transcript of the Inquiry, 26 September 2023, T6019.4-6020.15 (TRA.00091.00001).

³⁵⁸ Transcript of the Inquiry, 26 September 2023, T6026.5-10 (TRA.00091.00001).

³⁵⁹ Transcript of the Inquiry, 26 September 2023, T6026.27-41 (TRA.00091.00001).

³⁶⁰ Transcript of the Inquiry, 26 September 2023, T6021.12-44 (TRA.00091.00001).

³⁶¹ Exhibit 6, Tab 513, Statement of John Lehmann, 29 August 2023, [35] (SCOI.85495).

³⁶² Transcript of the Inquiry, 26 September 2023, T6028.17-24 (TRA.00091.00001).

SF Macnamir

341. DS Brown's evidence was that neither SF Macnamir nor the Young coronial statement was directed to supporting the likelihood of suicide or refuting evidence in support of the possibility of homicide.³⁶³ She considered that an "objective review of the brief of evidence would demonstrate that we looked at all possible – all three lines of inquiry".³⁶⁴

SF Neiwand

342. Mr Lehmann denied that the objective of SF Neiwand was to attack, rebut, undermine or discredit the work of Operation Taradale and the findings of Coroner Milledge,³⁶⁵ or that he personally was motivated to pervert the course of justice or by any other "nefarious" motive in relation to his involvement in SF Neiwand.³⁶⁶

SF Parrabell

343. DS Brown said that SF Parrabell was established by Mr Willing, with the "endorsement of [AC] Crandell...in response to the media attention being directed towards crimes involving sexuality or gender bias".³⁶⁷ DS Brown recalled having conversations with Mr Willing to this effect.³⁶⁸

344. Mr Willing denied having any involvement in the establishment of SF Parrabell.³⁶⁹

UHT

345. Mr Leggat gave evidence that all the teams within the UHT worked in the same room in a large open plan office.³⁷⁰ He agreed that investigators would typically talk to others in the room about what they were working on; and said that "you had a general idea of what the other teams were doing".³⁷¹

346. Numerous witnesses gave evidence to the effect that:

- a. they did not attempt, and/or were not encouraged by any senior NSWPF officers, to minimise the incident of gay-hate homicide; and/or

³⁶³ Transcript of the Inquiry, 3 October 2023, T6484.15-6485.10 (TRA.00095.00001).

³⁶⁴ Transcript of the Inquiry, 3 October 2023, T6484.24-27 (TRA.00095.00001).

³⁶⁵ Exhibit 6, Tab 513, Statement of John Lehmann, 29 August 2023, [38]-[39] (SCOI.85495).

³⁶⁶ Exhibit 6, Tab 513, Statement of John Lehmann, 29 August 2023, [42] (SCOI.85495).

³⁶⁷ Exhibit 6, Tab 519, Statement of Detective Sergeant Penelope Brown, 20 September 2023, [8] (SCOI.85747).

³⁶⁸ Transcript of the Inquiry, 3 October 2023, T6465.34-46 (TRA.00095.00001).

³⁶⁹ Transcript of the Inquiry, 6 October 2023, T6798.22-43 (TRA.00098.00001).

³⁷⁰ Transcript of the Inquiry, 25 September 2023, T5938.45-5939.3 (TRA.00090.00001).

³⁷¹ Transcript of the Inquiry, 25 September 2023, T5939.5-16 (TRA.00090.00001).

- b. that no-one to their knowledge had sought to promote a “company line” that gay hate crimes had been exaggerated; and/or
- c. that to their knowledge there was no coordination between any of the strike forces directed to discrediting claims that so many deaths were gay hate crimes.
347. Examples include Superintendent Middleton,³⁷² D A/S Bignell,³⁷³ Mr Leggat,³⁷⁴ Mr Lehmann,³⁷⁵ DS Brown,³⁷⁶ DS Taylor,³⁷⁷ and DSC Rullo.³⁷⁸
348. It is submitted that the above evidence is of limited utility. There appears to be a fundamental misapprehension on the part of the NSWPF about the gravamen of some of the submissions made by Counsel Assisting. Those submissions have not been directed to any notion that such officers were told of any such matters.

Peter Gray SC

Senior Counsel Assisting

Meg O’Brien

Counsel Assisting

Claire Palmer

Counsel Assisting

16 October 2023

³⁷² Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023, [87] (NPL.9000.0029.0019).

³⁷³ Transcript of the Inquiry, 21 September 2023, T5876.1-7; 5876.46-5877.11 (TRA.00089.00001).

³⁷⁴ Transcript of the Inquiry, 25 September 2023, T5997.17-22, T6001. 33-36 (TRA.00090.00001).

³⁷⁵ Transcript of the Inquiry, 26 September 2023, T6111.16-6112.7 (TRA.00091.00001).

³⁷⁶ Transcript of the Inquiry, 3 October 2023, T6522.7-30 (TRA.00095.00001).

³⁷⁷ Exhibit 6, Tab 517, Statement of Detective Sergeant Alicia Taylor, 20 September 2023, [39] (NPL.9000.0033.0001).

³⁷⁸ Exhibit 6, Tab 520, Statement of Detective Senior Constable Paul Rullo, 22 September 2023, [45]-[46] (SCOI.85772).

ANNEXURE A

1. As outlined at [90] of these submissions, Counsel Assisting have endeavoured to, from a practical perspective, ensure that any of the individuals referred to in the submissions of the NSWPF or Mr Willing, who wished to give evidence or to make a submission, would be given every opportunity to do so.
2. This Annexure sets out all of the steps taken by the Inquiry in this regard.

