SPECIAL COMMISSION OF INQUIRY INTO LGBTIQ HATE CRIMES

Further Final Submissions on behalf of Mr Michael Willing

Contents

Executive Summary 2
Ms Young's media strategy 4
NSWPF 7 April media strategy 14
10 April - Dan Box 20
10 April - Ms Alberici 23
Between 10 April and 12 April 28
13 April - Glebe 31
The 5pm calls 41
'kowtowing' 52
Lateline interview 56
Aftermath 62
Immediate need to appease Ms Young 62
Media release 64
Ms Alberici 65
The 'win' texts and Ms Brown 66
Ms Brown, her Duty Book entry and her failure to complain 67
Conspiracy 70
New witnesses 72
Parrabell and Neiwand 72
Conclusion 73

Executive Summary

1. Mr Willing relies on, and maintains, the submissions previously made in writing and orally. These submissions are additional to what has previously been said and will focus on the evidence which has been adduced more recently.

2. CAS (Counsel Assisting Submissions) seek to condemn Mr Willing in relation to matters which are outside the Terms of Reference (TOR) , in circumstances where there is no contemporaneous corroborative written evidence contradicting his version of events and where the witnesses recently called in relation to issues affecting Mr Willing have obviously not told the truth and lack credibility.

3. Mr Willing maintains his position with respect to the TOR. Additionally, it is submitted that any specific issues concerning Lateline do not fall within the TOR, even pursuant to the judgments to date. Essentially, these factual disputes do not involve or relevantly relate to gay hate. It is uncontroversial that Ms Young said what she did because she was upset with the priority being given to the Johnson family, especially in circumstances where no evidence of homicide existed. Her motives had nothing whatever to do with *gay hate*. Not only is that outside the TOR, but there is no need to resolve questions of who knew what about the studio interview and when.

4. The issues with respect to procedural fairness have not been completely extinguished by the calling of further evidence. Some of those matters have been ventilated in our letter of 27 September 2023. The written and oral response will be addressed in due course below. The further issues of unfairness include the unexplained delay in providing the Young Evidentiary Statement. It seems clear that Mr Willing was asked questions from that statement as early as February. And yet it was not provided until September. That is, it was not disclosed by the time the evidence and submissions had closed in June. The relevance of the statement will be addressed below.

5. Aligned with that issue is the changing nature of the propositions which Counsel Assisting put to Mr Willing. And the timing of those changes in relation to material as it became known. Additionally, what Counsel Assisting has said about the dot point notes has changed as his position on what was said during the 5pm call has changed.

6. Ms Young, Ms Brown and Ms Alberici are unreliable witnesses. They have, additionally, all given evidence in circumstances where contamination was unavoidable. Ms Young, for example, said she was wavering on whether or not Ms Alberici conducted the door stop interview because of what Ms Alberici and then Ms Brown said. Ms Brown gave evidence after Ms Alberici. And Ms Young also said that maybe a cameraman asked the

questions. She agreed that she only said that because Ms Alberici said that. Ms Young was in Court for the duration of the evidence of Ms Brown and Ms Alberici.

7. Another thing they have in common was that in relation to Mr Willing, they were rarely challenged by Counsel Assisting. Answers begging for exploration, if not interrogation, were not pursued. Those examinations will be addressed below.

8. But aside from contamination, the evidence of all three was a concerted attack on Mr Willing. They were prepared to invent evidence and say things which clearly would have been included in their respective statements if true. Their evidence at times was illogical. It was also inconsistent in important respects.

9. CAS fail to address matters that go to the heart of the credibility of Ms Young, Ms Brown and Ms Alberici. And CAS fail to address the obvious and concerted effort made by both Ms Brown and Ms Alberici to support Ms Young's position.

10. Counsel Assisting suggests that Ms Alberici and Ms Brown are credible witnesses. However, *no* analysis has been engaged in with respect to the unsatisfactory parts of their evidence. Manifest unreliability has been waived away or simply ignored. When the evidence Ms Brown gives is inconsistent with propositions put by CAS, it is not included in the analysis of her credit. This allows Counsel Assisting to avoid ever saying that Ms Brown gave evidence which should be rejected.

11. The test applied to judge Mr Willing's reliability has not been applied to those witnesses or Ms Young. Of course, a witness can be said to be reliable if the unreliable parts of their evidence are ignored.

12. Counsel Assisting criticises Mr Willing because he added something to an earlier answer regarding the 5pm call. This will be analysed below. And yet Counsel Assisting *relies* on oral evidence given by Ms Brown, Ms Alberici and Ms Young which was *not* in their statements even though, if true, should have been there.

13. Mr Willing has always maintained that he was not aware of the studio interview before it went to air. He was examined over five separate days. There is not a single piece of objective and reliable evidence to the contrary. There is, however, support for his position with contemporaneous documents and oral evidence from others.

14. The Young/Brown and Alberici evidence as to Mr Willing's knowledge in advance of 13 April 2015 is consistent in one respect: the absence of any corroboration. The absence of corroboration is particularly important in the circumstances here where their evidence was contaminated by access to evidence of other witnesses, as well as by being told

what was said about them in advance of being questioned on behalf of Mr Willing and the police.

15. Further, the oral evidence of the three of them is strikingly inconsistent with:

    a. Their own written evidence;
    b. Each other's evidence; and
    c. Other evidence before the Commission.

Ms Young's media strategy

16. It is now uncontroversial that the official media strategy was controlled in all aspects by the Police Media Unit (PMU). That Unit reported into Mr Strath Gordon and the decisions had to be approved by him or someone more senior. Mr Willing did *not* fall into that category of seniority or authority. Relevantly, that group comprised of Kerlatec, Finch, Kaldas, Burn[1] and Scipione.

17. Mr Willing had no authority in relation to media apart from being able to authorise Ms Young to give a bland doorstop. Ms Young agreed that if she had a media strategy, she was obliged to share it with PMU.[2] There was no equivalent email to 7 April any time prior to that. For the obvious reason that Ms Young was keeping it away from PMU and Mr Willing.

18. Unsurprisingly, Ms Young believed that she did not need authority to conduct a doorstop. And, again unsurprisingly, she actually believed that the doorstop she conducted was appropriate. Even with the benefit of hindsight, she still cannot see or admit that what she said was wrong. The Glebe doorstop will be analysed in due course.

19. The 7 April media strategy intimately involved the PMU. They chose the journalists, including Knowles not Alberici, and the platforms. They formulated the strategy. They agreed internally on the strategy. And then sent it up the chain of command. The 7 April email was more than advisory. That is demonstrated by Kerlatec and Kaldas ultimately approving this strategy of backgrounding.

20. This is in stark contrast to the Young/Brown/Alberici strategy. No-one from the PMU was aware of any involvement of Ms Alberici until April. No media strategy was being prepared or even considered by the PMU because it had not been raised with them by anyone. Not one single contemporaneous document exists to suggest, let alone establish, that the PMU was alerted to the involvement of Ms Alberici until April. Until

[1] Deputy Commissioner Burn is only included here as her Staff Officer, Mr Monk, was in the 7 April 2015 email.
[2] T 6842.39

April, Mr Willing also understood that the relevant journalist from the ABC was to be Lorna Knowles. This will all be considered in detail below.

21. Ms Young was considered to be very hierarchical and a responsible and careful officer. That was why there was a comfortable belief and confidence that she would not do anything without proper authorisation. She was trusted.

22. But in this investigation, Ms Young was pushed by the combined conduct of the Johnson family, some compliant media and a weak, as she saw it, Police Minister. She and her trusted OIC, Ms Brown, were being directly and publicly criticised by the family. It was the first time she had experienced unfair prioritisation of one grieving family over many other grieving families. It was the first time a credible witness, Mr Noone, needed protection from the deceased's family. She had never experienced a family having such influence over the relevant Minister and media.

23. There were a whole host of things which Ms Young and Ms Brown did not disclose before 7 April. The only person who knew was Ms Alberici:

    a. In January 2015, Ms Brown did not tell PMU that she and Ms Young were canvassing for journalists.[3]
    b. Ms Brown did not tell PMU that she printed the PYC (Pam Young Coronial statement) in February.[4]
    c. Ms Brown does not suggest that Mr Willing knew about the PYC being provided to Ms Alberici.[5] Ms Young agrees that she did not discuss with Mr Willing the intention to provide Ms Alberici the PYC.[6]
    d. To the knowledge of Ms Brown, *no approval was sought* for the PYC to be provided to Ms Alberici.[7] Even though she knew that police were seeking a non-publication order over the PYC for a number of reasons including the safety of individuals.[8] And that neither she nor Ms Young had such authority themselves.[9]

24. And not a single contemporaneous document exists which suggests, let alone establishes, that Mr Willing knew about Ms Alberici's potential involvement until April. And Ms Young agrees that she did not say in PYS (Ms Young's Evidentiary Statement in

[3] T 6540.42
[4] T 6541.21
[5] T 6542.3
[6] T 6834.37, 6684
[7] T 6542.39-44
[8] T 6543.31-40
[9] T 6543.42, 6544.11

the Supreme Court) or April statement or September statement that Mr Willing knew prior to April 2015 that the PYC had been provided to Ms Alberici[10].

25. Are we to accept that Ms Alberici was speaking to PMU but there are no police emails which support that? And are we to ignore the fact that until a date in April, the only ABC journalist mentioned by PMU was Lorna Knowles? And are we to accept that Ms Alberici never discussed, in February or March, with Ms Young that she was speaking with both PMU and Mr Willing about this? Such that Ms Young informed PMU.

26. By April, Ms Young and Ms Brown had met with Ms Alberici and provided her with the sensitive PYC. The only people within NSWPF who knew of either of those decisions were Ms Young and Ms Brown. They had no authority to provide the statement to Ms Alberici. Any suggestion from anyone that Mr Willing knew in advance of April, which is denied, would not justify their behaviour as Ms Young knew full well that she could not have obtained authorisation from Mr Willing. Ms Alberici, despite her claims of knowing about media policy at the police, was wrong when she claimed that Mr Willing had such authority.

27. If Mr Willing knew about Ms Alberici, as claimed by the three of them, he would have immediately informed the PMU. He was obliged to, that was his practice, and *he had no reason not to*. No reason to keep that to himself was ever put to him by Counsel Assisting. His evidence, which is a contest between him, and Ms Young/Ms Brown and Ms Alberici cannot be rejected.

28. In addition, the absence of such a contention in relevant documents and their own statements by all three further confirm this issue.

29. Nowhere in their statements, four between them, do Ms Young or Ms Brown suggest that the PMU or Mr Willing knew about Ms Alberici *before* 7 April. Despite knowing full well what the controversies were.

30. They do not say that Mr Willing spoke with Ms Alberici before LL 13 (Lateline studio interview of 13 April 2015). They do not say that Mr Willing was told about the possibility of Ms Alberici before 7 April. They do not say that Mr Willing knew about the PYC being provided to Ms Alberici before 10 April.

31. Ms Young and Ms Brown do not say that PMU knew about any of this either.

[10] T 6835.11

32. This was their media strategy and no-one else was told because there was a risk it would be shut down – entirely consistently with the risks Ms Young knew full well would arise if an MLO was allowed to be involved.

33. The statement was printed on 17 February. That coincides with the month in which Ms Alberici says she received the statement. It was not printed that day just because Ms Brown was about to go on leave. Ms Young was capable of printing a document. On the day that Ms Brown printed the document, she spoke to Ms Alberici and told her that Ms Young would be in touch to organise a time to meet[11]. No doubt that was to provide Ms Young with an opportunity to provide Ms Alberici with her statement and tell her to read it thoroughly. Ms Alberici says that the statement was provided to her in February[12] and this is consistent with her email of 8 April.

34. Ms Brown claimed that printing the PYC in February did not mean that it would be provided to Ms Alberici that early. She claimed it was only a 'possibility'. She said it was still subject to whether Ms Alberici had passed the test for Ms Young[13].

35. This was a refusal on the part of Ms Brown to acknowledge that their intention, in February, was to provide the statement to Ms Alberici immediately. Ms Brown had to later agree to the obvious point, when asked, that Ms Alberici had *already* passed the test over lunch in January.[14] Therefore her claimed reason for not providing the statement in February was exposed. Why did she not give frank evidence about this when first asked?

36. Part of Ms Brown's message to Ms Young after printing the statement was that she had contacted Ms Alberici who was now waiting for Ms Young to contact her. No further steps were asserted by Ms Young to have taken place regarding her due diligence. For the obvious reason that the decision had been made. Ms Alberici had already passed the test. And Ms Brown well knew that.

37. Ms Brown's evidence that the February printing by her was not for provision to Ms Alberici at that point, because it was still only a 'possibility' that it would be given to Ms Alberici, must be rejected. Her evidence that by that stage, Ms Alberici had not passed Ms Young's test was also false and must be likewise rejected.

38. Ms Young had decided after the lunch that Ms Alberici would be provided an advance copy of the statement. Ms Brown printed it out and contacted Ms Alberici to facilitate

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[11] NPL.0138.0001.0072
[12] T 6229.9
[13] T 6492.19
[14] T 6541.39

the next contact with Ms Young. And neither of them told anyone in PMU or Mr Willing. As all the contemporaneous documents show.

39. No ABC reporter was on the radar in February. The only one mentioned before 7 April was Lorna Knowles. It is no surprise that neither Ms Young nor Ms Brown say in any of their statements that PMU or Mr Willing knew about Ms Alberici in advance of 7 April, let alone that anyone was aware of the provision of the statement.

40. Ms Brown's claim that she had conversations with Ms Young and Mr Willing, was unsatisfactory and should be rejected. It was firstly said by her in oral evidence. It defies belief that this would not have been referred to in her written statement. What she said in her oral evidence included a clear absence of any informing of Mr Willing[15]:

> *CA* *Are you telling us that in the ones that you were party to with Ms Young and Mr Willing, there was discussion of providing the statement to Ms Alberici? Is that what you are saying?*
>
> *PB* *Well, there was – what I'm saying, there was a strategy for – to correct the reporting. I can't remember about giving the statement to Emma Alberici …*
>
> *CA* *With Mr Willing is what I am asking?*
>
> *PB* *Yes, because Pam wouldn't do anything that wasn't authorised or the bosses didn't know …*

41. Ms Brown was not contending in either of these answers, despite being invited to do so, that she was part of a conversation with Mr Willing whereby the provision of the statement to Ms Alberici was discussed.

42. And yet Ms Brown also claims that she believed Ms Young had approval from Mr Willing. She also asserts that that came from conversations she had with 'both' of them[16]. That was a lie. It is clear, even from the extracts above, that she did not have any such conversations with Mr Willing. Ms Brown did not say in her statement that she was party to any such conversation. Nor did she say it when Ms Young was in trouble in 2015.

43. Ms Young does not say that she told Mr Willing about providing the statement to Ms Alberici in advance. She said that she was not obliged to.[17]

44. Counsel Assisting ignores the fact that such important evidence was absent from the statements of Ms Brown and Ms Young, notwithstanding their obvious and direct

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[15] T 6493.17
[16] T 6493.42
[17] T 6684.39

relevance to the questions posed and issues raised by the Special Commission. The obvious explanation is that their oral evidence is simply untrue. No explanation was ever given for the absence from their statements of these pertinent answers, now relied on so heavily by Counsel Assisting.

45. Ms Young had no authority to choose the journalist. She could suggest one to PMU who may agree, as they did in this case. And nor had she the authority to provide the statement to Ms Alberici. And when she did provide the PYC, she did not tell anyone that she would or had. Contrary to what Counsel Assisting has submitted, Mr Willing was correct to describe the provision of the sensitive document, to a journalist *not approved by PMU*, as completely inappropriate and wrong[18]. And unlike what Ms Brown said, Ms Young did act without authority whenever it suited her in this matter. CAS 1 [410] observed Mr Willing's description of the provision as being completely inappropriate and wrong. No criticism was there made of that evidence given by Mr Willing in June.

46. Ms Young knew full well that Mr Willing could not authorise the choice of journalist or the provision of PYC to such journalist. Those are matters for PMU. Ms Young did not ask Mr Willing to obtain authority. If she did, obviously he would have raised it with PMU. She kept it secret from everyone except Ms Brown and Ms Alberici.

47. It can be comfortably found that Ms Young and Ms Brown printed and provided the PYC to Ms Alberici in February 2015.

48. And that they did so without authorisation. It was up to the PMU to sign off on the media network and individual journalist. And because Ms Young and Ms Brown knew they were doing so without authorisation, they deliberately kept it from everyone. They had to. Ms Wells gave evidence that approval was required for Ms Young to have provided the PYC to Ms Alberici and that it would not have been approved at that stage.[19] Ms Young and Ms Brown knew that. That evidence from Ms Wells was not challenged.

49. The PMU did not have *any* knowledge of Ms Alberici until at least 2 April. For reasons detailed below, which includes contemporaneous PMU emails, it is more likely that the relevant date was in fact 7 April. Until that point in time, both Ms Wells and Ms McMahon from the PMU understood that Lorna Knowles was the ABC journalist to be backgrounded. Neither of them had any idea of Ms Alberici being chosen by Ms Young before April.

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[18] T 6782.19
[19] T 6375.5

50. The evidence from Ms Alberici that she was in contact with the PMU in February, and her detailed explanation for why it was in February,[20] cannot possibly be accepted. We note that this evidence was not tested by Counsel Assisting even though it was patently inconsistent with the contemporaneous documents. As Ms Young said, PMU was not brought in until *'quite late – later and closer to 13 April'*.[21]

51. Ms Alberici claimed that the *PMU*, not Ms Young, had *'given her permission to give [PYC] to two journalists, and I was – one from the ABC'*.[22]

52. Firstly, it is clear that PMU had *not* given Ms Young permission to provide the PYC in February to any journalist. No such permission was granted until at least 7 April by PMU. The evidence of Ms Alberici was unreliable in this important respect.

