

## The Special Commission of Inquiry into LGBTIQ hate crimes

### Submissions on behalf of Detective Sergeant Penelope Brown

#### Introduction

1. These submissions are filed on behalf of Detective Sergeant Penelope Brown in relation to Public Hearing 2.
2. Detective Sergeant Brown gave oral evidence on Tuesday 3 October 2023.<sup>1</sup>
3. Detective Sergeant Brown provided two statements which were received into evidence.<sup>2</sup>

#### Background

4. Detective Sergeant Brown's attendance at the inquiry resulted from criticism on behalf of the Commissioner of Police and Mr Willing, to the effect that:
  - a number of officers had not been called in relation to Strike Force Macnamir;
  - Mr Michael Willing attributed "conspiracy theories" in which Mr Willing asserted that Ms Pamela Young, Detective Sergeant Brown and Ms Emma Alberici were involved in a "covert and sophisticated plan" in circumstances where they had not been afforded the opportunity to respond to the allegations put forward by Mr Willing;<sup>3</sup> and
  - to provide procedural fairness to Detective Sergeant Brown in relation not her involvement in Strike Force Niewand and Strike Force Macnamir.
5. Detective Sergeant Brown was afforded the opportunity to provide a statement and she did so, providing the statement dated 19 September 2023.<sup>4</sup>

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<sup>1</sup> Transcript of the Inquiry, 3 October 2023, T6460.14-T6570.2

<sup>2</sup> Exhibit 6, Tab 519, Statement of DS Penelope Brown, 19 September 2023 (SCOI.85747); Exhibit 6, Tab 519A, Second statement of DS Penelope Brown, 29 September 2023 (SCOI.85950)

<sup>3</sup> Transcript of the Inquiry, 21 June 2023, T4373-5, T4416.31-4417.13, T4439.43-4440.3 (TRA.00063.00001).

<sup>4</sup> Exhibit 6, Tab 519, Statement of DS Penelope Brown, 19 September 2023 (SCOI.85747)

6. Detective Sergeant Brown voluntarily provided a supplementary statement dated 29 September 2023 which provided clarification in relation to her involvement in Strike Force Neiwand.<sup>5</sup>

### **Detective Sergeant Brown**

7. Whilst engaged on Strike Force Macnamir through the period 2013 to 2016, and for the brief period she was engaged on Strike Force Neiwand, Detective Sergeant Brown worked on a part-time basis along with Officer A who also worked on a part-time basis. Detective Sergeant Brown worked three days a week or six days a fortnight.<sup>6</sup>

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10. Detective Sergeant Brown was on leave from 16 February 2015 until 8 April 2015 as a result of undergoing knee surgery to repair the meniscus and anterior cruciate ligament of her right knee due to a work-related injury.<sup>9</sup>
11. On 8 April 2015, Detective Sergeant Brown returned to work, and, on 9 April 2015, she received a return-to-work plan. Detective Sergeant Brown returned to work earlier than recommended due to the upcoming Coronial Court Directions Hearing for the Inquest touching on the death of Scott Johnson. This was against the advice of her orthopaedic surgeon.<sup>10</sup>

### **Strike Force Macnamir**

12. Detective Sergeant Brown maintains that Strike Force Macnamir, and in particular Ms Young's coronial statement, assembled the available evidence in relation to

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<sup>5</sup> Exhibit 6, Tab 519A, Second statement of DS Penelope Brown, 29 September 2023 (SCOI.85950)

<sup>6</sup> Transcript of the Inquiry, 3 October 2023, T6473.44-T6474.24

<sup>7</sup> Exhibit 6, Tab 519, Statement of DS Penelope Brown, 19 September 2023, paragraph 12 (SCOI.85747)

<sup>8</sup> Exhibit 6, Tab 519, Statement of DS Penelope Brown, 19 September 2023, paragraph 12 (SCOI.85747)

<sup>9</sup> Exhibit 6, Tab 519, Statement of DS Penelope Brown, 19 September 2023, paragraphs 12-13 (SCOI.85747)

<sup>10</sup> Exhibit 6, Tab 519, Statement of DS Penelope Brown, 19 September 2023, paragraph 13 (SCOI.85747)

all three possibilities (suicide, homicide or misadventure), rather than favouring the suicide theory or indicating that suicide was more likely.<sup>11</sup>