Named police witnesses and issues regarding legal representation

3. Following the receipt of the CPS and in anticipation of the further extension of time being granted to the Inquiry, on 10 August 2023, the Inquiry wrote to the NSWPF and requested witness statements by 1 September 2023 from the nine current or former police officers referred to in the CPS.³⁷⁹ The nine current and former police officers from whom statements were requested were former DCI Stewart Leggat, former DCI John Lehmann, former DCI Pamela Young, DS Penelope Brown, DSC Paul Rullo, former DSC Michael Chebl, Superintendent Craig Middleton, DI Paul Grace and D A/S Cameron Bignell.
4. By letters dated 17 and 18 August 2023, the legal representatives for the NSWPF indicated that, with the exception of Superintendent Middleton, they did not represent any of the current or former police officers or staff identified in the Inquiry's letter of 10 August 2023 because of the possibility of a "conflict of interest". The nature of such asserted possible conflict has not been disclosed. They also indicated that, with respect to DI Grace and D A/S Bignell, they would seek their views as to whether they wished for the NSWPF to represent them.³⁸⁰
5. On 21 August 2023, the Inquiry advised the NSWPF that it would liaise directly with all current or former police officers other than Superintendent Middleton and serve material directly on them.³⁸¹
6. On 21, 22 and 24 August 2023, the Inquiry summonsed the nine current or former police officers identified in its letter dated 10 August 2023, together with former Deputy Commissioner Michael Willing, to attend to give evidence before the Inquiry.

³⁷⁹ Exhibit 6, Tab 424, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 10 August 2023 (SCOI.85244).

³⁸⁰ Exhibit 6, Tab 425, Letter from the Office of the General Counsel, NSW Police Force to Solicitor Assisting the Inquiry, 17 August 2023 (SCOI.85253); Exhibit 6, Tab 427, Letter from the Office of the General Counsel, NSW Police Force to Solicitor Assisting the Inquiry, 18 August 2023 (SCOI.85257).

³⁸¹ Exhibit 6, Tab 429, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 21 August 2023 (SCOI.85247).

7. The accompanying cover letter outlined the relevant paragraphs in the submissions of Counsel Assisting, the NSWPF and/or Mr Willing where that witness and/or their work was discussed, advised the witness that they could provide a statement by 4 September 2023, should they wish, and advised the witness that they could provide any submissions by 5 October 2023, should they wish.³⁸²
8. Of the nine current or former police officers in question, the NSWPF provided statements from three whom it ultimately represented – Superintendent Middleton, DI Grace and D A/S Bignell – all of whose evidence relates to SF Parrabell.³⁸³
9. Five of the remaining six current or former officers in question obtained separate representation (the Inquiry is not aware of Mr Chebl obtaining legal representation). All of those individuals were involved, to a greater or lesser extent, in either or both of SF Macnamir and SF Neiwand. Witness statements were subsequently provided to the Inquiry by all five represented current or former officers.³⁸⁴ Mr Chebl indicated that he did not intend to provide a statement.³⁸⁵
10. In the cases of D A/S Bignell, Mr Leggat, Mr Lehmann, DS Brown and Ms Young, their witness statements were supplemented by oral evidence given to the Inquiry. Mr Willing also gave additional oral evidence to the Inquiry although no additional witness statement was obtained from him.

³⁸² Exhibit 6, Tab 468A, Letter from Solicitor Assisting the Inquiry to Stewart Leggat, 22 August 2023 (SCOI.85575); Exhibit 6, Tab 469A, Letter from Solicitor Assisting the Inquiry to John Lehmann, 22 August 2023 (SCOI.85548); Exhibit 6, Tab 470A, Letter from Solicitor Assisting the Inquiry to Pamela Young, 24 August 2023 (SCOI.85568); Exhibit 6, Tab 466A, Letter from Solicitor Assisting the Inquiry to Penelope Brown, 21 August 2023 (SCOI.85578); Exhibit 6, Tab 471A, Letter from Solicitor Assisting the Inquiry to Paul Rullo, 21 August 2023 (SCOI.85583); Exhibit 6, Tab 467A, Letter from Solicitor Assisting the Inquiry to Michael Chebl, 22 August 2023 (SCOI.85554); Exhibit 6, Tab 464A, Letter from Solicitor Assisting the Inquiry to Craig Middleton, 21 August 2023 (SCOI.85562); Exhibit 6, Tab 465A, Letter from Solicitor Assisting the Inquiry to Paul Grace, 21 August 2023 (SCOI.85557); Exhibit 6, Tab 463A, Letter from Solicitor Assisting the Inquiry to Cameron Bignell, 21 August 2023 (SCOI.85558).

³⁸³ Exhibit 6, Tab 507, Statement of Superintendent Craig Middleton, 8 September 2023 (NPL.9000.0029.0001); Exhibit 6, Tab 508, Statement of Detective Inspector Paul Grace, 8 September 2023 (NPL.9000.0024.0012); Exhibit 6, Tab 509, Statement of Detective A/Sergeant Cameron Bignell, 8 September 2023 (NPL.9000.0026.0007).