53. Secondly, Ms Alberici's claim that *'police had determined it was time for them to have a voice in this matter, publicly'* as an explanation for why PMU gave permission to provide the statement in February is also untrue. The PMU was not even considering this issue at the time. They had not '*determined'* anything until early April.

54. And Ms Alberici further claims that this happened when she had dealings with PMU in February.[23] This did not happen. She was not on the radar of PMU until April. No-one from PMU spoke to Ms Alberici in February or even March. And certainly not about the statement being provided in February as claimed by Ms Alberici[24]. This evidence also cannot be accepted.

55. These are examples of Ms Alberici giving unreliable evidence to support Ms Young. Ms Young provided the statement. Ms Alberici was attempting to say that Ms Young had authority to do so from PMU, which we know is completely incorrect, and she tries to prove that by inventing conversations with PMU and Mr Willing. There is a contest in the evidence between Ms Alberici and Ms Wells. The evidence of Ms Alberici must be rejected. The evidence of Ms Wells as to when Ms Alberici came on the scene is corroborated by the contemporaneous documents. Ms Wells is to be accepted.

56. Ms Alberici's unreliability in this issue cannot be hived off conveniently. *A fortiori* when there are other fanciful pieces of evidence such as the disappearing/re-appearing text messages. It affects the assessment of her generally as a witness. She was not credible.

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[20] T 6229-31
[21] T 6685.10
[22] T 6229.38
[23] T 6229.44
[24] T 6229.44-6230.4

57. This unreliability extends to her claim that she was speaking to Mr Willing in February. Despite originally claiming to have text messages in 2015, such messages were not produced. They never existed. Her claim that messages from 2015 were seen by her one day, and then '*inexplicably*' went missing a few days later, before magically re-appearing is laughable and dishonest.

58. It is not surprising that no messages were produced from 2015, even though in her statement she says that such messages were seen by her shortly before they disappeared. Again, Counsel Assisting failed to test these absurd answers or address the issue in CAS. The response of Counsel Assisting during the evidence was[25]:

    That's phones for you, I suppose.

59. If that evidence had been given by Mr Willing or Ms Wells, would that have been the response of Counsel Assisting? Or would there have been a vigorous testing and challenge to this ridiculous evidence?

60. The evidence of Ms Alberici was dishonest. She was attempting to establish that Mr Willing knew of LL 13 in advance. And that the PMU also knew of her involvement well in advance of April – all of which would have the effect of protecting Ms Young and Ms Brown.

61. Mr Willing was not given time to complete his questions of Ms Alberici. She was not called in the first 90 days of sittings, notwithstanding her patent relevance. She was always in a position to give evidence as to when LL 13 took place and what her role was at Glebe. Her evidence that perhaps a cameraman asked the pointed questions of Ms Young, eliciting controversial and inappropriate answers, must also be rejected. That evidence will be analysed below.

62. What the evidence clearly establishes is that:

    a. Neither Ms Young nor Ms Brown referred in their statements to having informed the PMU or Mr Willing about Ms Alberici until April;
    b. Neither Ms Young nor Ms Brown sought authorisation to provide the PYC to Ms Alberici;
    c. Neither Ms Young nor Ms Brown ever told PMU or Mr Willing that they had in fact provided the PYC to Ms Alberici before April;

[25] T 6260.33

d. Even when provided a packet of three statements to give Ms Alberici on 10 April, Ms Young and Ms Brown did not tell PMU that they had already provided the PYC to Ms Alberici;
e. Their failure to so inform PMU on 10 April is consistent with the evidence of Mr Willing that he was not told about the provision of the PYC to Ms Alberici in advance of April. If he had been, Ms Young and Ms Brown would have told the PMU that they had already provided the PYC to Ms Alberici and that Mr Willing knew that that had happened;
f. Neither Ms Young nor Ms Brown told anyone in PMU about Ms Alberici until April. Until that time, Ms Young and Ms Brown allowed the PMU and Mr Willing to believe that the relevant journalist at the ABC would be Lorna Knowles;
g. Neither Ms Young nor Ms Brown told anyone else at NSWPF, including Mr Willing, about Ms Alberici until 2 April, but most likely 7 April;
h. The evidence from Ms Young that she told Mr Willing about Ms Alberici in advance of 7 April must be rejected;
i. The evidence from Ms Alberici that she was speaking with the PMU about PYC in February must be rejected. It is patently inconsistent with the PMU emails and Ms Alberici provides no support for her claim other than her oral evidence;
j. The evidence from Ms Alberici that she was speaking with Mr Willing at this time must similarly be rejected. There were no text messages to corroborate her claims. It is hard to believe that there were *only* phone calls at this time. Additionally, there is no note, email, diary entry or any other record.

63. The email strategy that was in place prior to 7 April 2015 was one designed by Ms Young and known only to Ms Brown and Ms Alberici.

64. The strategy that Ms Young actually discussed with Mr Willing, however, as recorded in her September statement, was very different[26] (emphasis added):

> *I approached Michael Willing with the idea that we too should be ready to do a* ***media release*** *if the State Coroner* ***does not*** *place a non-publication order over my coronial statements.*

65. *This* is what Ms Young was telling Mr Willing what she thought should happen. *Not* a studio interview. Contrary to what Ms Young, Ms Brown and Ms Alberici claimed.

66. The preceding paragraphs in the September statement refer to Ms Young's dealings with Ms Alberici. By the time of the September statement, Ms Young admits that she knew that everyone at the Special Commission knew about the ABC emails and her 2015

[26] September statement [99]

dealings with Ms Alberici.[27] Ms Young makes no reference in those paragraphs to telling Mr Willing about any of the dealings with Ms Alberici.[28]

67. The dealings with Ms Alberici were kept from PMU and Mr Willing until 7 April. However, at this time, Ms Young was talking to Mr Willing about a media release. She does not say in the September statement that she discussed LL 13 with Mr Willing. She says something totally different. Something that would ultimately have been done by PMU through the normal channels if so decided but no doubt with input from Ms Young.

68. If what Ms Young now says about Mr Willing's knowledge of LL 13 and the strategy, it would have had to be in her September statement. For obvious reasons, if that was her true position, given what the Special Commission was interested in. But also, because she *specifically* addresses what it is that Mr Willing and her discussed as their proposed media strategy.

69. It is not just that Mr Willing was kept in the dark about Ms Young's media strategy with Ms Alberici, he was *actively misled* by Ms Young.

70. As Mr Willing has always maintained, even prior to the September statement being written, that Ms Young was keeping her strategy from PMU and him. The only people that knew were Ms Brown and Ms Alberici.

71. Ms Young continues at [99] of her September statement:

> *I approached Michael Willing with the idea that we too should be ready to do a media release if the State Coroner does not place a non-publication order over my coronial statements. In discussions I had with Michael Willing and the SCC Media Liaison, a media strategy was developed in the weeks before 13 April 2015.*

72. Ms Young does not differentiate between Mr Willing and the PMU as to what she told them. In the September statement, as she agreed, she does not say that Mr Willing knew about LL 13 prior to 13 April.

> *MT* *Ms Young do you agree that you do not say in your civil statement or the April statement or the September statement that Mr Willing knew about the 13 April studio interview before 13 April.*
>
> *PY* *I did not say those words in those statements.*

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[27] T 6837.47
[28] T 6844.27

73. The totality of what Ms Young said in the three statements that Mr Willing knew of her role, was the 7 April email and her drafting of the media release if the State Coroner did not make a non-publication order. That was it.

74. As she agreed, she does not go further than that with respect to Mr Willing's knowledge in any of her three statements. And *in fact*, she told him that her strategy was a *media release*. Their agreement was that she was the better person to draft it. But obviously, the ultimate wording would be for PMU.

75. In truth, however, if the State Coroner did not make the non-publication order, Ms Young had promised an explosive exclusive with Ms Alberici. Which only Ms Brown knew about. She was not planning a 'media release' as she told Mr Willing. Ms Young lied to Mr Willing about her true intentions.

NSWPF 7 April media strategy

76. The 7 April media strategy did not overrule Police Media Policy. It was obviously subject to it. It would have been read and understood in that context. If the Media Policy required authorisations, then the 7 April strategy had to be read and understood in that context. For example, there is no reference in the 7 April email as to *who* would be tasked to go on the record if that was ultimately decided. Yet the Media Policy makes clear that criterion existed for that important question.

77. Similarly, the context includes the emails written at PMU in the discussion as to media strategy. Ms Wells pointed out that previous emails specifically mention that media requests for on the record interviews would be considered following the backgrounders.[29] And, as she stated, it was understood that further requests would be required because that was both the Media Policy and consistent with normal procedure.[30]

78. The 7 April email made clear that it was Gordon, Kerlatec and Finch who were the decision makers. The person in charge of PMU and police more senior than Mr Willing. This was confirmed by Mr Willing informing Kaldas, with Kerlatec present, what the proposed strategy was and Kaldas approving that strategy.

79. Ms Young in evidence continued to attempt to include Mr Willing in that approval process. Her desperation went so far as to suggest that perhaps the author of the email had accidentally included Mr Willing in the 'cc' section.[31] This of course was absurd for

[29] T 6321.19
[30] T 6321.37-45
[31] T 6761.14

the simple reason that the Head of Homicide had no such authority in the Media Policy. If that was not enough, the email was addressed to 'Ken and John', being Finch and Kerlatec respectively.

80. Ms Young was attempting to ordain Mr Willing with this authority so that her secret conduct, known only to Ms Brown, could retrospectively be legitimised with her claim that she had had various discussions with Mr Willing, including the 5pm phone call.

81. Ms Young finally agreed that in relation to the media strategy of 7 April[32]:

    His [Mr Willing's] authority was the same as my authority.

82. Therefore, Ms Young had to accept that Mr Willing's authority in relation to the media strategy was no higher than hers. This was important and her evasive answers leading into this ultimate acceptance, telling.

83. The discussion that Ms Wells had with Ms Young about a separate interview to go on the record is consistent with the Media Policy.[33] That make sense as the backgrounder offers a greater opportunity for a frank expression of views. For example, Mr Willing said that if Ms Young had used the word 'kowtowing' off the record, that would not matter. It makes the point to the journalist as part of the backgrounding. But that cannot mean that the words used are automatically on the record should the State Coroner not make a non-publication order.

84. The strategy encompassed the possibility of speaking on the record in due course. That was hardly surprising. In those circumstances, backgrounding a television program was a prudent step. The first journalist considered from the ABC, Lorna Knowles, fit that category.

85. Emails on 7 and 8 April are informative as to when PMU was first told about Ms Alberici.

86. Tab 526 was an email sent by Ms Wells to Mr Willing on 8 April 2015. As of that day, Ms Wells understood that the relevant journalist from the ABC was Lorna Knowles. Ms Wells was not taken to this part of the email[34] even though it was contemporaneous rather than being written a week later.

87. Tab 351 shows that on 9 April 2015, Ms McMahon believed that the relevant journalist from the ABC was Lorna Knowles.

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[32] T 6763.35
[33] T 6340.19-27
[34] T 6312

88. Further, as Ms Wells said, if Ms Alberici had been speaking to Mr Gordon or Ms McMahon, she would have been told.[35] Ms Alberici said it was with a female and that means only Ms Wells or Ms McMahon. Tabs 526 and 351 prove that neither of them had any understanding of the involvement of Ms Alberici prior to 7 April.

89. Ms Wells added that if Mr Willing knew, he would have told her[36]:

> *Because we had a very good working relationship on media issues where I would let him know if I became aware of things, he would let me know if he became aware of things, and we would regularly discuss strategy and how me might approach things.*

90. This is consistent of course with Mr Willing calling Ms Wells straight after Ms Young called him on the afternoon of 13 April. It is inconceivable that Mr Willing would keep advance knowledge of LL 13 from her and the wider PMU. No-one has given any reason why their trusting relationship would be betrayed for LL 13. Ms Wells described him as a very transparent person.[37] It was never suggested to Mr Willing that he deliberately kept the PMU in the dark about anything.

91. Tab 372 was written on 14 April. Ms Wells specifically says that her memory is hazy on some things as she was completely bedridden on the 8th and 9th. The date of 2/4 as to when Ms Young told Ms Wells about Ms Alberici must be wrong given Tabs 526 and 351 which were written on 7 and 8 April respectively. There is no contemporaneous email or PMU document which refers to Ms Alberici prior to 7 April. That is not a surprise given Tabs 526 and 351 – which also suggests the relevant date was 7 April.

92. Ms Young informing the PMU on 8 April, or even the 7th, fits perfectly with where she has slotted Ms Alberici into her timeline in both the April statement and the PYS – 7 to 8 April. That is why Ms Young, unlike Ms Alberici, has never claimed that PMU was involved prior to April. Ms Alberici was a secret until then – as was the provision to her of the PYC.

93. By the time of the 7 April email, the media strategy had been approved by Gordon as the relevant person with authority. That approval was noted in the email. There was no need to refer to any approval from Mr Willing as he did not have any role in the approval process.

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[35] T 6355.29, 6358.11, 6376-77
[36] T 6377.17
[37] T 6395.2

94. This was a proposal from the PMU. Given the circumstances, it was sent higher up to provide an opportunity for consideration and rejection. Ultimately it was approved by Kerlatec and Kaldas the next day.

95. There has never been a suggestion that Kerlatec, Finch, Kaldas – until now, Burn or Scipione knew about LL 13 before it aired. Indeed, Finch wrote an email on the night of the 13th to Mr Gordon and Kerlatec asking who approved it. The email was correctly described as 'terse'.

96. Steer said that Kaldas was a major supporter of the work of the BCU so if Steer is reliable, it shows that Kaldas' view re LL 13 had nothing to do with gay hate.

97. What the 7 April email demonstrates is that an addressee, Finch, did not regard the 7 April media strategy as self-executing. Nor would he have appreciated being misled that the media strategy was confined to backgrounding if in fact it permitted a studio interview. Notwithstanding the supportive message he sent Ms Young afterwards, which will be addressed below.

98. As of the 7 April email, the PMU strategy had not been approved. Ms Young knew that. Ms Young herself relies on the absence of a rejection by Kerlatec and Finch over the next six days. And she knew that Ms Alberici's involvement could not be revealed before then as she had not obtained authority to do so. She also knew that it could not be revealed to Mr Willing as he would have immediately contacted the PMU. There was every reason for him to do that. And no reason not to.

99. As Ms Young had not obtained the requisite approval from PMU, no media strategy was in place earlier in the year. It was her decision to interview and test Ms Alberici from January. And her decision to impose a test on Ms Alberici with respect to digesting the PYC. And it was her decision to provide the sensitive PYC to Ms Alberici without approval. The only person Ms Young told was Ms Brown. PMU and Mr Willing were deliberately kept in the dark. If the evidence from Ms Alberici that she was speaking to PMU in February was true, there would have been emails to that effect well before 8 April.

100. The evidence clearly demonstrates that Ms Young did what *she* thought was right. The suggestion that she only acted on authority, in this matter, was patently false. Ms Young demonstrated that on a number of occasions. She is not someone who takes responsibility for her actions. She will always blame someone else.

101. And that is why she claims that she had an approval of sorts from Mr Willing to speak to Ms Alberici and provide her with the sensitive PYC. There is no support for this proposition whatever.

102. In a somewhat similar vein, Ms Young continues to believe that her work showing *'that it was not likely to be a marauding gang gay hate crime'* contributed to the manslaughter conviction at the end of the day.[38] She continues to deny that she sought to highlight factors which would support the suicide theory.[39]

103. By 7 April therefore, Ms Alberici was not known to the PMU. At that point, Ms Young was now able to inform others of her choice. She deliberately did not tell anyone, however, that she had already been backgrounding Ms Alberici as she did not have such approval. She also did not tell anyone that she had already provided the PYC as she did not have such approval. Only Ms Brown knew.

104. PMU was therefore only told on 7-8 April. Even when a package was prepared by PMU of the three PYCs, Ms Young did not tell anyone that she had already provided the PYC to Ms Alberici. She allowed PMU to continue to believe that as of 10 April, Ms Alberici had not been provided with a copy of PYC. And that they were meeting for the first time. If PMU knew that the statement had been provided in February, as Ms Alberici claims, they would not have printed another copy of a sensitive 445 page statement. And they would have made a note of the earlier meeting.

105. The 7 April media strategy did not mean that Ms Young could go on the record without notifying PMU. Firstly, the earlier PMU emails make clear the obvious, that specific requests would be considered, and further approval needed. Kaldas was not told that the media strategy involved anything more than backgrounding.

106. Secondly, there was a Media Policy in place. That policy mandated that only persons of a certain rank *'appropriately trained for that environment'* could participate in a studio interview. Ms Young patently did not qualify in either category.