13. Detective Sergeant Brown gave evidence that what would have been anticipated would have been a thorough investigation, and then as a result of that investigation, the evidence would “lead you to what the result would be”.<sup>12</sup> There was no expectation from “up the chain” as to what the results of any of the strike forces would achieve.<sup>13</sup>
14. Whilst Counsel Assisting’s submission at paragraph 155 of the submissions dated 16 October 2023, specifically refer to a submission relating to Ms Young and Mr Willing wishing to “defeat” the Johnson family by resisting a finding of homicide, particularly one of gay hate homicide, there is no evidence that Detective Sergeant Brown held that view or was involved in any actions that sought to “defeat” the Johnson family. Whilst Detective Sergeant Brown gave evidence that Scott Johnson’s death was not a gay hate homicide, it must be borne in mind that this is a reference to the ultimate finding of the Supreme Court on sentence of Mr White.
15. It is contended that it would be accepted that, in the eyes of Detective Sergeant Brown, that her understanding was that Strike Force Macnamir was thoroughly investigating the death of Mr Johnson. That is, that in her mind, it was not limited to a view that “favoured” a suicide theory or that suicide was more likely.
16. It is contended that, whilst others may have been of the view that Strike Force Macnamir favoured the suicide theory or that suicide was more likely, there is no evidence that this in fact was the view held by Detective Sergeant Brown during the life of Strike Force Macnamir.
17. Detective Sergeant Brown’s evidence that neither Strike Force Macnamir nor Ms Young’s coronial statement were directed to supporting the likelihood of suicide or refuting evidence in support of the possibility of homicide. She considered that

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<sup>11</sup> Counsel Assisting Submissions, 16 October 2023, paragraph 155

<sup>12</sup> Transcript of the Inquiry, 3 October 2023, T6474.33

<sup>13</sup> Transcript of the Inquiry, 3 October 2023, T6474.44

an “objective review of the brief of evidence would demonstrate that we looked at all possible – all three lines of inquiry”.<sup>14</sup>

18. Counsel Assisting submitted that Detective Sergeant Brown gave evidence in a frank and straightforward manner. This supports the submission that the Commissioner would accept Detective Sergeant Brown’s evidence that all three lines of inquiry were open throughout the investigation.
19. The evidence as to Detective Sergeant Brown’s work ethic and capabilities can only support the submission that she undertook her tasks without bias, solely as an investigator collating all relevant evidence without prejudice.

#### **Lateline interview**

20. It is contended that the Commissioner would find that Detective Sergeant Brown was not involved in the origins or formation of the media strategy that gave rise to the Lateline interview with Ms Alberici.
21. Detective Sergeant Brown supports the submissions of Counsel Assisting in relation to the origins of the media strategy.<sup>15</sup>
22. Detective Sergeant Brown’s only involvement in the preparation of the Lateline interview was to photocopy Ms Young’s statement on 17 February 2015. Detective Sergeant Brown then went on extended leave until she returned to work on 8 April 2015.<sup>16</sup>
23. Detective Sergeant Brown was not privy to any discussions about media strategies or media appearances. Detective Sergeant Brown simply provided the name of Ms Alberici, being someone she knew through personal circumstances.<sup>17</sup>
24. Detective Sergeant Brown was present at the meetings with Ms Alberici on 30 January 2015 and 10 April 2015.<sup>18</sup>

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<sup>14</sup> Transcript of the Inquiry, 3 October 2023, T6484.15-6485.10 (TRA.00095.00001)

<sup>15</sup> Counsel Assisting Submissions, 16 October 2023, paragraph 165

<sup>16</sup> Exhibit 6, Tab 519, Statement of DS Penelope Brown, 19 September 2023, paragraphs 14 - 16 (SCOI.85747)

<sup>17</sup> Exhibit 6, Tab 519, Statement of DS Penelope Brown, 19 September 2023, paragraph 18 (SCOI.85747)

<sup>18</sup> Exhibit 6, Tab 519, Statement of DS Penelope Brown, 19 September 2023, paragraph 19 (SCOI.85747)



25. Detective Sergeant Brown was also present during a phone call between Ms Young and Mr Willing on 13 April 2015. Detective Sergeant Brown made a record of that call in her Duty Book which was annexed to her statement dated 19 September 2023. Detective Sergeant Brown made a record of the call because she knew that using the word “kowtowing” would be controversial.<sup>19</sup>
26. The record supports the submission that Ms Young and Detective Sergeant Brown were not involved in a covert or secretive plan as alleged by Mr Willing. The Commissioner would accept that there was no such plan and that Ms Young had been open and honest about her plan to conduct an interview with Lateline and that this was known, and approved, by Mr Willing and his superiors.
27. Further, Detective Sergeant Brown gave evidence that she heard conversations between Ms Young and Mr Willing in this respect.
28. Counsel Assisting’s submission that the evidence of Detective Sergeant Brown was “frank and straightforward” is adopted.<sup>20</sup>
29. Counsel Assisting’s submission that Ms Young and Detective Sergeant Brown did not deliberately deceive Mr Willing or NSWPF or conceal Ms Young’s intention to give an interview to Lateline, for broadcast if the statement was released is adopted.<sup>21</sup>

### **Strike Force Neiwand**

30. Detective Sergeant Brown had limited involvement in Strike Force Neiwand. Detective Sergeant Brown’s duty book showed that on 1 October 2015, Mr Willing advised that the next Strike Force for investigation would be in relation to the death of John Russell and disappearances of Ross Warren and Gillies Mattaini. Mr Willing asked Detective Sergeant Brown to inform DCI Lehmann of Commander Willings’ wishes.<sup>22</sup>