³⁸⁴ Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023 (SCOI.85707); Exhibit 6, Tab 513, Statement of John Lehmann, 29 August 2023 (SCOI.85495); Exhibit 6, Tab 521, Second statement of Pamela Young (SCOI.85816); Exhibit 6, Tab 519, Statement of Detective Sergeant Penelope Brown, 20 September 2023 (SCOI.85747); Exhibit 6, Tab 519A, Second statement of Detective Sergeant Penelope Brown, 29 September 2023 (SCOI.85950); Exhibit 6, Tab 520, Statement of Detective Senior Constable Paul Rullo, 22 September 2023 (SCOI.85772); Exhibit 6, Tab 520A, Second statement of Detective Senior Constable Paul Rullo, 25 September 2023 (SCOI.85780).

³⁸⁵ Exhibit 6, Tab 467D, Letter from Solicitor Assisting the Inquiry to Lina Chebl, 18 September 2023 (SCOI.85718); Exhibit 6, Tab 467E, Email from Lina Chebl to Solicitor Assisting the Inquiry, 19 September 2023 (SCOI.85726).

Other witnesses named by CPS and/or WS

11. On 22 and 24 August 2023, the Inquiry wrote to a number of additional witnesses that were identified in the CPS and WS as having not been called to give evidence before the Inquiry, namely [1446] DS Alicia Taylor, Georgina Wells, Emma Alberici, former DS Kenneth Bowditch, Ms Braw, former Commissioner Michael Fuller, Strath Gordon, Siobhan McMahon, former DAS Chris Olen, Zdenka Vaughan and Dr Philip Birch.³⁸⁶
12. These letters were in similar terms to those outlined above at [7].
13. Witness statements were subsequently provided by [1446], Mr Gordon, Ms McMahon, Ms Wells, DS Taylor and Ms Alberici.³⁸⁷ DS Taylor, Ms Wells and Ms Alberici were also summonsed and gave oral evidence to the Inquiry.³⁸⁸
14. In addition, [1446] and DS Morgan were summonsed to attend to give evidence before the Inquiry.³⁸⁹ [1446] ultimately provided a statement and was excused from giving evidence.³⁹⁰ DS Morgan did not provide a statement and was excused from giving evidence.
15. On 24 August 2023, Mr Bowditch's solicitor advised the Inquiry that Mr Bowditch would not be able to provide a statement or submissions or attend the September/October hearing.³⁹¹

³⁸⁶ Exhibit 6, Tab 472A, Letter from Solicitor Assisting the Inquiry to [1446], 22 August 2023 (SCOI.85513); Exhibit 6, Tab 474A, Letter from Solicitor Assisting the Inquiry to Alicia Taylor, 22 August 2023 (SCOI.85502); Exhibit 6, Tab 475A, Letter from Solicitor Assisting the Inquiry to Georgina Wells, 22 August 2023 (SCOI.85514); Exhibit 6, Tab 506A, Letter from Solicitor Assisting the Inquiry to Emma Alberici, 22 August 2023 (SCOI.85510); Exhibit 6, Tab 477A, Letter from Solicitor Assisting the Inquiry to Kenneth Bowditch, 22 August 2023 (SCOI.85474); Exhibit 6, Tab 478A, Letter from Solicitor Assisting the Inquiry to Jacqueline Braw, 22 August 2023 (SCOI.85471); Exhibit 6, Tab 479A, Letter from Solicitor Assisting the Inquiry to Michael Fuller, 22 August 2023 (SCOI.85480); Exhibit 6, Tab 480A, Letter from Solicitor Assisting the Inquiry to Strath Gordon, 22 August 2023 (SCOI.85469); Exhibit 6, Tab 481A, Letter from Solicitor Assisting the Inquiry to Siobhan McMahon, 22 August 2023 (SCOI.85473); Exhibit 6, Tab 482A, Letter from Solicitor Assisting the Inquiry to Christopher Olen, 22 August 2023 (SCOI.85470); Exhibit 6, Tab 483A, Letter from Solicitor Assisting the Inquiry to Zdenka Vaughan, 22 August 2023 (SCOI.85472); Exhibit 6, Tab 505A, Letter from Solicitor Assisting the Inquiry to Phillip Birch, 24 August 2023 (SCOI.85484).

³⁸⁷ Exhibit 6, Tab 512, Statement of Strath Gordon, 5 September 2023 (NPL.9000.0028.0001); Exhibit 6, Tab 510, Statement of Siobhan McMahon, 1 September 2023 (NPL.9000.0025.0009); Exhibit 6, Tab 511, Statement of Georgina Wells, 4 September 2023 (NPL.9000.0027.0001); Exhibit 6, Tab 517, Statement of Detective Sergeant Alicia Taylor, 20 September 2023 (NPL.9000.0033.0001); Exhibit 6, Tab 524, Statement of Emma Alberici, 25 September 2023 (SCOI.85817).

³⁸⁸ Exhibit 6, Tab 474B, Letter from Solicitor Assisting the Inquiry to Alicia Taylor, 11 September 2023 (SCOI.85528); Exhibit 6, Tab 475B, Letter from Solicitor Assisting the Inquiry to Georgina Wells, 11 September 2023 (SCOI.85535)

³⁸⁹ Exhibit 6, Tab 472B, Letter from Solicitor Assisting the Inquiry to [1446], 25 August 2023 (SCOI.85569); Exhibit 6, Tab 473A, Letter from Solicitor Assisting the Inquiry to Steven Morgan, 8 September 2023 (SCOI.85524).

³⁹⁰ Exhibit 6, Tab 516, Statement of [1446], 15 September 2023, [18] (NPL.9000.0031.0001).

³⁹¹ Exhibit 6, Tab 477B, Letter from Nicholas Eddy to Solicitor Assisting the Inquiry, 24 August 2023 (SCOI.85486).