107. Ms Young's suggestion that the word *'environment'* refers to her knowledge of the case[40] is illogical and self-serving. It must be rejected. It was a self-serving attempt to justify her contention that she should have been the one to be interviewed. Matters which interest the media include Local Court hearings run by Constables. That does not mean that the Constable, who is the Officer in Charge, would be equipped or authorised to be interviewed in a studio. The only sensible way to read that requirement was as put by Counsel Assisting– the '*environment*' refers to live interviews.[41]

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[38] T 6663.20
[39] T 6663.36
[40] T 6674
[41] T 6674-75

108. Any interview could not descend into the detail that Ms Young knew in any case because the matter was before the Coroner. No-one of sufficient rank would have said what Ms Young said on LL 13 (or at Glebe). The point of any interview would have been a high level position of support for the Third Inquest. That is, Ms Young was not the *only* person capable of being interviewed as the interviewee would have known to stay well away from the detail and therefore did not need to be across it like Ms Young and Ms Brown were. No doubt PMU would have given the relevant senior officer a briefing and an MLO would have been present to practice and assist.

109. Ms Young's attitude and views made her exactly the person who would *not* have been permitted by PMU to be interviewed. Is there any suggestion that PMU would have allowed her to be interviewed without an MLO present and without a practice run? She ultimately had to agree that Mr Willing could have represented the police at the interview.

110. Such a suggestion that the 7 April email authorised Ms Young to be interviewed without any further steps is absurd. Even Finch did not believe that, and he was sent the email.

111. Further still, the Media Policy required the consent of the State Coroner before any studio interview. That make perfect sense for the same reason why Ms Young should not have been speaking on the record about her views as to potential findings. The PMU was obviously well aware of its own policy.

112. No approval was sought from the State Coroner, clearly supporting the evidence of Ms Wells and Mr Willing that the 7 April email did *not* authorise LL 13. The text sent by Mr Willing was a courtesy to the State Coroner and was sent at 811pm on the night the LL 13 aired. That could hardly be said to constitute the PMU seeking approval under the Media Policy. There was no suggestion in the 7 April email from PMU that Mr Willing was tasked to seek *approval* from the State Coroner pursuant to the Media Policy. What was noted was that the State Coroner would be advised of the backgrounding, as a *courtesy*. No doubt that happened. The text of the 13th was also a matter of courtesy.

113. As far as PMU and Mr Willing were concerned, the status of the 7 April email:

a. Did not of itself authorise a studio interview in the event the Coroner ordered a third inquest and released PYC;
b. Going on the record would require further consideration;
c. Did not authorise Ms Young to be interviewed on LL 13.

114. The views of PMU and Mr Willing are consistent with the Media Policy which then applied. They are also consistent with the emails which preceded and proceeded the 7 April email. The interpretation relied upon by Ms Young is self-serving.

10 April- Dan Box

115. Ms Young had imposed criterion on Ms Alberici to read and digest her 445 page statement. Even though they had already met and were introduced by her trusted colleague, Ms Brown. Ms Young said that she would not engage with Ms Alberici until she had read the statement, so much so that she hung up on her while Ms Alberici was still reading the statement. Ms Alberici said they were looking for a 'trusted voice'.[42]

116. There was no lunch with Dan Box in advance of the 10th so that Ms Young could get to know him and see if he passed the test that Ms Brown acknowledged Ms Alberici passed at lunch. There was no provision of the statement months earlier so that he could even read it, let alone study it. There was no requirement that he thoroughly study the statement before Ms Young would express herself.

117. The due diligence that Ms Young conducted with Ms Alberici led her into the shocking disclosures that would ensue. This started in advance of 8 April as is clear from the email of that day from Ms Alberici. It continued on the 10th and then at Glebe and then LL 13.

118. That was not the process with Dan Box. The process with Dan Box was controlled by the PMU, except for the absence of an MLO. The backgrounding was organised by the PMU. It was held on police premises. The statement was provided. Nothing controversial came of it. Dan Box found the session helpful which meant that anything he wrote was more likely to be balanced.

119. PMU, meaning Strath Gordon, was not happy with the absence of an MLO for the background interview with Dan Box but after discussion with Mr Willing, was prepared to allow it. As stated in his statement, Gordon said it was his decision. Only he had such authority as head of PMU.[43] Mr Willing had no authority to permit the backgrounding without an MLO. Ms Wells was not taken to the Gordon statement when asked about this issue.[44]

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[42] T 6228.40
[43] Strath Gordon [17]
[44] T 6316-18

120. The reasons why Ms Young did not want an MLO, exposed in her evidence, was telling. What she told Dan Box ultimately does not matter. What matters is what she was planning to tell him.

> *I was going to tell Dan Box about my thoughts of the influence of – that the Minister was – had been susceptible to the Johnson family and the impact on the Unsolved Homicide Team. I was also going to point out some journalists and articles that contained false and misleading statements, or I might even call some of them lies ..*[45]

121. Ms Young was proposing to tell Dan Box that the Johnson family had undue influence with a government minister. And that they were spreading lies. These were matters well outside the PYC. And yet Ms Young says in both her April and September statements:

> *I knew that backgrounding and further public comment must be limited to the information and evidence within my coronial statements.*

122. Ms Young knew that she would be saying things that she was unauthorised to say. And she did not want an MLO present. Not because Ms McMahon would be able to stop her. Ms Young was not going to accept advice or direction from the PMU. She did not want an MLO because she did not want to jeopardise *her* media strategy.[46] She was asked by Mr Tedeschi KC:

> *MT* *So you thought that she might pull you up and tell you not to say those things?*
> *PY* *She may have attempted to give me advice.*
>
> *MT* *And you didn't want that advice, did you?*
> *PY* *The advice would not have changed my mind.*
>
> *MT* *You didn't want that advice, because you would have ignored it if she had given it?*
> *PY* *Perhaps.*
>
> *MT* *If she had come and you had said those things, if she was criticised, then there was always the possibility that you would be prevented from saying those same things to Emma Alberici; is that right?*
> *PY* *Perhaps.*

[45] T 6741.35
[46] T 6742-43

123. Ms Young was not interested in participating in the media strategy of the NSWPF. She had her own media strategy. One that would never have been approved. Which she well knew. She had to exclude the MLO because she had to keep her plans to her very small group – Ms Brown and Ms Alberici.

124. This conduct also undermines her repeated claims that the 7 April email authorised everything she did. The media strategy was within the purview and authority of the PMU. And yet she would say what she wanted to say, regardless of the constraints which she well knew existed. As she would later do with the explicit use of the word 'kowtowing'.

125. It is readily apparent that the PMU would not have authorised criticism of the Minister. And Ms Young knew it. This is why Ms Young did not want an MLO. She knew that the PMU would stop certain statements being made by Ms Young.

126. Critically, Ms Young was not going to listen to any such advice. She was not going to take direction from the PMU. She and Ms Brown were the ones who the media, initiated by the Johnson family, were criticising.[47] Ms Young was going to say what *she* wanted to say. And witnesses wonder why the submission was made that she lost all objectivity and the word 'rogue' adopted.

127. The PMU would control the narrative of the backgrounding if permitted. However, it was a very different narrative to the one that Ms Young and Ms Brown were running.

Ms Young knew that if the PMU got wind of what she was proposing to say, there was no chance that she would be able to continue involvement in the 7 April media strategy.

128. This is precisely the reason why the Ms Young media strategy was kept secret from everyone except Ms Brown and Ms Alberici. And that includes keeping it from Mr Willing. Obviously if he was told, he would immediately inform the PMU, as he would be required to do and as he did straight after the 5pm phone call.

129. As far as Ms Brown was concerned, the police objectives for Dan Box were the same as that with respect to Ms Alberici[48]. But no on the record interview was organised for him. Nor was he given the statement in advance. Ms Young and Ms Brown treated Ms Alberici very differently to how they treated Dan Box.

[47] T 6729.27
[48] T 6547.30

10 April - Ms Alberici

130. As far as the PMU were concerned, Ms Young was meeting with Ms Alberici for the first time on 10 April. They prepared a package of the Ms Young Coronial statements for her because they believed, wrongly, that Ms Alberici did not have a copy of the PYC. Neither Ms Young nor Ms Brown disabused the PMU of their ignorance. We know why.

131. In the April statement, Ms Young says that she provided PYC to Ms Alberici on 10 April. But does not say that she provided that statement to her earlier in February.[49] Or that she had met Ms Alberici in January. Why not? Because the ABC emails which revealed this were not known to the parties in April.

132. No doubt once informed of her involvement, there would have been contact between Ms Alberici and PMU regarding logistics. As there was with Dan Box. But as the 7 April email made very clear, this was a backgrounding interview, and off the record.

133. The oral evidence from Ms Alberici that the PMU knew days in advance of LL 13 that a studio interview would be conducted, or was even being contemplated, was a lie.

134. Ms Alberici was unfairly contaminated in advance of giving evidence. She was told that Mr Willing had described Ms Young as having gone *rogue*. That was completely unnecessary and was not relevant to any question posed in writing to her. The *'rogue'* comment was not recorded in the letter to her from the Special Commission either. It was only revealed because Ms Alberici wanted to respond to it and did so in her statement.

135. What was even more unfair about that was that it was not Mr Willing who said that at all. This was only made clear to Ms Alberici in her oral evidence, after our letter pointed that fact out.

136. What was even more unfair was that the word had emanated as one of two alternatives from the Commissioner. And therefore, the word '*rogue*' was chosen in preference to the other term raised by the Commissioner; '*kamikaze*'. '*Rogue*' was only used as a descriptor after the Commissioner had said the word twice in his enquiry of how Mr Willing's Senior Counsel would describe the character of the conduct Ms Young had engaged in. Rogue was adopted because it accurately encompassed the submission being made. The term was not used in the written submissions filed on behalf of Mr Willing.

[49] T 6774-75

137. Ms Alberici was clearly upset by the '*rogue*' reference. She referred to it multiple times in her statement. It affected her evidence and led to inculpatory statements in her written and oral evidence – accusations without any corroboration and at times, inconsistent with contemporaneous and reliable evidence.

138. Ms Alberici was asked a question specifically in Q2 by the Commission.[50] She said that the answer she wrote in her statement was true and complete. She mentioned Ms Young, Ms Brown and people at the ABC. All of that is manifestly correct. She made no mention of PMU or Mr Willing.

> *MT* *If you were honestly answering the question in the way that you have given your evidence, the answer to question 2 would have to include, on your evidence, Police Media and Mr Willing; correct?*
> *EA* *That's right.*

139. There were no questions asked by Counsel Assisting or Ms Alberici's lawyer as to why this omission was made in relation to both PMU and Mr Willing. The oral evidence was unreliable.

140. Ms Alberici was asked a specific question in her statement. She made no reference to PMU or Mr Willing. When it came to oral evidence, that changed. Applying the test Counsel Assisting has applied to Mr Willing, the oral evidence of Ms Alberici, must be rejected.

141. Ms Alberici had not built a '*strong relationship*' with PMU and Mr Willing in the months preceding 8 April as she also claimed[51]. The strong relationship she had was only with Ms Young and Ms Brown. She was limited to '*minor dealings*' with PMU as she herself said in her statement[52] and none with Mr Willing. Mr Willing's diary for 8 April makes no mention of anything to do with Ms Alberici, although there is such a reference on 21 April. The diary also shows how busy he was on the 8th. The 8 April email written by Ms Alberici does not reference Mr Willing. This was another example of oral evidence of Ms Alberici being unreliable and unsupported and an attempt to inculpate Mr Willing.

142. Even Ms Young said that Ms Alberici used 'exaggerated language' in some of her email references.[53] Ms Young denied some things that Ms Alberici wrote in her 8 April email.[54]

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[50] T 6443
[51] T 6246.33-40
[52] Answer to question 4
[53] T 6683.44
[54] T 6687-89

143. The contemporaneous documents are consistent with the evidence given by Ms Wells and Mr Willing and inconsistent with the evidence given by Ms Alberici. This is another example of Ms Alberici being an untruthful supporter of Ms Young.

144. When taken to LL 10 (Lateline recorded interview of 10 April 2015) this exchange took place:[55]

> *CA* *... was your understanding that her view actually was that it was probably a suicide? That was what you thought she thought?*
> *EA* *No, that's what I thought the evidence weighed towards.*

This answer was evasive. It was clear what Ms Young thought and Ms Alberici had just been taken to relevant comments Ms Young had made during LL 10. But Ms Alberici did not want to admit the obvious because it was not in Ms Young's interests. She was pressed by Counsel Assisting:

> *CA* *And you thought that she believed that it was suicide?*
> *EA* *Well, she says that.*

Yes, Ms Young had said that. So why could Ms Alberici not just give a straight answer when asked the first time?

145. By this time, Ms Young and Ms Brown had had lunch with Ms Alberici. They had provided the PYC and Ms Alberici had thoroughly digested it. From her evidence, it seems readily apparent that she accepted everything that Ms Young believed.

146. The unsolicited commentary in Ms Alberici's statement to the Special Commission speaks volumes. And is akin to her self-professed claim to know about the NSWPF Media Policy. She claimed, for example, that the Media Policy allowed Mr Willing to authorise a studio interview[56]. Her ignorance and chutzpah on both accounts is breathtaking. Being unencumbered by knowledge has not prevented her from professing 'facts' as she sees it.

147. Ms Alberici claims the fact that PMU knew she had the PYC meant that the discussions between her and them amounted to more than backgrounding.[57] This was patently wrong. The 7 April PMU email is clear. The explicit purpose of the provision of the PYC was to background and influence, without having to go on the record. Ms

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[55] T 6244.35-6245.9
[56] T 6436.35
[57] T 6273.27

Alberici does not understand the Police Media Policy, let alone the instant media strategy.

148. Ms Young had also hand-delivered the statement. And then, according to the evidence, only had telephone communication. Given Ms Young's refusal to engage until Ms Alberici had read the statement, the 8 April email from Ms Alberici, if it is to be believed in the face of the evidence of Ms Young, must have come from limited phone communication according to Ms Young and Ms Alberici. Given what Ms Alberici email claims as of 8 April, this seems unlikely.

149. Ms Alberici was not even honest internally at the ABC. She wrote in her 8 April email that she was only person who had a copy of the PYC. But, as she said in evidence, she believed as early as February that a print journalist was also being given a copy.[58]

150. The backgrounding interview of the 10th was more than a dry run. Part of the reason was to obtain grabs for promotion. On the one hand, Ms Young and Ms Brown speak about the significant experience that Ms Brown has when needing to justify LL 13. But then claim nerves that required a dry run. Nerves would be one reason why an MLO would be included in the process.

151. Ms Brown effectively took on the role of MLO. Despite her repeated claim that she did not know about media strategy and was not participating in it, the transcript of the 10th paints a different picture. Her claim is also inconsistent with her alleged participation in the *'hallway conversations'* with Ms Young and Mr Willing.

152. On the 10th, despite cajoling from the interviewer, Ms Brown could see problems. She offered unsolicited advice throughout. She was not silent when it came to the execution of the media strategy. Far from it. Her contributions included:

> *In relation to the suicide belief, which Ms Young herself described in LL 10 as 'such a controversial statement' (T 4.9), Ms Brown advised that 'you are heading down the right path in couching it in .. those terms.' (T 4.30).* This was Ms Brown's offering in relation to a controversial issue. It was unsolicited.
>
> *'I'm apprehensive for Pam' (T 8.26).*
>
> *'You care what happened to Scott' (T 9.1).*

[58] T 6409-11

The unidentified speaker, which seems to be Ms Brown, advises against pursuing the Johnson family connections (T 28.34 – 29.5).

Yeah, so they've personally targeted – they made it known to people they don't like Pam and I. (T 31.7).

153. And it was not just a dry run of what Ms Alberici wanted. There was a list of key talking points that Ms Young wanted the opportunity to address. And she would. Ms Alberici encouraged Ms Young to say what she wanted, even if the answer was non-responsive. For example:

> *Look at politicians: they don't care what my question is; they say whatever they want … I'm saying employ a bit of that. (T 6.20)*
>
> *Okay, let me just see if there was anything else you wanted me to scope over before we go (T 29.11).*

Ms Alberici must have been looking at some notes to say that. Two questions are then asked – the value of information provided by the Johnson family and their claim that people do not suicide when naked. (T 29.16-39)

154. Ms Young knew full well what the boundaries would have been if the interview was authorised. She knew that matters extraneous to her statements were off-limits. And she knew it during LL 10. She never used the word 'kowtowing'. And she noted this:

PY *Again, the Johnson family are very special.*

EA *What do you mean?*
PY *Don't use that.*

Ms Young knew full well that criticism of the Johnson family was inappropriate to say on the record. Ms Brown counselled against it as well.

155. Ms Young knew full well that the use of the word 'kowtowing' would be inappropriate, even if said off the record. And, consistent with understanding, she did not use that word during LL 10. If she did, Ms Brown would have advised her against. Just as she would have during the 5pm call if the comment about being tempted to use that word was anything other than a joke.

156. Ms Brown knew full well what the Special Commission wanted her to address in her statement. That included LL 10 and what authorisation Ms Young had to contact the

media.[59] Ms Brown made no suggestion in her statement that LL 10 was authorised, let alone explain why[60]. This was something that should have been taken up by her with PMU.

157. This interview was part of Ms Young's media strategy. Ms Young did not tell PMU or Mr Willing that LL 10 was recorded in some way and might be used to promote a studio interview.[61] Why not?

Between 10 April and 12 April

158. Even after LL 10, neither PMU nor Mr Willing were told that the interview on the 10th had been recorded[62]. Or might be used as a promotion for a studio interview. Ms Young and Ms Brown deliberately kept this from them. They were aspects of the interview that were not part of backgrounding.

159. In these couple of days, Ms Young says she confirmed LL 13 if the triggers occurred. That means, for that whole period, she continued to keep her private media strategy from the PMU. The only person that knew was Ms Brown. Ms Alberici, however, says that it was a week or so before LL 13[63] and at least by 8 April[64]. Ms Young, however, wants to place it on the other side of LL 10.