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<sup>19</sup> Transcript of the Inquiry, 3 October 2023, T6503.14–20 (TRA.00095.00001)

<sup>20</sup> Counsel Assisting submissions, 16 October 2023, paragraph 248

<sup>21</sup> Counsel Assisting submissions, 16 October 2023, paragraph 248

<sup>22</sup> Exhibit 6, Tab 519A, Second statement of DS Penelope Brown, 29 September 2023, paragraph 3 (SCOI.85950)

31. When Strike Force Neiwand was established in 2015, Detective Sergeant Brown was already the officer in charge on Strike Force Macnamir and Macnamir 2. The investigations of SF Macnamir and Macnamir 2 involved a considerable amount of work, including travel and speaking to numerous people and brief preparation. Strike Force Macnamir and Macnamir 2 became Detective Sergeant Brown's full-time responsibility that did not end until a few months after the conclusion of the Inquest.<sup>23</sup>
32. On 26 September 2023 whilst attending Public Hearing 2, Detective Sergeant Brown saw a document that was shown to Mr Lehmann in the course of his evidence. She saw that the document recorded Detective Sergeant Brown as the "OIC" of SF Neiwand. Detective Sergeant Brown's uncontested evidence is that, initially at the creation of SF Neiwand, "management" made a decision that she would be the Officer in Charge. This was due to:
- Detective Sergeant Brown's involvement and knowledge of the reward application and subsequent reward media release; and
  - Detective Sergeant Brown's knowledge of the circumstances surrounding the death of Mr John Russell and disappearances of Mr Ross Warren and Mr Gillies Mattaini.
33. Initially, Detective Sergeant Brown performed the role in the "beginning stages" of Strike Force Neiwand. Emails were tendered which show her initial involvement in Strike Force Neiwand.
34. The emails include an email sent by Detective Sergeant Brown on 17 December 2015<sup>24</sup> and 1 February 2016<sup>25</sup> to other investigators involved in SF Neiwand. But due to the workload of Strike Force Macnamir and Macnamir 2, statement preparation for the inquest, being part-time and on a return-to-work plan following knee surgery due to a work-related injury it was not possible for her to remain as the Officer in Charge of Strike Force Neiwand.

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<sup>23</sup> Exhibit 6, Tab 519A, Second statement of DS Penelope Brown, 29 September 2023, paragraph 4 (SCOI.85950)

<sup>24</sup> Exhibit 6, Tab 282, Email from Detective Sergeant Brown on 17 December 2015 (NPL.0115.0002.9817)

<sup>25</sup> Exhibit 6, Tab 306, Email from Detective Sergeant Brown on 1 February 2016 (NPL.3000.0001.0026)

35. Detective Sergeant Brown ceased to be involved in Strike Force Neiwand and was not involved at the time the Investigation Plan was prepared.<sup>26</sup> The involved officers were:
- Detective Chief Inspector Christopher Olen
  - Detective Sergeant Steve Morgan
  - Detective Senior Constable Michael Chebl
  - Detective Senior Constable Tamar Kilani
  - Detective Senior Constable Jon Oldfield
  - Detective Senior Constable Paul Rullo
36. Detective Sergeant Brown was not involved in the preparation of the Issues Paper "Assessment of 30 potential 'gay hate' unsolved homicides by the Unsolved Homicide Team (UHT) to determine if any bias motivation existed.
37. On the evidence tendered, Detective Sergeant Brown had limited involvement in Strike Force Neiwand as a consequence of a combination of factors including the workload associated with Strike Force Macnamir and Macnamir 2, working part-time and the fact that Detective Sergeant Brown was on a return-to-work plan.

### **Conclusion**

38. The Commissioner would find that Detective Sergeant Brown was not involved in any covert or secretive plan with Ms Young and Ms Alberici.
39. Detective Sergeant Brown's evidence was forthright, a matter accepted by Counsel Assisting in the supplementary submissions.
40. It is uncontested that Detective Sergeant Brown remained under the Command of Mr Willing without reprimand or disciplinary proceedings.
41. The uncontested evidence before the Special Inquiry is that Detective Sergeant Brown excelled in her job, she rose to rank of Detective Sergeant whilst working on a part-time basis due to family matters and, at no point, was ever reprimanded

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<sup>26</sup> Exhibit 6, Tab 18, Investigation Plan (SCOI.74880\_0001)

or disciplined in relation to her work on Strike Force Macnamir, her work in the Unsolved Homicide Team or in relation to the Lateline interview in which Ms Young participated. It is uncontested that Detective Sergeant Brown rose to Detective Sergeant and, at no point in time was reprimanded or disciplined in relation to her conduct in relation to Strike Force Macnamir or Ms Young's Lateline interview despite the fact that Mr Willing was ultimately promoted to Deputy Commissioner.

A handwritten signature in black ink, appearing to read 'LB', with a small dot at the end.

**Linda Barnes**

**Sir Owen Dixon Chambers**

**24 October 2023**