16. On 24 August 2023, Dr Birch emailed the Solicitor Assisting the Inquiry and advised that, having reviewed the sections of the CAS and CPS relevant to him, he had nothing further to add. As for the research study he conducted on behalf of the NSWPF from October 2018 (addressed at CAS [264]-[269]), Dr Birch noted that the “systematic review conducted did not yield the data/information needed in order to develop an assessment tool for operational use”; but that his research was extended in a “Delphi study” conducted between October 2020 and October 2021 which “better served NSW Police in reflecting on their current policies and practices concerning the policing of hate crime”.³⁹²
17. Despite advising the Inquiry on 4 September 2023 that they had received instructions to assist Ms Braw with her statement to the Inquiry,³⁹³ the NSWPF’s legal representatives did not ultimately provide a statement on behalf of Ms Braw.
18. No statements or submissions were provided by Mr Olen, Ms Vaughan or Mr Fuller. The Inquiry did not receive any acknowledgement or response from Mr Olen or Ms Vaughan to its correspondence.

The Flinders academic team

19. Notwithstanding that the Inquiry sent correspondence to Dr Dalton and Dr de Lint on 7 June, 10 July and 21 August 2023 concerning the submissions made by the parties in relation to Public Hearing 2,³⁹⁴ no responses or submissions were received by the Inquiry from either academic.
20. Further, at CPS [730], the NSWPF submitted that the submissions at CAS [1266]-[1283] as to the approach of the Flinders academic team contained an “extraordinary allegation... which seeks to impugn the integrity of three academics”, noting that Dr Danielle Tyson had not been called to give evidence.
21. Accordingly, the Inquiry also wrote to Dr Tyson on 22 August 2023, inviting her to provide a statement or submissions.³⁹⁵

³⁹² Exhibit 6, Tab 505B, Email from Associate Professor Phillip Birch to Solicitor Assisting the Inquiry, 24 August 2023, 1 (SCOI.85497).

³⁹³ Exhibit 6, Tab 451, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 11 September 2023 (SCOI.85673).

³⁹⁴ Exhibit 6, Tab 502A, Email from Solicitor Assisting the Inquiry to Dr Derek Dalton, 7 June 2023 (SCOI.85550); Exhibit 6, Tab 503A, Email from Solicitor Assisting the Inquiry to Dr Willem de Lint, 7 June 2023 (SCOI.85582); Exhibit 6, Tab 502B, Letter from Solicitor Assisting the Inquiry to Derek Dalton, 10 July 2023 (SCOI.85505); Exhibit 6, Tab 503B, Letter from Solicitor Assisting the Inquiry to Willem de Lint, 10 July 2023 (SCOI.85504); Exhibit 6, Tab 502C, Letter from Solicitor Assisting the Inquiry to Derek Dalton, 21 August 2023 (SCOI.85507); Exhibit 6, Tab 503C, Letter from Solicitor Assisting the Inquiry to Willem de Lint, 21 August 2023 (SCOI.85501).

³⁹⁵ Exhibit 6, Tab 504A, Letter from Solicitor Assisting the Inquiry to Danielle Tyson, 22 August 2023 (SCOI.85503).

22. On 5 September 2023, Dr Tyson emailed the Solicitor Assisting the Inquiry and advised that, whilst she had provided some “limited” editorial advice on early drafts of the Parrabell Report and took part in discussions about how to classify cases, she was “not one of the co-authors and [was] therefore unable to cast any further light on its content”. She also noted that she had “little recollection of the specifics” of any discussion between members of the academic review team about the methodology for coding cases or use of the BCIF. She further advised that she had destroyed all materials relating to the project, as required under the research agreement with the NSWPF.³⁹⁶

Bias Crimes Unit

23. On 10 August 2023, the Inquiry requested that the NSWPF provide a statement by 1 September 2023 from a witness or witnesses able to speak to the accuracy 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 Investigation Unit.³⁹⁷
24. On 18 August 2023, the NSWPF advised that “inquiries in relation to the identification of a witness who can speak to the matters addressed at [79(a)] [of the Inquiry’s letter of 10 August 2023] are ongoing and we are unable to further comment at this time”.³⁹⁸
25. On 24 August 2023, the Inquiry requested that the NSWPF identify an appropriate witness answering the description given at [79(a)] of its letter of 10 August 2023 by no later than 1:00pm on 29 August 2023.³⁹⁹ No response was provided on that date.
26. On 30 August 2023, the Inquiry sent a further reminder via email to the NSWPF of the need to provide a response to the Inquiry’s letter of 10 August 2023.⁴⁰⁰
27. On 1 September 2023 (the day on which any such statement was due), the NSWPF wrote to the Inquiry and stated that the NSWPF is “making enquiries in relation to the identification of a witness who is best placed to speak to the matters” referred to at CPS [34].⁴⁰¹

³⁹⁶ Exhibit 6, Tab 504B, Email from Danielle Tyson to Solicitor Assisting the Inquiry, 5 September 2023 (SCOI.85563).

³⁹⁷ Exhibit 6, Tab 424, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 10 August 2023, [79(a)] (SCOI.85244).

³⁹⁸ Exhibit 6, Tab 427, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 18 August 2023 (SCOI.85257).

³⁹⁹ Exhibit 6, Tab 435, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 24 August 2023 (SCOI.85251).

⁴⁰⁰ Exhibit 6, Tab 446, Email to the Office of the General Counsel, NSW Police Force, from Solicitor Assisting the Inquiry, 30 August 2023 (SCOI.85704).