160. If Ms Young genuinely believed that *she* was authorised to participate in LL 13, surely she would have informed the PMU. Why did she not? For the same reason that she did not want an MLO at the 10th. So, no-one would be able to stop her.

161. What would have happened if Ms Young or Ms Brown told PMU? Either directly or because she informed Mr Willing who would have told them.

a. PMU would have asked Ms Young how this came to be;
b. The private scoping of the January lunch would have been revealed;
c. The unauthorised provision of the PYC to Ms Alberici would have been exposed;
d. The recorded background interview LL 10 would have come to light; and
e. Ms Young's refusal to permit an MLO would have been viewed completely differently.

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[59] T 6528.10-22
[60] T 6532.13
[61] T 6848.41-49.26
[62] T 6549.2
[63] T 6444.37
[64] T 6445.2

162. In other words, LL 13 would never have happened.

163. Under no circumstances would Ms Young or Ms Brown reveal this unauthorised media strategy before it went to air. If they did, everything Ms Young wanted desperately to say on air would be at risk. All of their work to date would have been wasted.

164. Ms Young had multiple opportunities and reasons to assert that Mr Willing knew about the studio interview in advance of 13 April:

a. In the near-immediate aftermath when senior police became concerned about the ramifications;
b. When contempt was being considered;
c. When Ms Young's future in the Johnson case was being considered;
d. When Ms Young was told to have nothing further to do with the Johnson case;
e. When Ms Young considered that Mr Willing had taken the weak option in not telling that to her face;
f. When the word 'inopportune' was being considered;
g. When Mr Willing then put his name to the media release which described parts of LL 13 as inopportune and which caused her to lose faith in him;
h. When she sued the State and made allegations around LL 13 in PYS;
i. The April statement; and
j. The September statement.

165. It cannot be accepted that PMU or Mr Willing knew about the studio interview in advance of 13 April. Unless he knew about LL 13 before the 13th, then the new evidence, being some of the evidence given by Ms Young, Ms Brown and Ms Alberici, cannot establish what is asserted.

166. Mr Willing was part of the 7 April email. He had not been told by Ms Young and Ms Brown what they had been up to from January with Ms Alberici. He had met with Kaldas and Kerlatec and the backgrounding strategy was approved. Finch did not read the 7 April email as authorising the interview. No sensible person could have. Such a tortured reading was also inconsistent with the Media Policy.

167. The discussion with Kaldas resulted in an approval for backgrounding. Personal feelings that he held towards Gallacher does not equate to approval for a studio interview. Kerlatec was present at the meeting. Therefore, neither of the addressees to the 7 April email expressed any belief that the media strategy encompassed a studio interview without any further approval. Much less that it authorised Ms Young to be the police officer to be interviewed.

168. If Mr Willing knew about the studio interview in advance of 13 April, he would have not only informed PMU, but also Kaldas. Mr Willing is the one who took the proposal to him. Any major change from that discussion, which was limited to backgrounding, necessarily obliged Mr Willing to update the Deputy Commissioner.

169. Personal feelings held by the Deputy Commissioner are also utterly irrelevant to the obligations Mr Willing had to his superior officer. Any such feelings do not obviate the need for further approval. If it was obvious that Kaldas would have given approval, all the more reason why anyone with prior knowledge would have protected themselves by obtaining approval from him. In any case, there is nothing to suggest that Mr Willing knew what Mr Kaldas thought of the former Minister. Or the Johnson family.

170. Mr Willing was not entitled to decide for himself something like '*Deputy Commissioner Kaldas will support Ms Young in a studio interview and that can be taken to be approval for Ms Young to conduct a studio interview even though to date police have only obtained his approval for backgrounding.*' The suggestion is patently absurd and reflects a misunderstanding as to how police hierarchy works. The chain of command is not satisfied because an officer believes that the senior officer *would* have given his approval.

171. There is also no evidence that Mr Willing knew how Kaldas would react to a controversial interview of Ms Young on LL 13. Was he supposed to predict the future? How was he supposed to justify why he did not follow the chain of command after the event? Was he supposed to say: *'I just assumed that Deputy Commissioner Kaldas would not have a problem with a highly controversial and problematic interview given by Ms Young on the national broadcaster so I did not see the need to ask him for approval to move from backgrounding to on the record.'*?

172. And just because Kaldas expressed those views after the event, privately, does not mean that he would have been prepared to *approve* that formally.

173. During LL 13 Ms Young, without approval, revealed the private thoughts of a Deputy Commissioner in relation to Gallacher. She agreed when asked that Kaldas had never expressed those views publicly. No doubt if Gallacher remained the Police Minister as of 14 April 2015, the Deputy Commissioner of Police would not have said publicly what he told Ms Young privately. Even after the Gallacher removal, and despite the corruption cloud hanging over the former Minister, Kaldas had not publicly expressed the views he had expressed privately.

174. What this means is that Mr Willing did not have authority from Kaldas for a studio interview prior to it being aired. It was incumbent on him to seek that authority if he was aware of LL 13. He did not seek that authority from this superior because, like PMU, Finch and Kerlatec, he did not know about the studio interview. He obviously would have asked Kaldas if he knew.

175. If the questions posed by Counsel Assisting of Mr Willing regarding Kaldas' message on the 14th were correct, Mr Willing would have had complete confidence that such approval would have been given. And all the more reason why Mr Willing would have obtained that approval as soon as he knew about LL 13.

13 April - Glebe

176. The State Coroner ordered a Third Inquest. This now meant that a homicide finding was a real possibility. It also meant that the PYC would be tested. And that Ms Young's beliefs would be tested.

177. By 8 April, Ms Alberici says she had an explosive exclusive. That entailed an understanding that Ms Young would not say anything explosive to anyone else on the record before LL 13. That is what Ms Alberici conveyed in her email and evidence.

178. LL 10 had taken place. And the studio interview had been locked in, subject to the trigger. By the time of the doorstop, that trigger had been pulled.

179. In order to ensure that the exclusive remained with Ms Alberici, it is obvious that Ms Young could not speak frankly with anyone else. And she did not. She only spoke to the ABC.

180. If Ms Young was fulfilling her duty to the police, she would have spoken to the media pack. She would have professed how happy the police were about the Third Inquest. Ms Young would have told the media pack precisely what she said in relation to the obvious first question:

> *The NSW Police are very pleased about the decision today. We're very much looking forward to having the Inquest.*
>
> *From March last year we were hoping that the Coroner would consider this, and we wrote to him in March last year to bring it to his mind. It's very good today that that's happened and we very much look forward to the public of New South Wales getting to scrutinise the facts of the matter.*

181. This was a textbook answer. Entirely consistent with the bland yet important message that the police wanted the public to understand. One which would also help undercut a suggestion of police resistance to the Third Inquest. And the best way, despite Ms Young's unwillingness to admit it[65], was to say this to a media pack and get in on the nightly news programs and stories of multiple news organisations.

182. It is no surprise that Mr Willing authorised Ms Young to give a doorstop to say this. This is consistent with what Ms Wells understood Mr Willing had authorised.[66] Ms Young had no authorisation to go any further.[67] He knew she could deliver the textbook answer.

183. Ms Young told Ms Wells and Mr Willing that the media pack had gone. That is why the Media Release was necessary. Ms Young was not correct when she said in evidence that one would have gone out anyway. Ms Wells wrote (emphasis added)[68]:

> *… door stop(ped). This didn't occur and I issued a media release* ***instead****.*

184. And given that Ms Young contacted PMU during the day about the media, and LL 13 was already organised with Ms Brown and Ms Alberici for later that day, why did Ms Young *not* then tell Ms Wells about the studio interview? What rational reason could there be other than *deliberate concealment*?

185. And, given the concealment, why would Ms Young and Ms Brown reveal it to Mr Willing? Who would obviously tell PMU, exactly as he properly did immediately after the 5pm call?

186. Counsel Assisting is submitting that Ms Young lied to Mr Willing (and PMU) on the 13th in a matter concerning media. And yet told him the truth about LL 13 later that day. Even though *none* of her statements suggest that she told Mr Willing (or PMU) anything about LL 13 before the 13th.

187. If Mr Willing knew about LL 13 in advance of 13 April, as Ms Young, Ms Brown and Ms Alberici claim, why would Ms Young lie to Mr Willing about the media pack having left as Counsel Assisting submits? Why would she lie to PMU about that?

188. The best way for the police to get the messaging out for the 6pm news was for a doorstop to the media pack. That was the obligation that Ms Young had as part of her

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[65] T 6850, 6853
[66] T 6322-6323.5
[67] For example, T 6339.14
[68] Tab 372

responsibilities. She deliberately eschewed it. There was no good reason to do so. Ms Young did so because she had her own plans with Ms Alberici. And this was consistent with the footage of Ms Young and Ms Brown being taken when no-one was else was there. Now, only the ABC had that footage.

189. More importantly, the ABC now had an exclusive interview from the Coroner's Court with Ms Young. Ms Wells was correct to so describe it.[69] It was then put to Ms Wells that that was another assumption. Again though, she was correct. And on the information she had, a rational conclusion. It could hardly be said to be illogical or irrational and yet accurate.

190. Ms Alberici was at Glebe. There was no other ABC journalist at the Coroner's Court.

191. Ms Alberici is the one who had promised the explosive exclusive interview on 8 April. She was invested in delivering it. And she was the only person at the ABC who knew the content. Who knew what Ms Young wanted to say. Who knew what questions to ask.

192. Ms Young explicitly stated in her September statement that the doorstop was conducted by Ms Alberici. It was only contamination from the evidence of Ms Brown and Ms Alberici that caused her to, allegedly, wonder. Ms Alberici, knowing what it was that was asserted in relation to the doorstop, denied being the interviewer[70]. But when told what Ms Young had said, left open the possibility that it was her.

193. The camera was an ABC one. An extract from the doorstop was played on the 7pm news. There is no doubt that the interviewer was from the ABC.

194. So, who was it? There was only one journalist there from the ABC. The same journalist who was heavily invested in retaining her explosive exclusive. And the speaking footage was used to promote the Lateline interview to be conducted by Ms Alberici.

195. Ms Alberici claimed that was not the sort of thing she would do. Her job, she said, was for research and in the studio, not 'outside a Coroner's Court'.[71] This was another disingenuous answer. And another example of how it is not possible to rely on the evidence of Ms Alberici.

196. Ms Alberici was the reporter Juanita Phillips referred to. It was exactly her job, not only *outside* the studio, but also *outside* the Coroner's Court. This explanation for why it

[69] T 6343.31
[70] T 6851-52
[71] T 6247.30

was not her who conducted the door stop must be rejected. Only when this was pointed out to her by Counsel Assisting did she admit her role outside Court.

197. This was akin to Ms Alberici's claim that she would not cover a story without a studio interview and therefore her involvement always included an on the record component. This was wrong in that it necessitated an on the record interview *with police*. As wrong as her suggestion that she understood police media policy.

198. Ms Alberici went on to report on the Coronial Inquest.[72] That did not involve an interview *with* police. It never required one. The whole point of backgrounding is to sway the journalist to provide a favourable, or at least more balanced, coverage. It does not require an on the record interview at all. Backgrounding is used by organisations to television channels all the time, without an interview or even indirect reference.

199. So, if it was not Ms Alberici, who does she suggest it could be? The *cameraman* was said by Ms Alberici in evidence to be *'likely'* to have asked the questions after she had gone[73].

> *... indeed, it's likely that the cameraman asked a question after I was gone ...*

200. That was offered as a serious proposition. The person who waits outside Court all day to be able to shoot footage at a moment's notice.

201. Ms Alberici repeated the cameraman line when questions were asked on behalf of Mr Willing.[74]

> *So, it's in all likelihood not the case that I was there, that it was just the cameraman, you know, getting what we call a grab, a quote from the detective involved.*

202. That evidence from Ms Alberici was absurd. She knew full well that it was not a cameraman who asked those pointed questions. Questions which happened to be the ones that Ms Young wanted asked.

203. Counsel Assisting did not test this proposition, but rather continued with offering Ms Alberici the chance to reject propositions being put on behalf of Mr Willing. Testing the proposition, and exposing its unreality, would have supported the contrivance that Ms Young, Ms Alberici and Ms Brown engaged in to ensure an exclusive and controversial door stop with Lateline.

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[72] T 6259.7
[73] T 6256.38
[74] T 6456.10

204. The door stop took place after the media pack had left. This was during the part of the day that Ms Brown and Ms Young were unable to properly account for.

205. Ms Alberici says therefore that it was likely that a cameraman asked the following questions:

> *Counsel assisting the Johnson family, John Agius, suggested in court today that police had been resisting a third inquest and were actually calling for the court to reject the application.*
>
> *Are you actually saying that you called for a third inquest?* (This was a follow-up question.)
>
> *We also hear in court that after your two-year investigation - that you have suggested that a new inquest will deliver no different finding to that which was established in 2012 by Deputy State Coroner Carmel Forbes. Can you tell us how you arrived at that conclusion, given we haven't had another inquest yet?*
>
> The answer to this question was partially played on the 7pm news.

206. These questions were asked by someone across the brief. A journalist who was covering the matter. There is no evidence that any ABC cameraman was familiar with the material. Or was provided questions to ask, irrespective of the answer. Is it seriously being suggested that a cameraman with notes could have even asked these questions, which included a follow-up question, without knowing the matter? Is it being suggested that he or she held the camera with one arm and then read pre-prepared questions being held in the other arm instead of looking through the camera?

207. Ms Young knew who interviewed her. That is why she said in her statement that the doorstop was conducted by Ms Alberici.

208. The PMU understood that the doorstop was conducted by Ms Alberici. That was in April 2015. And that information could only have come from Ms Young or Ms Brown or the call between Mr Willing and Ms Wells. For example, at 618pm on 13 April, Ms Wells sent Mr Gordon an email. Her information could only have come from Mr Willing:

In addition to the media update re SF: Macnamir. Det Ch Insp Pam Young spoke to Emma Alberici from ABC Lateline on camera today. The reporter also spoke with Steve Johnson. Both are to appear on tonight's Lateline.[75]

209. This is a contemporaneous record which is consistent with the oral evidence given by Ms Wells and Mr Willing. It is consistent with Mr Willing's Ashurst notes and what Mr Willing said in evidence in May.

210. The 618pm email is a contemporaneous document which also proves that Ms Alberici conducted the door stop. This further undermines the evidence she gave as well as that of Ms Brown. Ms Brown knew full well who asked the questions from the ABC. Ms Brown gave dishonest evidence when she said that Ms Alberici was not there.

211. In Summary, the only reasonable conclusion as to who conducted the doorstop at Glebe for the ABC is Ms Alberici.

212. The more interesting question is why Ms Alberici denied it.

213. And why Ms Brown said in evidence that Ms Alberici was not there.[76]

214. The evidence of Ms Brown that Ms Alberici was not there was patently untrue. Ms Brown knew that the doorstop was conducted by Ms Alberici. And yet she denied that and positively asserted Ms Alberici's absence.

215. And Counsel Assisting asserts that Ms Alberici and Ms Brown are reliable witnesses. This issue alone exposes that submission. We also know that Ms Young lied in evidence about not calling Ms Wells and Mr Willing and telling them that the media pack had left. Why are the three of them lying about what happened at Glebe? And what happened during the hours that Ms Young and Ms Brown spent there? Why are those details not accurately recorded in the Duty Book? The nebulous entry 'Court duties' is inaccurate. Court had finished by lunch, as had the conference.

216. Ms Young should have given a door stop to the media pack. That was what was in the best interests of NSWPF. She did not. Instead, she waited for the media pack to leave. The only organisation that stayed was the ABC. If footage of Ms Young was required, the ABC could have shot them walking into Court, earlier that day. No doubt the other media organisations would have done exactly that.

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[75] Tab 362 NPL.0138.0002.3238
[76] T 6556

217. Ms Brown claimed that she would not have volunteered to be in an organised shot[77]. No-one has ever suggested that she did. The point was that the doorstop was organised with Ms Young to take place after the media pack had left. However, the text from Ms Young to Ms Wells and Mr Willing about the hair and lipstick on Ms Brown looking good does not sit well with the claim of Ms Brown that she would have actively avoided being in camera shot. And the footage shows Ms Brown walking closest to camera, in front of Ms Young. If Ms Brown wanted to avoid being filmed, she could have easily stayed back and allowed the cameraman to only shoot Ms Young. Ms Young was the only police officer of interest from a media perspective.

218. The reference to Ms Brown's hair and lipstick is only consistent with Glebe footage and not a studio interview, despite the questions asked of Mr Willing and Ms Wells on behalf of Ms Young. Ms Young was hardly going to reveal LL 13 in these texts when she had deliberately avoided telling PMU to date, including that *very day* when she spoke with Ms Wells *about media*.

219. The media pack left. The ABC stayed, with a cameraman. Ms Alberici stayed. Why was she spending time at Glebe in those circumstances when the pack had gone? When she had a show on that night? Because she knew that she had an exclusive doorstop to conduct first. To get a grab which could be used to promote LL 13 during the 7pm news. To ask the questions the three of them wanted to go to air. Including the completely unwarranted and personal attack on Senior Counsel representing the family of the deceased. Maybe it was in-house legal which decided that certain answers should not be broadcast.

220. This doorstop took place at the time that neither Ms Young nor Ms Brown can properly account for. What a coincidence that is. Ms Brown claimed that she and Ms Young left Court '*very late in the afternoon, near closing of the Court*'.