⁴⁰¹ Exhibit 6, Tab 449, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 1 September 2023 (SCOI.85667).

28. On 12 September 2023, the Inquiry wrote again to the NSWPF outlining that if the NSWPF did not provide a witness statement or statements, as requested in paragraph [79(a)] of the letter of 10 August 2023, by 5:00pm that day, the Inquiry would take this to mean that the NSWPF withdrew any submissions in CPS [29], [34] and [36] to the effect that relevant evidence has not been obtained or taken into account.
29. At 6:21pm on 12 September 2023, the NSWPF wrote to the Inquiry and provided an unsigned statement of Superintendent Andrew Hurst.⁴⁰²
30. The provision of this statement at 6:21pm on 12 September 2023 was the first time the Inquiry was made aware that a statement was being obtained, or rather *had been* obtained, by the NSWPF from Superintendent Hurst.
31. On 13 September 2023, the Inquiry wrote to the NSWPF regarding the approach taken to this issue.⁴⁰³
32. On 19 September 2023, following a request by the Inquiry for a supplementary statement, Sergeant Geoffrey Steer provided a third statement to the Inquiry, outlining the reasons he applied for a transfer out of the Bias Crimes Unit in June 2017.⁴⁰⁴

Junior Strike Force Parrabell officers

33. The CPS made submissions concerning the “more junior members of the team” that conducted Strike Force Parrabell that could have been called to give by the Inquiry.⁴⁰⁵
34. On 10 August 2023, the Inquiry requested that the NSWPF identify any of these individuals from whom a statement ought to be provided by 1 September 2023.⁴⁰⁶
35. On 21 August 2023, following the correspondence between the NSWPF’s legal representatives and the Inquiry as to the representation of the NSWPF officers named in the CPS and WS set out above at [4]-[5], the Inquiry further requested that the NSWPF provide the name and contact details for each of the persons falling within this category by 5:00pm on 23 August 2023.⁴⁰⁷

⁴⁰² Exhibit 6, Tab 460, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 12 September 2023 (SCOI.85674).

⁴⁰³ Exhibit 6, Tab 461, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 13 September 2023 (SCOI.85682).

⁴⁰⁴ Exhibit 6, Tab 518, Third statement of Sergeant Geoffrey Steer, 19 September 2023 (SCOI.85731).

⁴⁰⁵ See, eg, Submissions of NSWPF, 28 June 2023, [520] (SCOI.84211).

⁴⁰⁶ Exhibit 6, Tab 424, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 10 August 2023 (SCOI.85244).

⁴⁰⁷ Exhibit 6, Tab 428, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 21 August 2023 (SCOI.85246).

36. On 28 August and 1 September 2023, the NSWPF provided the names and contact details for the 18 officers who were on the staff list for SF Parrabell.⁴⁰⁸
37. As at these dates, five of the 18 officers identified had already been contacted by the Inquiry.⁴⁰⁹
38. On 28-29 August and 1 September 2023, the Inquiry wrote to the remaining 13 officers.⁴¹⁰ Each letter drew the officers' attention to the sections of the CAS and the interested parties' written submissions concerning SF Parrabell, and invited the officers to provide a statement by 8 September 2023 or written submissions by 5 October 2023 as to the issues raised by Public Hearing 2 if they wished. Follow-up letters were sent to the officers on 15 and 18 September 2023, advising that, as the deadline by which to provide a statement had passed, the Inquiry would proceed on the assumption that the officer did not wish to provide a statement.⁴¹¹

⁴⁰⁸ See Exhibit 6, Tab 440, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 28 August 2023 (SCOI.85273); Exhibit 6, Tab 448, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 1 September 2023 (SCOI.85695). The names provided were: Craig Middleton; Paul Grace; Jo-Anne Kenworthy; Geoffrey Steer; Andrew Agostino; Hugh Brandon; Cameron Bignell; Chelsea Bennetts; Christopher Borg; Adam Churchill; Renee Cochrane; Kathleen Collins; Sarah Fleming; Jody Gibbons; Rebecca Parish; Timothy Ryan; Brad Yusuf; and Ashley Grimes.

⁴⁰⁹ The Inquiry had already written to Superintendent Middleton, DI Grace and D A/S Bignell. Sergeant Steer was an interested party in Public Hearing 2 and the Inquiry had already received a statement from Ms Kenworthy.

⁴¹⁰ Exhibit 6, Tab 489A, Letter from Solicitor Assisting the Inquiry to Adam Churchill, 29 August 2023 (SCOI.85475); Exhibit 6, Tab 490A, Letter from Solicitor Assisting the Inquiry to Andrew Agostino, 29 August 2023 (SCOI.85481); Exhibit 6, Tab 491A, Letter from Solicitor Assisting the Inquiry to Brad Yusuf, 29 August 2023 (SCOI.85479); Exhibit 6, Tab 492A, Letter from Solicitor Assisting the Inquiry to Chelsea Bennetts, 29 August 2023 (SCOI.85477); Exhibit 6, Tab 493A, Letter from Solicitor Assisting the Inquiry to Christopher Borg, 29 August 2023 (SCOI.85483); Exhibit 6, Tab 494A, Letter from Solicitor Assisting the Inquiry to Hugh Brandon, 29 August 2023 (SCOI.85478); Exhibit 6, Tab 495A, Letter from Solicitor Assisting the Inquiry to Jodie Gibbons, 29 August 2023 (SCOI.85487); Exhibit 6, Tab 496A, Letter from Solicitor Assisting the Inquiry to Renee Cochrane, 29 August 2023 (SCOI.85488); Exhibit 6, Tab 497A, Letter from Solicitor Assisting the Inquiry to Sarah Fleming, 1 September 2023 (SCOI.85496); Exhibit 6, Tab 498A, Letter from Solicitor Assisting the Inquiry to Kathleen Collins, 1 September 2023 (SCOI.85665); Exhibit 6, Tab 499A, Letter from Solicitor Assisting the Inquiry to Rebecca Parish, 1 September 2023 (SCOI.85666); Exhibit 6, Tab 500A, Letter from Solicitor Assisting the Inquiry to Timothy Ryan, 1 September 2023 (SCOI.85668); Exhibit 6, Tab 501A, Letter from Solicitor Assisting the Inquiry to Ashley Grimes, 1 September 2023 (SCOI.85663).

⁴¹¹ Exhibit 6, Tab 489B, Letter from Solicitor Assisting the Inquiry to Adam Churchill, 15 September 2023 (SCOI.85681); Exhibit 6, Tab 490B, Letter from Solicitor Assisting the Inquiry to Andrew Agostino, 15 September 2023 (SCOI.85688); Exhibit 6, Tab 491B, Letter from Solicitor Assisting the Inquiry to Brad Yusuf, 15 September 2023 (SCOI.85680); Exhibit 6, Tab 492B, Letter from Solicitor Assisting the Inquiry to Chelsea Bennetts, 15 September 2023 (SCOI.85676); Exhibit 6, Tab 493B, Letter from Solicitor Assisting the Inquiry to Christopher Borg, 15 September 2023 (SCOI.85686); Exhibit 6, Tab 494B, Letter from Solicitor Assisting the Inquiry to Hugh Brandon, 15 September 2023 (SCOI.85683); Exhibit 6, Tab 495B, Letter from Solicitor Assisting the Inquiry to Jodie Gibbons, 15 September 2023 (SCOI.85689); Exhibit 6, Tab 496B, Letter from Solicitor Assisting the Inquiry to Renee Cochrane, 15 September 2023 (SCOI.85690); Exhibit 6, Tab 497B, Letter from Solicitor Assisting the Inquiry to Sarah Fleming, 18 September 2023 (SCOI.85709); Exhibit 6, Tab 498B, Letter from Solicitor Assisting the Inquiry to Kathleen Collins, 18 September 2023 (SCOI.85717); Exhibit 6, Tab 499B, Letter from Solicitor Assisting the Inquiry to Rebecca Parish, 18 September 2023 (SCOI.85720); Exhibit 6, Tab 500B, Letter from Solicitor Assisting the Inquiry to Timothy Ryan, 18 September 2023 (SCOI.85721); Exhibit 6, Tab 501B, Letter from Solicitor Assisting the Inquiry to Ashley Grimes, 18 September 2023 (SCOI.85715).

39. As at the date of these submissions, the Inquiry has received no statements or submissions from any of the 13 officers contacted.⁴¹²

Strike Force Neiwand officers

40. The CPS made submissions concerning the “extraordinary denial of natural justice” caused by Counsel Assisting’s “decision” not to call evidence “from any of the personnel actually involved in the investigations (beyond DS Morgan)”.⁴¹³

41. On 10 August 2023, the Inquiry requested that NSWPF identify any of the officers involved in SF Neiwand from whom a statement ought to be provided by 1 September 2023.⁴¹⁴

42. On 21 August 2023, following the correspondence between the NSWPF’s legal representatives and the Inquiry as to the representation of the NSWPF officers named in the CPS and WS set out above at [4]-[5], the Inquiry further requested that the NSWPF provide the name and contact details for each of the persons falling within this category by 5:00pm on 23 August 2023.⁴¹⁵

43. On 25 August 2023, the NSWPF advised that nine individuals (beyond DS Morgan) were involved in the investigation in relation to SF Neiwand.⁴¹⁶ As was the case with the SF Parrabell officers, four of these nine officers had previously been contacted by or summonsed to appear before the Inquiry.⁴¹⁷

⁴¹² Although the partner of one officer did contact the Inquiry to advise that the officer was unable to provide a response: see Exhibit 6, Tab 501C, Email from Daniel Parker to Solicitor Assisting the Inquiry, 20 September 2023 (SCOI.85774).

⁴¹³ Submissions of NSWPF, 28 June 2023, [364] (SCOI.84211).

⁴¹⁴ Exhibit 6, Tab 424, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 10 August 2023 (SCOI.85244).

⁴¹⁵ Exhibit 6, Tab 428, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 21 August 2023 (SCOI.85246).

⁴¹⁶ See Exhibit 6, Tab 438, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 25 August 2023, 2–3 (SCOI.85255). The nine individuals referred to were: Christopher Olen; Stewart Leggat; Penelope Brown; Michael Chebl; Tamer Kilani; Katherine Tierney; Jon Oldfield; Craig Crouch; and Bianca Comina.

⁴¹⁷ Namely, Christopher Olen, Stewart Leggat, Penelope Brown and Michael Chebl.