221. It is not known what time the doorstop took place. However, it took place after the media pack – which Ms Young chose to avoid – had left. It is clear that a number of hours are unaccounted for at Glebe that afternoon by both Ms Young and Ms Brown. The evidence as to what happened that afternoon from the two of them, and Ms Alberici, was wholly unsatisfactory. Nor was it consistent with the Duty Book entry as to what Ms Brown did and when.

222. What was said by Ms Young to the ABC at Glebe was highly inappropriate and sensational.

[77] T 6497.13

EA *Counsel Assisting the Johnson family, John Agius, suggested in Court today that police had been resisting a third inquest and were actually calling for the court to reject the application.*

PY *I found that quite amusing. It's certainly not based in any fact, so I'm not sure why he used that line. Maybe he thought it might be interesting to the waiting media.*

223. When questioned on behalf of Mr Willing as to this, Ms Young gave this evidence:

MT *So what you were doing was saying he's said something that wasn't accurate and that perhaps he said it for the benefit of publicising his client's interests to the media? That's what you've said there isn't it?*
PY *I've said those words that appear there. They're my words, yes.*

MT *And you were taking the opportunity to say something quite inappropriate?*
PY *Really?*

MT *Your reaction to that question is what you have there said about Mr Agius was entirely appropriate?*
PY *Yes, because he misrepresented the facts about the police position resisting the third inquest.*

...

MT *And so what you were doing there was taking the opportunity to denigrate the lawyer for the Johnson family.*
PY *No.*

224. The answers given by Ms Young during the exclusive door stop are exactly what a journalist would want to hear. Ms Young openly questioned the integrity of a senior lawyer acting for the Family.

225. Ms Young had, and continues to have, no sense of judgment or responsibility. Her view is that she is entitled to say anything she believes. And if something goes wrong, that is the fault of others.

226. Ms Alberici's questions at Glebe continued:

EA *Are you actually saying that you called for a third inquest?*

PY *.... In fact, the first reaction from Scott's family was to be quite cross at us for having approached the Coroner without consulting them first, and I got the impression from their first responses that they weren't ready to have an inquest considered at that stage without their go ahead.*

227. On behalf of Mr Willing, Ms Young was asked about this answer:

MT *Do you think that was an appropriate thing to say at a door-stop on the record?*
PY *It's factual.*

MT *That's not what I asked. Was that appropriate to say at a door-stop on the record?*
PY *Yes.*

228. Ms Young did not have authority to defame Mr Agius. Nor did she have authority to say what she did about the family. She maintained the position that she did nothing wrong. This time, she could not blame Mr Willing. This time it was the fault of Mr Agius and the family.

229. This door stop was conducted during the hours which Ms Brown and Ms Young do not properly explain. It was conducted by Ms Alberici who will not admit it was her. It contained questions which were controversial and provided an opportunity for Ms Young to say what she wanted about the family and their lawyer.

230. But it did not stop there. Ms Young wanted to say what the State Coroner's findings should be as well.

EA *We also hear in Court that after your two year investigation – that you have suggested that a new inquest will deliver no different finding to that which was established in 2012 by Deputy State Coroner Carmel Forbes Can you tell us how you have arrived at that conclusion, given we haven't had another inquest?*

231. By this stage, the State Coroner had announced the Third Inquest. The Media Policy, and normal decorum, would necessitate a refusal to answer such a question.

232. But this was part of Ms Young's media strategy. She wanted her message out there. And she wanted to undermine the message the Johnson family wanted out there. Which she also assisted in doing by questioning the motivations of the family and their Senior Counsel.

233. She was asked on behalf of Mr Willing why she would answer this question[78].

MT *So you're saying that anything that was in your statement was something that you could comment on on the record the day the Coroner – even after the Coroner had announced the inquest.*
PY *And made my coronial statement public.*

MT *Yes*
PY *Yes*

234. Bizarrely, Ms Young maintained that she could say on the record, what had been said in open court by Senior Counsel appearing for NSWPF. By that logic, an OIC could participate in an interview about a case once a prosecutor presents the Opening Address.

235. Despite her refusal to accept the following proposition in her evidence, Ms Young gave her opinion at the doorstop as to what the findings should be. She pointedly *omits* homicide from a possible finding[79]. Not only does she impermissibly speak about the findings the State Coroner was looking at, Ms Young expressly leaves out the one the family was seeking. The one she disagreed with.

236. By the time of the 5pm call, Ms Young had told Ms Wells and Mr Willing that she had missed the media pack. She never corrected that information until the 5pm phone call. Ms Wells therefore issued the media release. This went out[80] before she received the call from Mr Willing after 5pm.

237. Ms Young talked about the possible causes of death during this doorstop. This was also a breach of the Media Policy. She was not permitted to state or imply suicide. That was a matter for the Coroner. She was not authorised to do so. She would do the same later that day during LL 13. Ms Young's excuse that that limitation only applied to *'fresh matters'*[81] cannot be accepted. That interpretation would undermine the purpose of the policy and the jurisdiction of the Coroner.

238. Ms Young was also content to question the motivations of Senior Counsel appearing for the family. Like her unprofessional intrusion into the jurisdiction of the State Coroner,

[78] T 6857.19
[79] T 6858-59
[80] Tab 361
[81] T 6677.17

Ms Young was conducting her own media strategy. Ms Brown was there every step of the way. And the only other person who knew and was involved, was Ms Alberici.

239. Far from resiling from the submission previously made about the contrived doorstop at Glebe, the evidence from Ms Brown, Ms Young and Ms Alberici has only served to flesh it out further.

The 5pm calls

240. Counsel Assisting has changed his position in relation to this call over time. It was first asked about in February. It was returned to in May. And then again in October.

241. By the time Ms Alberici gave evidence, the statements of Ms Young and Ms Brown had been served. They both confirm what Mr Willing has always said - that the call took place on the way to the ABC, and therefore, before the studio interview had been recorded. Consistent with the Duty Book entry of Ms Brown.

242. Notwithstanding that, Counsel Assisting would not accept that even when Ms Alberici confirmed the same by saying that the interview was not recorded in the afternoon but the evening[82]:

> *CA* *... record an interview ... I understand was the one on Monday afternoon.*
> *EA* *It would have been Monday evening, not in the afternoon.*

It is not clear on what basis Counsel Assisting was able to put *'I understand'*. There is no evidence that the interview took place on Monday afternoon. Ms Young did not even arrive at the ABC until at least 5pm.

> *CA* *Yes, I'll come to the timing. Late afternoon, early evening.*
> *EA* *It would have been in the evening.*
>
> *CA* *Moving now to later in the afternoon or perhaps evening when the .. interview ... was recorded*[83]

243. The questions in February were put on the basis of the PYS. That statement was not disclosed at the time. Despite Ms Young saying in that statement that the call was made *on the way* to the ABC, it remained undisclosed when CAS 1 were filed and, remarkably, even when Mr Willing filed submissions. It remained undisclosed even though a

[82] T 6235.5
[83] T 6250.22

challenge had been made to Mr Willing in May that by the time of that call, the studio interview had been recorded.

244. The failure to disclose extended to the April statement, where the same was said by Ms Young. The only explanation provided for that non-disclosure has been that the Final Report was due. With respect, that is an utterly untenable reason for a failure to disclose relevant information from the person on the other side of the call. Especially when the person had put the version into statements which were prepared for use in the Supreme Court and then the Special Commission. Both statements professed to tell the truth. And those undisclosed statements supported Mr Willing's evidence in May that he was *not* told that a studio interview *had been recorded*.

245. In CAS 1 [435], it was suggested that perhaps Mr Willing was mistaken in February – when he agreed with what Ms Young had written in PYS. Of course, Mr Willing and his representatives were not to know at the time that that was where the questions emanated.

246. The submission was made by Counsel Assisting that perhaps Mr Willing was mistaken. To help make good that submission, Counsel Assisting relied on the accuracy of the Ashurst notes. Which meant, without saying so, that PYS was also wrong. CAS 1 also relied on those notes at CAS 1 [446]. And also, at CAS 1 [450] – *'given the clarity of the dot point notes'* and CAS 1 [451] – *'Mr Willing's dot points – being a near contemporaneous record of his knowledge and understanding at the relevant times, are to be preferred ….'.*

247. At that time, Counsel Assisting wanted to argue that what Mr Willing said in February and May were inconsistent and chose to rely on the May evidence. However, PYS and the April statement both said that Ms Young told Mr Willing she was *on her way* to the ABC. All the more reason why the PYS and April statement ought to have been disclosed.

248. What CAS 1 did not consider was whether both statements were made by Ms Young. That is, as said in February, she was *on her way* to the ABC. And, as said in the Ashurst notes and the May evidence, she *had recorded an interview* with the ABC. We now know, as a result of Ms Young and Ms Brown being called to give evidence, that both statements were in fact *correct* and *both* said. And now, as they have been called to give evidence, consistent with what Ms Wells understood and what Ms Alberici said as to the timing of the recording of the interview.

249. CAS 1 [447-48] submitted that Ms Young told Mr Willing that she *'had recorded an interview'* with Ms Alberici at Lateline *at the ABC*, that afternoon. This submission was made even though Counsel Assisting used the PYS to question Mr Willing and the PYS

said something very different. That is, that the call was made *on the way* to the ABC. By the time CAS was filed, the April statement, which said the same thing, had been sent to the Commission.

250. We now know, that as at the 5pm call, the studio interview had *not* taken place. So, when Counsel Assisting relies on Mr Willing being told that Ms Young had recorded an interview with the ABC, the *only* possibility is the door stop. Which is what Mr Willing says. And what Ms Wells says. And what Ms Young says. And what Ms Brown says. And what, with respect to timing, Ms Alberici says.

251. When first questioned about this in February, Mr Willing did not have the Ashurst notes to refresh his memory. It is unfair to put to him in October that he did not say what was recorded in those notes at a time when he had not had a chance to read them.

252. Is it really being suggested that if Mr Willing had the benefit of the Ashurst notes in February, that he would not then have said that Ms Young told him she had recorded an interview with the ABC? Of course he would have.

253. As Mr Willing said in May - in relation to the interview which had been recorded, as stated in his Ashurst notes, referring to the door-stop[84]:

Commissioner	*And when did you put that proposition together – your analysis, just a moment ago, either that she's told you an untruth or it happened later?*
Mr Willing	*When I went through these documents that had been provided to me.*

254. Mr Willing was entitled to give a version after refreshing his memory. After all, the call had taken place eight years earlier. In CAS 1, Counsel Assisting submitted that the Ashurst notes were contemporaneous and accurate. In CAS 2, Counsel Assisting submits that the Ashurst notes are relevantly, and deliberately, inaccurate.

255. Mr Willing said in May that Ms Young told him she had recorded an interview with the ABC. She had. Only one had been recorded by then. The doorstop. Ms Brown agrees that Ms Young would have told Mr Willing that. Ms Young agrees she may have. She agreed she was updating Mr Willing with what happened at Glebe, there being no reason to leave out the doorstop. It would have been odd to leave that out of the update, especially given the earlier call to Mr Willing where she said that the media pack

[84] T 3776.36

had gone. Additionally, a grab from the doorstop would be on the news. Ms Young *had* to let Mr Willing know about the doorstop.

256. Mr Willing said in evidence in February (emphasis added):

> *So my understanding was that she was going to go and talk to her, as planned, the way she had the other journalist.*[85]

257. Mr Willing made it clear in February that he understood that Ms Young was on her way to speak to Ms Alberici as part of the backgrounding process – *'the way she had the other journalist'*, Dan Box. And yet Counsel Assisting put this in October:

> *CA* *And I suggest to you that you originally accepted, back in February, that she rang you on the way to the ABC and said 'I'm about to go and speak to Emma Alberici'?*
> *MW* *Yes, on background.*
>
> *CA* *You didn't say that in February?*
> *MW* *That's my – that's what I believed it was.*

258. Counsel Assisting was wrong.

259. Mr Willing *did* say that in February. He said that Ms Young told him she was going to speak to Ms Alberici *'the way she had the other journalist'*. It is uncontroversial that the other journalist was Dan Box. And it is uncontroversial that Dan Box was spoken to for *backgrounding* only and *not* on the record.

260. The premise at the heart of Counsel Assisting's challenge to Mr Willing was wrong.

261. When CAS 2 [228] asks what else could Ms Young be going to the ABC for, the answer is obvious. The 7 April media strategy wanted more balanced reporting. The most important day needing balanced coverage was 13 April. It was well known within NSWPF that the Johnsons would be going on the record that day. The point of backgrounding was now acute. It had to continue on the 13th or the whole point of the media strategy was wasted. That is why Ms Young would be on her way to the ABC on the 13th.

262. If the evidence of a witness is to be rejected because the witness did not give the same answer when previously asked, then the evidence of Ms Young, Ms Alberici and Ms Brown would have to be rejected. For example, in PYS, Ms Young said she was *'likely'* to

[85] T 1720.42

use the kowtowing if asked[86]. In the April and September statements[87] she said, however, that she might be '*tempted*' which is naturally less certain. Is Ms Young's evidence to be rejected? When various statements of Ms Young, Ms Brown and Ms Alberici notably exclude reference to what was later asserted in oral evidence, should they be rejected. Counsel Assisting has not challenged Ms Young, Ms Brown or Ms Alberici on the basis used to challenge Mr Willing.

263. But perhaps the most misconceived aspect to the challenge by Counsel Assisting of the evidence of Mr Willing is that everything Mr Willing has said, at various times, about the 5pm call has been *correct*.

264. Mr Willing has said that Ms Young told him he was one the way to the ABC. Despite challenges previously to that evidence, he has proven to be correct. It is now beyond doubt that the studio interview took place after the 5pm call. And as Ms Brown's Duty Book entry is to be believed, that also states that the call was made on the way to the ABC.

265. Mr Willing has also said that on the call, Ms Young told him that she had recorded an interview with Ms Alberici. Counsel Assisting relied on this phrase to assert that that meant that Mr Willing knew about the studio interview because that was the recorded interview he was referring to. This was put, in questions and CAS 1, despite Counsel Assisting having both the PYS and April statement which both said that the call took place *on the way* to the ABC.

266. The *only* interview that *'had'* been recorded by the time of the 5pm call was the doorstop. Something that Mr Willing had authorised and therefore would have expected.

267. In summary, Counsel Assisting has challenged the evidence of Mr Willing that the call took place before the studio interview. This is despite putting the opposite position in February and not disclosing two statements of Ms Young which said the opposite.

268. Mr Willing, with the benefit of the Ashurst notes, added that Ms Young told him that she recorded a doorstop at Glebe. Despite challenges to that suggestion, it is a fact that she had. And given it was noted during the Ashurst interview, it can hardly be said to be evidence given in May which should be regarded as 'additional' in a sceptical sense. He was refreshed by a near contemporaneous note of his own. And what he was able to refresh his memory with, was accurate. It was not 'additional' in an unreliable sense at all. To the contrary.

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[86] PYS [120]

[87] April statement [58] and September statement [119]

269. Further, Ms Brown accepted that Ms Young would have told Mr Willing about the doorstop[88]. This is the witness that Counsel Assisting says is reliable.

> *MT* *So Ms Young would have said to Mr Willing "Oh look, I've answered a few questions at a doorstop in Glebe"? Firstly, there is no reason not to tell him that.*
> *PB* *Oh, no, she would have said that.*
>
> *MT* *It did happen?*
> *PB* *It did happen, yes.*
>
> *MT* *It did happen?*
> *PB* *Yes*
>
> *MT* *And there was no reason not to tell him?*
> *PB* *Yes*
>
> *MT* *.... it would be proper of Ms Young to inform him of that, wouldn't it?*
> *PB* *Yes, and she would have.*

270. But CAS 2 *ignores* what Ms Brown says even though it is a critical issue - and yet Counsel Assisting rejects Mr Willing's evidence saying the *same thing*.

271. Ms Wells told Mr Gordon, that Ms Alberici had conducted a doorstop interview with Ms Young. That information could only have come from Mr Willing. Which in turn, could only have come from the 5pm call. And when Mr Willing was able to refresh his memory from the Ashurst notes, he was able to give that evidence.

272. That is, Counsel Assisting rejects Mr Willing saying he was told about the doorstop even though:

a. The doorstop, in fact, did happen;
b. Ms Young had earlier told him that the media pack had gone so had to correct that;
c. The doorstop would be on the news in part thus exposing the original calls to Ms Wells and Mr Willing about the doorstop not taking place;
d. she was generally updating him as to what had happened at Glebe[89];

[88] T 6557
[89] T 6866

e. there was no reason not to tell Mr Willing about the doorstop – in fact she had to[90];
f. Ms Young accepts that she may have told Mr Willing about the door stop which to her knowledge Mr Willing did not know about at that stage[91];
g. the Ashurst notes which CAS 1 regarded as accurate confirm same;
h. Ms Brown, the witness Counsel Assisting submits is credible, agrees that Ms Young would have said that on the call; and
i. Mr Willing told Ms Wells about the call and Ms Wells noted that Ms Alberici had conducted a doorstop with Ms Young.

273. It is a surreal submission made by Counsel Assisting that Mr Willing was not told about the doorstop interview during the 5pm call.

274. Ms Young accepted that she may have said this. She was, after all, updating him as to what had happened at Glebe and she knew that he would not have known about the doorstop. There was no reason not to tell him. And the only other communication was that the media pack had gone which meant that a doorstop had not taken place. There was every reason to update that information because the position had changed.