44. On 28 August, 1 September and 6 September 2023,⁴¹⁸ having obtained of contact details for these officers,⁴¹⁹ the Inquiry wrote to the remaining five officers in the same terms as outlined above at [38].
45. As at the date of these submissions, the Inquiry received a response from two of the five officers contained. On 4 September 2023, Jon Oldfield advised the Inquiry that he would not be filing written submissions.⁴²⁰ On 11 September 2023, Bianca Comina advised that she did not wish to put on a statement or submissions as she was “not part of the leadership group within SF Neiwand” and hence “would not be able to shed any light on the decisions made and the course of action taken”.⁴²¹
46. No response was received from the other three officers. On 15 and 18 September 2023, the Inquiry wrote to those officers, noting that the date for their statements had now passed and advising of its understanding that they did not intend to provide a statement.⁴²²

Strike Force Macnamir and those assisting the State Coroner

47. At CAS [502], Counsel Assisting submitted that for the period between February 2013 to November 2017, the “unchanging and inflexible view held, and propounded, by SF Macnamir was that Scott Johnson’s death was a suicide”.
48. In response, at CPS [199(b)] the NSWPF contended, in relation to the conduct of SF Macnamir between April 2015 and November 2017, that a finding of “partiality in the context of a coronial investigation under the purview of the State Coroner” was “grave” and could not be made without

⁴¹⁸ Exhibit 6, Tab 484A, Letter from Solicitor Assisting the Inquiry to Tamer Kilani, 28 August 2023 (SCOI.85476); Exhibit 6, Tab 485A, Letter from Solicitor Assisting the Inquiry to Jon Oldfield, 28 August 2023 (SCOI.85482); Exhibit 6, Tab 486A, Letter from Solicitor Assisting the Inquiry to Katherine Tierney, 1 September 2023 (SCOI.85489); Exhibit 6, Tab 487A, Letter from Solicitor Assisting the Inquiry to Craig Crouch, 1 September 2023 (SCOI.85664); Exhibit 6, Tab 488A, Letter from Solicitor Assisting the Inquiry to Bianca Comina, 6 September 2023 (SCOI.85485).

⁴¹⁹ Exhibit 6, Tab 441, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, enclosing summons NSWPF174, 28 August 2023 (SCOI.85269); Exhibit 6, Tab 447, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 1 September 2023 (SCOI.85692); Exhibit 6, Tab 453, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 6 September 2023 (SCOI.85675); Exhibit 6, Tab 454, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 6 September 2023 (SCOI.85672).

⁴²⁰ Exhibit 6, Tab 485B, Email correspondence between Solicitor Assisting the Inquiry and Jon Oldfield, 4 September 2023 (SCOI.85491).

⁴²¹ Exhibit 6, Tab 488B, Email from Bianca Comina to Solicitor Assisting the Inquiry, 11 September 2023 (SCOI.85492).

⁴²² Exhibit 6, Tab 484B, Letter to Tamer Kilani, 15 September 2023 (SCOI.85691); Exhibit 6, Tab 486B, Letter to Katherine Tierney, 18 September 2023 (SCOI.85708); Exhibit 6, Tab 487B, Letter to Craig Crouch, 18 September 2023 (SCOI.85716).

calling the “relevant witnesses”, including DS Brown and [I446] and potentially also “those assisting the State Coroner”.

49. On 22 August 2023, the Inquiry asked the NSWPF to clarify, by 5:00pm on 23 August 2023, whom the phrase “those assisting the State Coroner” was intended to capture.⁴²³

50. On 23 August 2023, the NSWPF wrote to the Inquiry and outlined:⁴²⁴

- a. The period of time of Strike Force Macnamir’s operation from February 2013 to 30 November 2017 included a period (from 13 April 2015 onwards) during which “the work of SF Macnamir fell under the auspices of the State Coroner” and was “subject to directions given to investigating officers by the lawyers assisting the State Coroner”; and
- b. It is “conceivable” that, depending on the evidence given to the Inquiry by DS Brown and [I446] about the conduct of SF Macnamir between April 2015 and November 2017, it may be necessary to undergo “further examination of the instructions and directions provided to DS Brown and [I446]” by the legal advisors assisting the State Coroner.

51. As a result of this correspondence, a summons to attend to give evidence was issued to [I446] on 25 August 2023.⁴²⁵

52. On 25 August 2023, the Inquiry wrote to the NSWPF to clarify that SF Macnamir did not “fall under the auspices of the Coroner” from 13 April 2015 onwards. After the State Coroner ordered that a fresh inquest be held, police officers were indeed allocated to assist him with the coronial investigation; and the officers assigned were those familiar with the Johnson case. However, that coronial investigation took place concurrently with police investigations which were not subject to the Coroner’s directions.⁴²⁶

53. Further, the Inquiry’s letter clarified that during the third inquest, the Commissioner of Police was granted leave under s. 57 of the *Coroners Act 2009* (NSW) to be represented as a party with sufficient interest in the inquest. In that capacity, the Commissioner of Police received input from police officers as to factual matters for the purpose of providing instructions to his representatives. The Inquiry clarified that this was “separate to the role of the police officers responsible for assisting the State Coroner in the coronial investigation”. Thus the reference at

⁴²³ Exhibit 6, Tab 432, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 22 August 2023 (SCOI.85248).

⁴²⁴ Exhibit 6, Tab 433, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 23 August 2023 (SCOI.85254).

⁴²⁵ Exhibit 6, Tab 472B, Letter to [I446] enclosing summons to attend, 25 August 2023 (SCOI.85569).

⁴²⁶ Exhibit 6, Tab 436, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 25 August 2023 (SCOI.85252).