275. Further still, Ms Young and Ms Brown knew that the doorstop would be on television that night, at least on the 7pm news. They had to tell someone of that fact. Especially given the earlier communication that the media pack had gone.

276. Therefore, Counsel Assisting's challenge to the evidence of Mr Willing that he knew that Ms Young had recorded a doorstop was misplaced. There was every reason for him to be told that. Which is a good reason why he would have believed that. And why he told Ms Wells exactly that. Ms Young and Ms Brown had reason to tell him, and they would have.

277. In summary, Ms Wells and Mr Gordon believed that an interview had taken place. That could only have come from Mr Willing. Consistent with the dot point notes, an interview had been recorded by this stage. The only interview that had been recorded at that stage was the doorstop at Glebe. It is also now uncontroversial that the call took place when Ms Young and Ms Brown were on their way to the ABC. Therefore, the other part of what Mr Willing believes may have been said was also accurate and also relayed to him by Ms Young.

278. As at 5pm, Mr Willing had no reason to believe that Ms Young had not complied with the Media Policy and all other authorisations.

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[90] T 6865
[91] T 6866.1-9

279. It is hardly surprising that Mr Willing now says that he may have been told what he said in February *and* what he said in May. In May, he never denied also being told that Ms Young was on her way to the ABC. He agreed with the proposition put in February that he was told by Ms Young she was on her way to the ABC. When the dot points surfaced, he agreed he was told that she 'had recorded an interview'.

280. Before he gave evidence the third time, where Counsel Assisting expects his evidence to remain unchanged, relevant witnesses had further refreshed his memory.

281. By the time Mr Willing gave evidence in October, Ms Brown had given evidence that Ms Young told Mr Willing that she was on her way to the ABC to give an interview *and* agreed that Ms Young would have told Mr Willing that she had given a doorstop. Further, as noted in CAS 2 [227], Mr Willing only went so far in his evidence as to say Ms Young *may* have said both. This situation may have arisen because of the compelling evidence and logic from Ms Brown that Ms Young would have said updated Mr Willing about the door stop.

282. The evidence of Mr Willing was entirely consistent with the evidence of Ms Brown and not at all inconsistent on these issues with the only other person on the call, Ms Young. Also consistent with what Ms Wells was told and also consistent with the Ashurst notes. And also consistent with what happened.

283. Counsel Assisting's criticism of the Mr Willing saying that he was told that Ms Young was on her way to the ABC and had recorded an interview is misconceived. The two matters were factually correct, and Ms Young had every reason to tell him both things. Neither Ms Brown nor Ms Young deny it. In fact, to the contrary. Ms Brown says that Ms Young would have said that. Ms Young agrees she may have. Ms Wells also understood it that way, as did Mr Gordon.

284. Mr Willing was being asked about a conversation which took place eight years before, while driving, when he had other matters on his mind. He had attended an significant funeral that day. In February he did not have the benefit of his Ashurst notes. In May he did. He also had the benefit of considering other material. And has had more opportunity to do that since May. And in October gave evidence in unusual circumstances.

285. Mr Willing, as per his duty, called the PMU straight after this call. He spoke to Ms Wells.

286. Until Ms Wells received the call from Mr Willing at about 5pm, she understood that no door stop had taken place - because of what Ms Young had told her. After she received the call from Mr Willing, she assumed that Ms Young spoke to the media sometime after the call she had with Ms Young.[92] That assumption was correct. The assumption made sense to her she said because that was the *only* authority Ms Young had. It fit with the reference in the call with Mr Willing to an interview Ms Young had participated in. As Ms Wells said[93]:

> *Because that's all [quick grabs only, along the lines of the media release] that had been approved, was for a door stop with grabs to take place.*
>
> *But I assumed she would have done one later [doorstop] when I had the conversation with Michael Willing.*

287. Ms Wells told Ashurst that Ms Young had told Mr Willing that Mr Steve Johnson also spoke. We know that he also gave a doorstop at Glebe and did not appear in studio that night. This was consistent with Mr Willing's text to the State Coroner where he did not distinguish between the interviews of Ms Young and Mr Johnson. Both of them had given doorstops.

288. Ms Wells's assumption, was correct, and properly based. It was the only authority that Ms Young had.

289. And yet Counsel Assisting put to Ms Wells:

> *CA* *Wouldn't the more natural, more obvious, more straightforward assumption to have made be not that some door-stop had happened at some point after Ms Young told you there wasn't a door-stop but, rather, that Ms Young had spoken to Lateline in some other way?*
> *GW* *No*
>
> *CA* *Why not?*
> *GW* *Because all that had been approved was a door-stop.*

290. Why was Counsel Assisting not accepting what Ms Wells said when her assumption was, in fact, correct? And what she said was consistent with the statements of Ms Young and Ms Brown?

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[92] T 6323.24
[93] T 6326.47 – 6328.43

291. Why was Counsel Assisting suggesting that some other form of speaking to Lateline was the assumption she should have made? By the time of this call, the studio interview had *not* been recorded. Counsel Assisting was putting a proposition that was impossible – Ms Young had not even arrived at the ABC by the time of the call. Ms Young could not have spoken to Lateline *'in some other way'*.

292. This is another example of Counsel Assisting refusing to accept the evidence and persisting with the theory that the studio interview had been recorded by the time of the 5pm phone call – and therefore Mr Willing knew that the studio interview had been recorded because that is what Ms Young told him. Counsel Assisting will not accept that the evidence from Ms Young, Ms Brown, Ms Alberici, Mr Willing, Ms Wells, the ABC emails and the Ms Brown Duty Book are all inconsistent with the assumption he asked Ms Wells to make.

293. Ms Wells records, at 6.18pm, that both Ms Young and Mr Johnson are to appear on Lateline. There was no further update in her information after the 5pm call. Her record was accurate. There were two doorstops with Lateline.

294. CAS 2 [216] states that parts of CAS 1 do not turn on whether the 5pm call was before or after the interview. That the gravamen of those submissions was whether Mr Willing was shocked and surprised. How would that issue fall within the Terms of Reference? *A fortiori* when no challenge was made by Counsel Assisting to Mr Willing linking his reaction to LL 13, or even any knowledge of LL 13, to any other strike force or gay hate?

295. Perhaps Counsel Assisting originally relied on the file note written by Mr Gordon eight days later. The person who noted in his document at the time that he had a poor memory. That matter has now been resolved by the further statement from Mr Gordon.

296. Mr Gordon was told by Ms Wells about an interview having taken place. He has confused that with the studio interview when reconstructing thoughts in his head over a week later. His only source of information could have been Ms Young via Mr Willing and Ms Wells. That is, the 5pm calls. The studio interview had not taken place by this time. The doorstop with Ms Alberici had.

297. The word interview was used. Counsel Assisting has submitted that must have only been referring to a studio interview. That is not correct. Mr Willing's text to the State Coroner makes clear that he used the word *interview* to describe the backgrounding interview with Dan Box.

298. Ms Young and Ms Brown both said Ms Young would not use the word backgrounding in that context. Ms Young said that she would always use the word *'interviewed'* not *'backgrounder'*[94].

299. Police describe backgrounding meetings as interviews[95]. Therefore, the use of the word '*interview*' during the 5pm call equally refers to backgrounding. And Ms Young agreed that rather than say *'pre-recorded interview'* as per her statement, she might have just said *'interview'*.[96] Ms Young has never before said that she used the phrase '*pre-recorded interview'* on that call. Nor has Ms Brown. Ms Young did not use that term in her oral evidence.

300. And it could not be sensibly suggested that backgrounding was not required on the 13th. It was the day which most required the police getting their message out. That was why Mr Willing has always been correct when he said that he thought Ms Young was continuing with the backgrounding at the ABC on the 13th. She was going to see the same journalist she had been seeing already.

301. Ms Brown agrees that she never communicated with PMU or Mr Willing in relation to LL 10, the Glebe doorstop or LL 13 prior to the 5pm call[97]. Again, this does not sit with her claim of *hallway conversations* between 8 April and 13 April.

302. Nor does Ms Brown have a memory of Ms Young telling her that she had communicated with PMU or Mr Willing in relation to any of the three interviews before they took place.[98] And there is certainly no note of any such communication involving PMU or Mr Willing.

303. Ms Young agrees that she did not say on the 5pm call that the interview she was going to do was to be broadcast.[99] That is consistent with further backgrounding. And in none of her statements, had she ever said that she had told Mr Willing about LL 13 in advance of the call.

304. The combination of those two facts is that Mr Willing was *not* told about LL 13 before the program went to air.

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[94] T 6867.1-12
[95] T 6502.1
[96] T 6697.26-34
[97] T 6550.42-51.2
[98] T 6551.4-13
[99] T 6699.8-17

'kowtowing'

305. The first issue is that the potential use of the word *kowtowing* is irrelevant because Mr Willing understood that Ms Young was on her way to the ABC to continue backgrounding. The Third Inquest had just been announced.

306. The media strategy clearly had not finished. The possibility of speaking on the record had already been floated. It was known that the Johnson family would be engaging with media that day, irrespective of the decision of the State Coroner. The police messaging was still important. The media strategy would have been pointless if it finished on the 10th.

307. Therefore, the normal and sensible course of events would dictate the backgrounding would continue after the announcement of the Third Inquest. It would have been surprising if Ms Young was not speaking with Ms Alberici after the announcement. Therefore, floating the possibility of using the word '*kowtowing*' was irrelevant – even if it was not a joke.

308. This was a three way conversation as described by Ms Young. That is, she accepted that each of them was speaking[100]. Ms Brown, on the hand, denied that she spoke. She claims that Mr Willing did not know that she was there[101]. That evidence cannot be accepted. CAS 2 [226] refers to this conversation between Ms Brown and Mr Willing but omits all of this relevant information.

309. The reason that is important is because Mr Willing later told Ms Brown that he did not know that Ms Young would use the word '*kowtowing*'. The context of that discussion is not known. But it speaks directly against what Ms Brown and Ms Young claim, especially in relation to '*encouragement*'. As Ms Young said, it would not even be appropriate to use that word with a journalist off the record.

310. Given the three way conversation, Mr Willing could not have said that privately to Ms Brown unless he believed that Ms Young was joking. It would be pointless to say that to Ms Brown unless he genuinely believed it because she was on the call. Knowing that, that is why Ms Brown falsely claimed that Mr Willing did not know she was in the car during the 5pm call. But he did. It was a three way conversation. Why would she have kept silent during that call, which updated events from the day?

311. Ms Brown's claim that during this later private conversation she retorted, must be rejected. She did not include that conversation in her statement or Duty Book or any

[100] T 6865.19-31
[101] T 6563.38

email. Given its import, she obviously would have if true – at the very least as a comment related to the entry she made on the 16th. And for the same reason. But there is now evidence of Mr Willing telling Ms Brown at the time that he did *not* believe Ms Young would use the word kowtowing.

312. That evidence is consistent with any reference during the 5pm call to the potential use of the word as 'kowtowing'. The reality is that they would have all laughed. However, Ms Young and Ms Brown want to place a different narrative to the conversation.

313. Ms Young's view is that it would be inappropriate to use the word 'kowtowing' on the record[102]. She said (emphasis added):

> *I didn't use that word [with Dan Box].* ***I don't think even I would use that word with a journalist, even if it was off the record****, but I certainly emphasised the influence …*
>
> ***I would have thought it was inappropriate to use then****. I was more descriptive of the influence than just saying 'kowtowing'.*
>
> ***I would have thought, no, that might be a bit inappropriate****.*
>
> *… something stopped me using that word …*

314. Ms Young was very clear that she knew that it would been inappropriate to use that term, even off the record.

315. Ms Young also knew that all she could do was speak to her statement. The issue of the Minister favouring the family was not raised in her statement. Therefore, no-one else could have understood that she would canvas that topic as it was outside the boundaries of any authority.

316. Everyone who knew Ms Young would have known that she would understand her authority and faithfully adhere to it. *Her own words* about how using the word 'kowtowing' to a journalist would be inappropriate make it clear that Mr Willing had no reason to believe, on the 5pm call, that Ms Young was going to use the word. It would have been inconceivable. He could never have thought it any more than a joke.

317. When asked why she used the term on LL 13 she said:

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[102] T 6689.47-90.22, 6691.44

I can't figure. It's a good question. I don't have an answer for it.

318. This was a very important answer. It revealed that Ms Young had not premeditated the use of the word on LL 13. It was not something she had turned her mind to before the recording of the interview. It therefore was not in contemplation before or during the 5pm call. If it was, she would have known why. And would have said why.

319. The reality is that Ms Young said what she did on the 5pm call as a joke. One could easily imagine that scenario. Mr Willing understood she was continuing the backgrounding, so it was both funny and inconsequential. But even Ms Brown would have known that Ms Young could not have been serious.

320. Ms Young accepted that Mr Willing had no authority to allow her to use the word 'kowtowing':

MT You knew that he had no authority to allow you to say that right?
PY Yes, probably – highly likely, absolutely. I'd even go that far.

321. In circumstances where Ms Young agreed that Mr Willing had no such authority, there would no point *'raising it'* with him during the 5pm call for permission. She knew she had no authority. She knew he had no authority. 'Raising it' with him in that sense was pointless. That claim what not asserted in the days, weeks or months after LL 13. It remains self-serving.

322. If Ms Young was interested in authority in case she was tempted to say that, she would have contacted PMU. After all, she was someone who would not do something without authority she says. And Ms Brown says.

323. The reason she did not seek proper authorisation is because she knew it would never be given.

324. It is not in dispute that it was inappropriate to say that in relation to a former Police Minister.

325. It is utterly irrelevant that Gallacher by then was in the shadow of a corruption allegation. It had no bearing whatsoever on Ms Young's use of the word. At no time has she ever said that she felt that took some risk away for her or police. Or was otherwise relevant to what she said on LL 13. She had no idea of that issue facing the former Police Minister[103] and it played no part in her use of the word.

[103] T 6648

326. It is quite possible that some of the Police Executive initially had no difficulty with the former Minister being criticised like that because he was no longer in the job. But ultimately, any such complacency was dispensed with. The worm turned and the heat was on. And the burning issue was the use of the word '*kowtowing*'.

327. Which was why, on the 16th, Ms Brown made the entry in her Duty Book. And yet, the entry makes no suggestion that '*kowtowing*' was in anyway encouraged by Mr Willing. It does not record any response by him whatsoever.

328. Undoubtedly, if there was any relevant response, or '*encouragement*', that would have been noted. There would be no point, however, recording a laugh - which could never constitute encouragement – especially when the person laughing believes the interview is for backgrounding on the most relevant day for backgrounding, and had no authority to approve a studio interview.

329. It was obvious to everyone who knew her that Ms Young would not use the word *'kowtowing'* on the record. There was no evidence from Ms Brown to suggest she counselled Ms Young against it before or after the 5pm call. Despite giving advice during LL 10. That is entirely consistent with the three of them having a laugh.

330. One can easily imagine, and understand, Ms Young saying in a joking way that she would be tempted to put the Minister in his place in that way. It is precisely the suggested use of an unimaginable word which makes her comment amusing. Laughing in response to something which cannot possibly be taking seriously, cannot constitute encouragement.

331. What is also important is that Mr Willing had never expressed the view that the former Minister had '*kowtowed*' to the family. Mr Willing had never expressed a view of the former Minister which was negative. He therefore had no personal grievance with the former Minister. He held no negative position. Why then would his laughter be taken as encouragement? How could it? Mr Willing had no reason to encourage Ms Young in that regard.

332. Ms Young was obviously not authorised to denigrate the former Minister or family. She agreed that the 7 April email did not authorise her to criticise the former Minister.[104] She agreed to that when questioned by Mr Tedeschi KC.

[104] T 6747.10, 6748.27

MT *Do you agree that this email did not give you authority or permission to criticise the Minister of Police or a former Minister of Police?*

PY *Yes*

333. Ms Young was known to be hierarchical. It was obvious that she did not have this permission. It was obvious that she could not criticise at all, let alone the way she did. It was obvious that she could not use the word '*kowtowing*'. So why then would she be '*running it past Mr Willing*'? She was not. At best, she was joking.

334. It was certainly not in the interests of Mr Willing for Ms Young to create a problem for NSWPF. Encouraging Ms Young in the way she now claims would have done precisely that. It would have added fuel to a political fire.

Lateline interview

335. Ms Young has never accepted responsibility for anything she did in relation to LL 13. It was only when pressed at this Commission did she finally, albeit reluctantly, admit the occasional breach.

336. Ms Young's insistence that criticism of the former Police Minister and the family was connected to PYC was untenable. Like what she said at Glebe, she will find some reason, no matter how wrong, to justify her actions.

337. Ms Young knew full well that any public comment was constrained by what the Coroner had released from her statement. Her claim, that by referring to the Minister in her statement that justified the explosive comments she said[105] on the record, was dishonest. Similarly with respect to the family. The claims are so untenable that they could not be reasonably held.

338. Ms Young also chose to out the private views held by a Deputy Commissioner of the former Minister. She was not authorised by the Deputy Commissioner to reveal these views, previously only privately held. But incredibly, she maintained that the 7 April email authorised what she said[106]. Not only can this not be accepted, but it shows that what Ms Young maintains her authority was also cannot be accepted as a reasonably held view. Or that it was ever held.

339. The further problem was that by not identifying which Deputy Commissioner it was, aspersions were cast on an innocent party.

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[105] T 6701-02, 6724-27

[106] T 6869-70

340. If Ms Young is to be believed that she deliberately raised the word '*kowtowing*' in the 5pm phone call, why did she not raise the reference to the privately held views of the Deputy Commissioner? Why did she not raise that in advance with Kaldas?