CAS [502] to the “unchanging and flexible view” held by SF Macnamir was, in the period from 13 April 2015 onwards, to be read as the view of those officers involved in providing input into instructions on behalf of the Commissioner of Police as a sufficient interest party in the inquest.⁴²⁷

“Others” in State Crime Command

54. The NSWPF submitted (at CPS [207] and [234]) that there was “no evidence” to support Counsel Assisting’s submission, at CAS [503], that “perhaps others in State Crime Command” personally supported what DCI Young had said in her interview to *Lateline* on 13 April 2015. The NSWPF characterised this submission as a “grave allegation” without supporting documentary records, noting that the “others” had neither been identified nor called to give evidence. On 10 August 2023, the Inquiry requested that the NSWPF identify any of these individuals from whom a statement ought to be provided by 1 September 2023.⁴²⁸

55. On 21 August 2023, the Inquiry further requested that the NSWPF provide the name and contact details for each of the persons falling within this category by 5:00pm on 23 August 2023.⁴²⁹

56. On 25 August 2023, the NSWPF wrote to the Inquiry outlining:⁴³⁰

- a. that Counsel Assisting’s submissions had not identified any “others” in State Crime Command who personally supported what DCI Young did; and
- b. that the NSWPF are not aware of any such persons.

57. On 28 August 2023, the Inquiry summonsed the NSWPF for a list of all officers in the State Crime Command as at 13 April 2015.⁴³¹

58. On 1 September 2023, the NSWPF wrote to the Inquiry advising:⁴³²

In response to Category 1 of the Summons, which requests a list of the full names of all officers in the State Crime Command of the NSW Police Force as at 13 April 2015, we have caused for enquiries to be made of the Human Resources Manager of the State Crime Command and have been informed that as at that date approximately 1,000 personnel were attached to the State Crime Command at that time.

⁴²⁷ Exhibit 6, Tab 436, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 25 August 2023 (SCOI.85252).

⁴²⁸ Exhibit 6, Tab 424, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 10 August 2023 (SCOI.85244).

⁴²⁹ Exhibit 6, Tab 428, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 21 August 2023 (SCOI.85246).

⁴³⁰ Exhibit 6, Tab 438, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 25 August 2023 (SCOI.85255).

⁴³¹ Exhibit 6, Tab 441, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 28 August 2023 (SCOI.85269).

⁴³² Exhibit 6, Tab 447, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 1 September 2023 (SCOI.85692).

Of those 1,000 personnel, we are instructed the vast majority of the State Crime Command staff were not involved in Strike Force Macnamir. Further, a number of State Crime Command employees hold covert roles or have their identities otherwise suppressed. In standard court proceedings, the Commissioner would usually make a claim of public interest immunity over their identities.

We therefore respectfully request that Inquiry narrow the scope of Category 1 of the Summons to a particular strike force, team and/or squad within the State Crime Command as at 13 April 2015.

Strike Force Welsford

59. At CPS [77] and [103], the NSWPF noted that no documentary records were tendered or oral evidence called as to the “nature of the evidence obtained in the context of the SF Welsford investigation in 2019”, which was a reinvestigation into the death of Scott Johnson, or as to the circumstances leading to the charging and conviction of Scott White in 2023 for manslaughter.
60. As was ultimately clarified by way of correspondence between the Inquiry and the NSWPF:⁴³³
- a. the Inquiry does not understand the NSWPF’s submission at CPS [103] to require procedural fairness to be afforded to individuals working on SF Welsford; and
 - b. CAS do not make any criticism of SF Welsford or its officers; nor could they in circumstances where the diligent work of those officers led to the apprehension of Scott White.⁴³⁴

“Others” who shared the views of DCI Young and DS Brown

61. At CPS [198]-[201], the NSWPF submitted that any findings as to the approach of SF Macnamir to the reinvestigation of Mr Johnson’s death “would constitute a serious denial of procedural fairness” if DCI Young and DS Brown were not called. At CPS [201], the NSWPF also submitted that, if the Inquiry made findings without calling or otherwise giving an opportunity to be heard to “others’ alleged to have held the same views”, this would also constitute a breach of procedural fairness. The “others” contemplated by the NSWPF appear to include “those assisting the State Coroner” during the period of April 2015 to November 2017 (CPS [199(b)]). On 25 August 2023, the NSWPF advised the Inquiry that:⁴³⁵

⁴³³ Exhibit 6, Tab 438, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 25 August 2023 (SCOI.85255); Exhibit 6, Tab 441, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 28 August 2023 (SCOI.85269).

⁴³⁴ Exhibit 6, Tab 441, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 28 August 2023 (SCOI.85269).

⁴³⁵ Exhibit 6, Tab 438, Letter from the Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, 25 August 2023 (SCOI.85255).

In our respectful submission, Counsel Assisting has not explored the views held by DCI Young and DS Brown with them. Nor has Counsel Assisting identified the other persons alleged to hold those views. It is not possible to sensibly identify other persons who held the views of DCI Young and DS Brown without first taking evidence of DCI Young and DS Brown as to what their views were. It might then be possible to explore whether officers held those views with the relevant officers.

62. On 28 August 2023, the Inquiry wrote to the NSWPF, stating that it understood the position of the Commissioner of the NSWPF to be that in circumstances where Counsel Assisting have not explored the views held by DCI Young and DS Brown with them, it is not possible to sensibly identify “others” who held such views. The Inquiry confirmed that DCI Young and DS Brown would each give oral evidence in the September/October hearings.⁴³⁶ The Inquiry did not receive any further response from the NSWPF on this point.

⁴³⁶ Exhibit 6, Tab 441, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force, 28 August 2023 (SCOI.85269).