341. Ms Young did not have authority to even appear on LL 13, let alone say what she did. She had no authority to criticise the former Police Minister. She had no authority to criticise the Family. She had no authority to address matters which the State Coroner was now considering. She had no authority to reveal what a Deputy Commissioner thought of the former Minister.

342. Ms Young said what she wanted, whenever she wanted. She was not concerned by authorisation. She would not have listened to an MLO because it was her way not that of the PMU. She had her own agenda, her own media strategy. She executed that media strategy without authority. She only confided in Ms Brown. No-one at PMU knew about it. She never claimed Mr Willing knew about it until September 2023.

343. As she had done earlier in the day at Glebe, without warning or notice, Ms Young spoke as she saw fit. She there chose to denigrate Senior Counsel acting for the family and commented on the findings she thought appropriate and possible. Those possibilities, notably, did not include homicide.

344. Ms Young executed her media strategy with only Ms Brown in the loop and in attendance for every relevant engagement with Ms Alberici. Everyone else was kept in the dark about what she would say at the doorstop. Everyone else was kept in the dark that the only journalist she would speak to at Glebe would be Ms Alberici. And we are supposed to believe that she gave advance warning to Mr Willing that she might use the word *kowtowing* in a *studio* interview?

345. Ms Young has addressed the issues concerning LL 13 authority in multiple statements in different jurisdictions. She has not said that Mr Willing knew about LL 13 in advance of 13 April in her:

a. PYS
b. April statement
c. September statement

346. Not even in her September statement for this Special Commission.

347. Ms Young does not say in any of those statements that PMU knew about LL 13 before it went to air.

348. Ms Young tacked to her present position orally.

349. Is it a coincidence that Ms Brown did the same thing? Is it a coincidence that Ms Brown's statement also makes *no* reference to Mr Willing knowing about LL 13 in advance of 13 April? No reference, for example, to the hallway conversations she gave oral evidence about. Ms Brown is as unreliable as Ms Young.

350. Ms Brown was not able to offer any detail as to when these conversations took place. Apparently, they did not warrant inclusion in her statement or Duty Book at the time. A consideration of Mr Willing's dairy and what he told Ashurst leaves very little opportunity for any conversation in the hallway, let alone multiple conversations. On the 8th, once Ms Brown came back from a long break from work, he was very busy. On the 9th his daughters were in the office, and he was there for only four hours. He was not in the office 10-12 April.

351. Is it a coincidence that Ms Alberici claims to have had discussions with PMU as early as February? Is it a coincidence that Ms Alberici's statement fails to nominate Mr Willing in several answers that are wholly inconsistent with her oral evidence which does assert knowledge on the part of Mr Willing?

352. Ms Alberici knew full well that Ms Young was prepared to sacrifice her career over this. That was why Ms Alberici described her as being brave. It is clear from what Ms Alberici said in her own statement. Ms Alberici's attempts to shift in evidence from the obvious meaning of what she herself wrote cannot be accepted, notwithstanding the leading questions asked of CA[107].

> *And that's partly because, I take it, as you say lower down that page, under the heading "As to question 3", you thought that she was not there as a leaker but, rather, was indeed, speaking in a way that the police wanted her to speak.*

353. That leading question picked up an answer to Question 3 when the relevant answer was given in Question 2. It also assumes that Ms Young was a whistleblower on behalf of her colleagues. If that was the case, why was PMU kept in the dark? And what does this whistleblowing have to do with 'gay hate bias'?

354. Ms Alberici's claim that PMU knew about the statement being provided in February must be rejected. Mr Willing's diary for the 8th also undermines her evidence that she spoke with PMU and Mr Willing for an hour about the issue with The Australian must be

[107] For example, T 6234.3

rejected. Her evidence that PMU knew about LL 13 in advance cannot be accepted either. In those circumstances, her evidence that Mr Willing knew about LL 13 in advance must also be rejected. She never told anyone at the ABC that Mr Willing knew about the LL 13 interview. Either before or after. Not in her 8 April email or otherwise.

355. Q4 that the Commission asked Ms Alberici to answer was another straightforward question (emphasis added).[108]

> *Any communications or dealings between you and NSWPF media **or** other personnel (**apart from** Ms Young and Ms Brown) in relation to arrangements for either or both of the two interviews, at any time in 2015, including as to how the interview of 13 April 2015 would be conducted (for example whether it would be a **sit-down interview** in the studio or in some other form); and whether it would be for **broadcast**, or only as an off the record backgrounder, or otherwise). Please identify **any** such NSWPF personnel with whom you had **any** such communications, and when.*

356. Mr Willing denies that he falls into this category. Ms Alberici did not mention Mr Willing in her answer. But magically Ms Alberici does in her oral evidence, without challenge when questioned by Counsel Assisting or criticism in CAS 2.

357. The dealings with PMU were said to be '*minor*'. And no mention of Mr Willing was made in her answer. Ms Alberici claimed that the question was asking about arrangements[109]. This answer was patently false. The question clearly asked for substantive communications as well when it asked:

> *… and whether it would be for broadcast or only as an off the record backgrounder or otherwise …*

358. When pressed on this part, Ms Alberici continued to evade the question[110]. Her evidence was self-serving and dishonest. CAS make no reference to these questions and answers.

> *MT* *I just want to confirm, you're saying that you had discussions with Mr Willing in advance of 13 April 2015 about the fact that it would be a sit-down interview on TV – yes or no?*
>
> *EA* *Yes*

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[108] T 6446.3
[109] T 6447.13
[110] T 6447-48

MT *So if that's true, why have you not identified him in answer 4 in your statement?*

EA *Because answer 4 specifically says 'arrangements' for the interviews ....*

359. Ms Alberici *finally* agreed that Q4 asked for more than people involved in 'arrangements', but only after the relevant part of the question was read out for the *third* time.[111] She gave non-responsive speeches rather than answering the question, as the transcript records.

360. Given her acceptance of the inevitable as to the breadth of the question, we return to the original proposition. Why was Mr Willing not included in that answer then? Why was this new position only raised in oral evidence? Why has CAS not analysed this critically? Counsel Assisting simply relies on the oral evidence and ignores the problem that, again, if the evidence of Ms Alberici were true, reference to Mr Willing would have to have been made to *specific* questions answered in her statement. Ms Alberici is unreliable. And we also have the disappearing, partially reappearing text messages.

361. CAS 2 state that Mr Willing knew about LL 13 in advance. For the reasons above, that finding cannot be made on the evidence. But what CAS 2 do not address is:

a. How did he find out?
b. When did he know?
c. Why did he not tell PMU?
d. What motivated him not to tell Kerlatec, Finch and Kaldas?
e. What did he know Ms Young would say? Was it anything more than what would have been permitted at the doorstop?
f. Why would any possible reference to *'kowtowing'* in the 5pm phone not be a joke?

362. CAS fails on any account to logically answer, on the evidence, these obvious questions. To any standard, let alone *Briginshaw*.

363. Ms Brown's evidence as to what Ms Young said during LL 13 was unpersuasive.

364. Ms Brown said that LL 13 was authorised because Ms Young would never do something unauthorised[112]. And Ms Young falsely claimed that she would obtain authority if she needed authority[113]:

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[111] T 6451.7
[112] T 6504.1
[113] T 6841.35

a. Even Ms Young has admitted that she did things which were unauthorised. She admitted that she was not authorised to reveal views held by the Deputy Commissioner about a former Minister revealed to her privately.
b. Ms Young accepted she was not authorised to use the word '*kowtowing*' to criticise the former Minister. Ms Brown was watching this at the ABC studios.
c. No-one could possibly argue that Ms Young was authorised to say what she did on the record about Mr Agius SC. Ms Brown was there for the doorstop.
d. Ms Young was not authorised to comment on what findings she thought the Coroner should make.
e. Ms Brown knew that Ms Young was required to limit what she said to Ms Alberici to her PYC.[114] Ms Brown knew full well that Ms Young went outside the statement during LL 10, the doorstop at Glebe and LL 13. And yet she maintains that Ms Brown never went outside her authority with Ms Alberici. That position is indefensible. Ms Brown is not a credible witness.

Ms Brown could not have genuinely believed that Ms Young did not exceed her authority in relation to the Johnson investigation. While that may have been her normal approach, '*hierarchical*' as Mr Willing said, it was not how she conducted herself in the Johnson matter. And Ms Brown was there every step of the way.

365. Ms Brown agrees that she never told PMU or Mr Willing that there would be a studio interview if the statement was released.[115] This does not sit well with her new claims about hallway conversations.

366. Ms Brown also claims that the absence of an MLO during *LL 13* was an agreement between Ms Young, Mr Willing and PMU.[116] Firstly, there was no basis whatsoever for this evidence. It was patently incorrect with respect to Ms Alberici, let alone LL 13. Secondly, Ms Brown specifically brings Mr Willing into this supposed agreement. Ms Young does not suggest any such agreement. Why does Ms Brown give this evidence which is clearly wrong? She does so to protect Ms Young and to point the finger at Mr Willing, even though there was, again, no basis to do so. Ms Brown engaged in this dual behaviour throughout her evidence.

367. Further in relation to LL 13, Ms Brown said that the use of the word *'kowtowing'* was controversial. Ms Young's belief in its accuracy was irrelevant to that issue. However, Ms Brown said that the criticism of the family was not controversial '*because it was true*'.[117] By that logic, if the Minister was '*kowtowing*' to the family as Ms Young believed, then

[114] T 6553.47-54.8
[115] T 6549.16
[116] T 6555.13-22
[117] T 6505.1-16

that also would not have been controversial. According to Ms Brown, the only other person who could have held the view that the Minister had *'kowtowed'* was Olen and he also held that view.[118]

368. Ms Brown knew full well that the Special Commission wanted her to address any issue of authority in her statement regarding LL 13. And yet the only reference in her statement to any suggestion of authorisation is what she said about the 5pm call.[119] And yet, Ms Brown not only gives far different evidence about authorisation – pointing at Mr Willing – she did not say any of that in her statement.

369. Further, there was no testing of this new evidence by Counsel Assisting. Why did he not challenge the absence of this '*damning*' evidence from her statement? No explanation was even sought let alone given. Ms Brown has embellished her evidence in the witness box with two, related, motivations. Support Ms Young and tell lies about Mr Willing's involvement and knowledge.

370. And how does this issue at all fall within the Terms of Reference of this Special Commission? Ms Young's controversial comments had *nothing* to do with gay hate bias. She was complaining about the priority given to an influential family over hundreds of equally deserving families. It would not have mattered if Scott Johnson was heterosexual or female. Further, she says, rightly, there was no evidence of homicide. And the ultimate evidence of homicide could not have been discovered earlier.

Aftermath

Immediate need to appease Ms Young

371. Immediately after LL 13, Finch sent an email to the relevant people –Gordon and Kerlatec – at 10.24pm. It read:

> *So – the question is who organised – and approved Pam Young's interview with Emma Alberici? What was the purpose of it?*

372. This email was put to Mr Willing and he was asked why he had not sent or raised something similar that night.

373. Yet Finch still sent this text to Ms Young:

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[118] T 6505.42
[119] T 6537

Hello Pam. I know you are very upset with the media statement. A request was made to de-personalise it and refer only to support for the good and hard work that had been done. Unfortunately that battle was lost. Don't let this get on top of you. You have a lot of support and that has not diminished. I know you may not want to speak to anyone at the moment, but I'm happy to do so whenever and if you feel like talking. Regards Ken Finch.

374. The fact that Finch was not happy with the interview did not stop him from supporting Ms Young in her time of need. That is what leadership is. That was the multi-faceted role that people like Finch and Mr Willing had at that time.

375. Dealing with Ms Young was not an easy task as the evidence bears out. Mr Willing had to call her repeatedly to be able to speak with her. And Ms Young expected that everyone should be aiming to completely exonerate her. And a failure to do so would be taken personally, never forgotten or forgiven.

376. Ms Young's personality was such that she needed appeasement at this time. Mr Willing described doing so in relation to the 'win' text messages. Finch was doing so despite his clear problem with the LL 13. Mr Willing had a welfare role when he called Ms Young on the 14th. She would not have taken criticism from Mr Willing well at that point, if ever. No doubt he had to worry about her mental health, the risk of her leaving the police and the acute problem at hand.

377. It was to Mr Willing's great credit that he did not deny telling her that day that the interview was good. He could have easily denied it, despite having little or no memory of the conversation. The reason he could not deny it was obvious – the same as had applied to the 'win' texts. Appeasement. That call had a welfare component, if not solely, then certainly principally. Mr Willing could not tell her the truth – she was not ready for it and would never have accepted it. Her evidence makes clear that her refusal to accept the inappropriate nature of her comments during the doorstop and LL 13 remain to this day.

378. His appeasement and welfare role may have included what Ms Young now claims he ssaid. But an unwillingness to lie and deny the attributed comment does not mean that he therefore said it. Mr Willing was prepared to concede that he may have said this, and this frank concession is telling. Mr Willing is a reliable witness and should be accepted.

379. The most telling piece of evidence, however, comes from Ms Young herself. In the PYS, she specifically refers to that call and specifically says that Mr Willing told her that

the COP was '*fairly relaxed*'. If Mr Willing had also said that, it would undoubtedly have been included in that paragraph[120].

380. Not only that, despite the huge controversy and personal stakes, at no point prior to her oral evidence has Ms Young ever claimed that Mr Willing made those comments to her. Not even in the September statement, despite her knowledge that there was a significant contest over what was said during the 5pm call, who knew what about LL 13 and what they thought of it[121].

381. And, like Finch, being supportive towards Ms Young after LL 13 does not equate to agreement, much less knowledge, of what she did and said in relation to LL 13.

Media release

382. Ms Wells correctly anticipated that the media would pursue the police position after LL 13. She was proactive as expected in her role. She and Mr Willing were liaising with the office of the COP. This was a wider issue than Ms Young. It was a public relations nightmare because it involved criticism of a Minister and the family of a deceased person.

383. The email that was drafted was not for the purpose of reflecting the feelings of Mr Willing, Ms Wells or Mr Gordon. This was a release designed to represent the police. A release that plays down adverse criticism of the police and its frontperson on a major matter.

384. As Ms Wells said, '*there were other considerations*'.[122] One of those was that, at that stage, Ms Young was the lead police officer in the Coronial Inquest which had just been announced. As Ms Wells pointed out, there was no benefit to NSWPF to severely criticise Ms Young because that would have impacted the entire matter going before the Coroner.[123] As she said[124]:

> *The police had to distance themselves from the personal comments, the ones … about the Minister and the family … but still support that this was a thorough investigation undertaken by a very experienced detective.*

385. The rival tensions were obvious. But ultimately, the stakeholders needed to retain confidence *in the investigation*. That necessarily meant that Ms Young had to be praised

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[120] T 6872-73
[121] T 6874.1
[122] T 6350.1
[123] T 6383.43
[124] T 6384.6

for her work. There *had* to be support for her experience and investigation so that the police would not be compromised and criticised before and during the Inquest.

386. The suggestion that the draft release reflects support for the interview is illogical and fails to grasp what Ms Wells, a media relations employee, knew was required. There was a bigger picture. Even if people, after the fact, do not have a problem with what was said during an interview of some sort, that does not mean they knew, much less approved it. The unknown problem is the risk of a severe adverse reaction.

387. Ultimately, there was a criticism in the final version of the release. Someone decided that had to happen. And that Mr Willing would have to wear the word *'inopportune'*.

Ms Alberici

388. Question 7 posed to Ms Alberici asked (emphasis added):

> *Any communications (written or oral) between you and **any** NSWPF officers or staff (**including** Ms Young, Ms Brown and NSWPF **media** personnel) following the broadcast of the Lateline episode on 13 April 2015, including the **identity of those** persons and the **content** of what was said and when.*

389. Ms Alberici's explanation for not referring to Mr Willing was[125]:

> *... so I wasn't really thinking that – of the relevance of Mick Willing in this regard.*

390. This answer was another lie. The question was very clear. Ms Alberici gave evidence of admissions by Mr Willing, all oral of course without corroboration. If those conversations were true, which they are not, she would have included them in this answer. She could not have omitted Mr Willing.

391. When she started her evidence, Ms Alberici confirmed that her statement was true and correct[126]. Her statement itself says that the statement was true in every particular to the best of her knowledge and belief. She also checked her statement before signing it.[127] The answers she gave were her true and complete answers she said.

> Ms Alberici's answers to questions 2, 3 and 4, make no reference to Mr Willing. Neither does her answer to question 7. However, in oral evidence, all of those

[125] T 6451.38
[126] T 6225.47
[127] T 6404.11-19

answers refer to Mr Willing in detail. She had to agree that every one of those written answers, in her 'true and complete' statement, should have included Mr Willing if her oral evidence was true.

392. Why is new oral evidence given by Mr Willing a basis to reject his evidence? But new oral evidence given by Ms Alberici and Ms Brown to be firmly embraced?

393. There are reasons to accept the new oral evidence from Mr Willing. There is no explanation for why the statements of Ms Alberici and Ms Brown did not include the inculpatory positions they took orally. Each of them could have been asked to explain these absences by their own lawyers or Counsel Assisting. The failure to ask these questions means that their omissions are unexplained and speak strongly against the reliability of each witness.

The 'win' texts and Ms Brown

394. The 'win' texts have been characterised in a particular way by Counsel Assisting. Neither Ms Young nor Mr Willing agreed. Counsel Assisting rejects both in either CAS 2 or CAS 1.

395. This was another example of Ms Brown giving evidence which avoided reality in order to support Ms Young. As noted in CAS 1 [355]:

> *Mr Willing accepted that it was 'very clear' that DCI Young regarded the Johnson family as 'opponents' of the NSWPF in relation to the third inquest. He accepted that she had the view that 'one objective of the police in the third inquest would be to defeat the Johnson family by convincing the Coroner that it was not homicide'.*

396. Counsel Assisting embraces this evidence from Mr Willing. Ms Brown would refuse to admit the obvious.

397. Counsel Assisting took Ms Brown to the 'win' texts over several pages of transcript until a successful objection.[128] Ms Brown rejected each of Counsel Assisting's propositions. This was a rare occasion when Counsel Assisting challenged Ms Brown.

398. Why is there no submission from Counsel Assisting that Ms Brown's answers should be rejected? If a series of questions were asked, and positive propositions put, Counsel Assisting's position must be that Ms Brown should have agreed with him.

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[128] T 6484-87

399. CAS 2 [158] states that the evidence, including denials by Ms Brown, tend to support the submission that Ms Young and Mr Willing wished to defeat the Johnson family by resisting a finding of homicide, particularly gay hate homicide. Surely that submission cannot exclude Ms Brown? The evidence in the preceding paragraphs included Ms Brown throughout, including the unprompted answer she gave which emphasised that it was not a gay hate homicide.

400. Either Ms Brown's evidence helps support Mr Willing and Ms Young in this regard or Counsel Assisting's position must be that the evidence given by Ms Brown must also be rejected. If the former, it should have been incorporated into the assessment of what Ms Young and Mr Willing said. In the way that Counsel Assisting has done on the occasions when he has asked witnesses questions about documents that they have not been directly involved in.

401. Counsel Assisting has taken the position that Ms Young wanted to defeat the Johnson family. He has explained why. By his logic, the evidence of Ms Brown, which rejected the propositions, should be rejected.

Ms Brown, her Duty Book entry and her failure to complain

402. The Duty Book entry of Ms Brown was made on the 16th, when Ms Brown next had her shift. That was the evidence she first gave when asked by Counsel Assisting.[129] The evidence suggests that was the case given the unlikelihood of her carrying her Duty Book with her, the absence of detail and the correction of two dates. The Duty Book entry recorded the words used by Ms Young, not the interpretation placed on those words by Ms Brown.

403. By the 16th, there was significant controversy over the use of the word '*kowtowing*'. It is no surprise that this entry was therefore made. Perhaps it provided some cover for Ms Brown if she needed it.

404. The claim by Ms Brown that she wrote this entry before the controversy had erupted[130] cannot be accepted. Ms Brown admitted she was aware of the '*inopportune*' reference in the press release the next day[131]. She had already said that she wrote the entry on the 16th. The controversy was well alive by then.

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[129] T 6502
[130] T 6503.34
[131] T 6523.20

405. The evidence of Ms Young that she had no communication with Ms Brown between 13 and 16 April cannot be accepted[132]. Ms Young accepted that she was extremely distressed in the 48hrs after LL 13[133].

406. Ms Young certainly knew it was controversial well before the 16th. That is why she has now claimed that she had no contact with the person most heavily involved in LL 13 between the 13th and the 16th. That was patently false. As was Ms Brown's evidence that the controversy had not erupted before she made the note.

407. Ms Brown and Ms Young were obviously living this huge issue for Ms Young together. They were joined at the hip throughout - the January lunch, the provision of the statement, LL 10, the Glebe doorstop and LL 13. Ms Alberici came to the attention of Ms Young because of Ms Brown. Of course, they would have discussed the media release and the word '*inopportune*'. Ms Young was asking for help for herself *and* Ms Brown or 'Pen' as she called her[134]. And they clearly would have been discussing the role or Mr Willing given he was the one whom Ms Young was particularly upset with.

408. If Mr Willing had any knowledge or involvement as asserted in oral evidence by Ms Young or Ms Brown, it would have been shouted loudly and widely in the succeeding days, weeks and months. And in the civil suit. And in the evidentiary statement. And in the statements for the Special Commission.

409. Ms Brown knew, within a month of LL 13, that there was a difference of opinion within NSWPF as to whether or not LL 13 was authorised.[135] And so Ms Brown was asked if she told a single person that Ms Young was authorised because of the conversations she had given oral evidence about.

410. If what Ms Brown had told the Special Commission when asked by Counsel Assisting was in fact true, that Mr Willing was party to conversations and Ms Young was authorised, Ms Brown would obviously have told senior police. She would have defended her boss stoutly. Ms Young, no shrinking violet, would have been telling senior police exactly what role and knowledge Mr Willing had. And that Ms Brown was a witness.

411. If any of the evidence given by Ms Young and Ms Brown about Mr Willing's knowledge, approval and encouragement prior to LL 13 being aired were true, they would have told all relevant people and made notes precisely to that effect. After all, Ms

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[132] T 6757.1-4, 6756.15
[133] T 6756.11
[134] NPL.2017.0001.0033 – see text message from Ms Young to Mr Willing
[135] T 6525

Young would email herself relevant material and Ms Brown made a Duty Book entry on the 16th about '*kowtowing*'. They knew how to protect themselves.

412. But they had nothing to tell the senior police about Mr Willing concerning his knowledge and authorisation and encouragement despite all the reasons why Ms Young came to have a problem with him. Despite the pressure she was under in the days, weeks and months after LL 13 aired, including the possibility of contempt charges.

413. Ms Brown knew that her evidence concerning Mr Willing was not '*damning*' as Counsel Assisting submits. Ms Brown knew it was false. She knew she had never told anyone in police at the time or even since, notwithstanding her knowledge of the controversies.

414. So, what does Ms Brown say when asked the obvious question as to whether she told anyone. When she was tested, she said she told *Mr Willing*. That is, she claims that she told the person who she claims was *not* being upfront. The person hanging her boss out to dry. And *no-one* else[136]. That evidence was absurd.

415. This is the witness Counsel Assisting relies on as credible. The witness he relies on to reject Mr Willing. Ms Brown knows that anyone she told would have made a record and actioned it. So she cannot claim that because no such records exist and no-one had any reason to complain about Mr Willing.

416. But the position gets worse. Ms Brown claims that Mr Willing told her that he did not know that Ms Young would use the word *'kowtowing'*.[137] There is now evidence through Ms Brown of Mr Willing expressing that view '*shortly after*' LL 13. That is entirely inconsistent with the evidence given by Ms Brown and Ms Young.

417. She then claims, because it would be absurd of him to say that to her if false, that he did not know that Ms Brown was in the car during the 5pm call. That is, that he only said that because he did not know about the conversation she says took place at 5pm.

418. But that is exposed as another lie from Ms Brown. Ms Young put in her statement, and adopted orally, that the 5pm call was a *three way conversation*. There was no reason for it not to be. Ms Young was updating Mr Willing about what had happened during the day. No doubt Ms Brown was talking as well. Presumably Ms Young did her boss the courtesy of telling him who was part of the speaker phone conversation.

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[136] T 6526.40
[137] T 6526.28

419. So, Mr Willing knew full well that Ms Brown was part of the 5pm call. And he still said to Ms Brown that he did not know that Ms Young was going to use the word 'kowtowing'. He would not have said that if the evidence of Ms Brown and Ms Young as to the 5pm call was true. If he had encouraged the use of the word as they both claim.

420. If any of what Ms Young and Ms Brown say was true about these advance conversations and knowledge, Ms Young would have included it in her PYS. And she would have asked Ms Brown to put on a statement as corroboration. But if what Mr Willing says is true, then such conversations did not take place and they would not be referred to in the PYS.

421. CAS 2 [225] notes that Ms Brown was not the subject of any disciplinary action. Firstly, Ms Young went off sick and therefore that disciplinary investigation could not proceed. Secondly, the covert nature of what Ms Brown and Ms Young were doing with the ABC only became known in May this year.

Conspiracy

422. CAS 2 complains that NSWPF and Mr Willing ascribe conspiracies to certain allegations raised in CAS 1. CAS 2 points out that CAS 1 never used the word 'conspiracy'. Using other words to describe conspiratorial conduct does not mean that that is not what is being alleged.

423. CAS 1 reference different strike forces and investigations. Suggestions as to inadequate gay hate investigations and resourcing. A preparedness to test findings of gay hate deaths made by a Coroner. A common thread is alleged. Negative explanations, unbecoming law enforcement, are suggested. CAS 2 [82] notes:

> *Each is to the effect that a group of NSWPF officers … 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 of consequence.*

424. For example, CAS 1 [192]:

> *The conduct and outcomes of each of SF Macnamir (2013-2017), SF Parrabell (2015-2018) and SF Neiwand (2015-2018) as well as the history of the Bias Crimes Unit in its various guises since 2007, cast considerable light on the views and approaches of the NSWPF over time in relation to the LGBTIQ community.*

425. What light is cast from 2013-2018?

426. With these unspecified conclusions, however, the Scott Johnson death is then said to fall within the Terms of Reference. That is said to be so, notwithstanding the absence of gay hate motivation in the death and that the matter was not unsolved. And a complete absence of any suggestion that anyone involved in the Johnson investigation, was not motivated to solve the crime. Or was affected by gay hate bias. No such propositions were put to Ms Young, Ms Brown or anyone else.

427. Another example is at CAS 1 [237-38]. That the BCU had 3.5 to 4 staff when the police force had more than 16,000 officers. Presumably the submission is that inadequate resources were being allocated. What is said to be the cause of this in October 2015? Homophobia? If so, who was involved in the decisions with respect to BCU? What was the reason for the particular allocation, or non-allocation, of resources?

428. A further example is found at CAS 1 [352]. That SF Macnamir sought to cast doubt on the findings of Coroner Milledge which had so influenced the second Scott Johnson inquest. That is, a Strike Force set about undermining the findings in relation to three unrelated deaths in order to not make a finding of homicide in relation to Mr Johnson. What is being alleged is a conspiracy between certain police officers. A far-fetched and illogical one.

429. Perhaps what happened was that the available evidence did not prove homicide. No suspect was identified against whom a case, which could be established in Court, could be built.

430. This conspiracy is then overlaid with another, it is said, at CAS 1 [353]. That SF Neiwand, from 2015 to 2017, '*baselessly*' generated conclusions that the findings of Coroner Milledge should be disregarded.

431. The evidence then relied on are the '*win*' texts. Ms Brown did not agree with the formulation put by Counsel Assisting in this regard. Is she to be rejected? And if so, what does this say about her evidence generally?

432. The submission then made, at [359], that Mr Willing wanted to '*prevent a finding of homicide*' was not put to him. It is a baseless accusation. The police did not believe homicide because of the state of the evidence. Is it being suggested that if the evidence ultimately revealed in relation to Mr White was earlier available, that police would have not acted on it?

433. Another example is at CAS 1 [576] and [635] (emphasis added):

[SF Neiwand] was clearly aimed at discrediting both the work of Operation Taradale and Mr Page personally and discrediting the findings of the Taradale Inquest as well.

The actual (as distinct from documented) objective of SF Neiwand, as exemplified by what it actually did, was to attack and rebut the work of Operation Taradale and the findings of Coroner Milledge. That was also one aspect of what had been embarked upon by SF Macnamir ("putting to the test" the Taradale findings).

434. This submission speaks for itself. It submits that certain officers had a highly improper motive and were not interested in the truth. That they had an agreement between them to execute these plans and acted accordingly. A conspiracy.

New witnesses

435. Mr Willing did not assert that further witnesses ought to have been called. On behalf of Mr Willing, it was specifically submitted that reasons may have existed to explain their absence. What was pointed out was that the findings sought in CAS 1 should not be made without evidence from those witnesses.

436. On behalf of Mr Willing, reference was made to four persons. Each of those persons have now given oral evidence. Their importance was, with respect, always obvious. The Commission must have considered earlier whether or not they should be called. Especially in light of the challenge by Counsel Assisting of parts of the evidence of Mr Willing and the submissions ultimately put in CAS. No blame could possibly be sheeted home to Mr Willing because Counsel Assisting had made a decision not to call Ms Young, Ms Brown, Ms Wells and Ms Alberici. Nor should those submissions made on his behalf be grouped together with those from NSWPF in relation to other potential witnesses.

437. Contrary to CAS 2 [61c], it is not for a witness to afford procedural fairness to people that were not called as witnesses. Especially when the relevance of those people was obvious.

Parrabell and Neiwand

438. These matters will, presumably, be covered by the submissions from the NSWPF and those already made.

439. CAS 2 [343] refers to Ms Brown saying that Mr Willing established SF Parrabell. That was wrong. Why is she claiming that? This is another contest between Mr Willing and Ms Brown where Ms Brown cannot be accepted.

440. CAS 2 [266-268] refers to Ms Brown saying that there must have been some media around to explain why Neiwand was set up. An SBS documentary. But the SBS Deep Water documentary was brought to the attention of PMU and Mr Willing on 8 December 2015[138], some two months after Neiwand was established on 1 October 2015.

Conclusion

441. CAS 2 relevantly pose a number of issues in relation to Mr Willing:

- Did he know that a police officer would go on television;
- Did he know she was going to say that a former Minister was 'kowtowing' to a family;
- Whether he knew during a phone call that a police officer gave a doorstop which did in fact take place and the police on the call would have updated him with.

442. How do the resolution of any of these specific matters relate to the Terms of Reference?

443. As of April 2015, there was *no evidence* to suggest homicide. Ms Young was right. There was some evidence which suggested other possible causes of death. The submissions made by Counsel Assisting at the Inquest reflect the state of the evidence as it then stood.

444. The police view that it was not a homicide was not the result of a failure of objectivity. It was the product of a thorough investigation, which the Crime Commission concurred with. Many potential suspects were considered. Mr White was unknown. There was no evidence of homicide. There was no evidence of gay hate. And unless the ex-wife of Mr White came forward, that would remain the case to this day. And if she had not, people would still be arguing that this was a gay hate crime committed by a group of people.

445. There has been no suggestion, nor could there be, that the police investigation failed to find Mr White because of a gay hate bias.

446. The investigation did not stall because of any gay hate bias. It was suspended or classed within zero solvability because no leads were left to explore. The evidence which would later come out was not available to police prior to April 2015. It was not discovered during the Third Inquest.

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[138] NPL.3000.0012.0001

447. The findings made in the second and third Inquests were based on gay hate crimes committed in the area. Ultimately, they would prove to be irrelevant. Once those crimes are removed, suicide or an open finding were the only realistic findings available.

448. Ms Young's unauthorised conduct had *nothing* to do with gay hate bias. Nor did Ms Brown's. No such suggestion was made by CAS to either of them.

449. LL 13 also had nothing to do with gay hate bias. That was about telling the people of NSW that the Minister had behaved appallingly by forcing a strike force to be set up simply because the family was influential. No other family was given such access or priority. That was the basis of Ms Young's private media strategy. As she commenced delivering publicly, and also without authority, at Glebe.

450. At CAS 1 [393] it was submitted that Ms Young and Ms Brown regarded a further inquest as a waste of time and resources. No doubt that was the view of Ms Young and Ms Brown. And they knew the evidence better than anyone.

451. The animosity that existed towards the Johnson family had nothing to do with gay hate bias. Michael Noone was a gay man. He loved Scott Johnson. Ms Young and Mr Willing were desperate to look after him. That is, they were looking after a gay man from being bullied, as they all saw it, from Mr Steven Johnson, a man who is not gay.

452. Ms Young's upset towards the Johnson family came from a deep sense of injustice. Anger that the family was able to leverage its influence to unduly influence a Police Minister. A family that was prepared to divert limited police resources to a case that had no avenues left to explore. At the expense of other victims and their families. Ms Alberici drew the same conclusion and expressed those views in no uncertain terms in her statement. Ms Alberici and Ms Young also believed that the Johnson family was lying through the media. And Ms Young believed that she and Ms Brown were being personally attacked by the family.

453. Ms Young's frustration came from an unequal treatment of victims. A prioritisation only achieved through undue influence over a Police Minister. She was not affected by any homophobia, directly or indirectly. Mr Johnson's sexuality was utterly irrelevant to her.

454. Her frustration grew, she lost objectivity and devised her own media strategy to expose these wrongs. She knew it would not be authorised, so she convinced the PMU to relax the requirement for an MLO. She would not have taken any advice from the MLO and therefore did not want to risk being cut short before the program went to air. None

of this has anything to do with gay hate. No such suggestion was made to Ms Brown either.

455. Counsel Assisting rightly points out that some factual disputes here cannot be resolved. The preponderance of evidence weighs in favour of Mr Willing. No adverse findings need to be made for the final report. And the evidence does not permit such findings to the requisite standard.

456. Assume the worst in relation to Mr Willing for the sake of argument. That is, he shared Ms Young's views and knew she was going on the record. He knew she might use the word '*kowtowing*' and was relaxed the next day about the interview.

457. Setting aside the absence of evidence to safely draw any of those conclusions, how would any of that be relevant to gay hate?

458. It was not, and cannot possibly be, suggested that Mr Willing was motivated by gay hate. Or motivated to stop police investigating a gay hate crime. Or motivated to hide earlier police failings relating to gay hate bias. *No* motivation was even put to Mr Willing by Counsel Assisting, let alone one or more related to gay hate.

459. So how then would *any* view taken by Mr Willing, or any knowledge he had of LL 13, be relevant to the Terms of Reference?

M Thangaraj SC

Forbes Chambers

23 October 2023