The Special Commission of Inquiry
into LGBTIQ Hate Crimes

PUBLIC HEARING 2

Further submissions on behalf of the Commissioner of Police

Contents

PART A: INTRODUCTION

1. These submissions are made on behalf of the Commissioner of Police in relation to Public Hearing 2. They are made following the further hearings relating to Public Hearing 2 issues conducted between 21 September 2023 and 6 October 2023.

2. They supplement the submissions filed on behalf of the Commissioner of Police on 28 June 2023 (**June CPS**), in response to the submissions of Counsel Assisting dated 7 June 2023 (**June CAS**). In particular, they respond to submissions made by Counsel Assisting on 16 October 2023 (**CAS**).

PART B: THE RE-OPENING OF PUBLIC HEARING 2

Background

3. Pursuant to s. 14 of the *Special Commissions of Inquiry Act 1983* (NSW) (**SCOI Act**), the interested parties to an Inquiry do not have the power to summons witnesses to give evidence; that power is reposed solely in the Commissioner of the Inquiry. Even where a witness has been summonsed, they may not be called to give evidence by a party; only Counsel Assisting are able to call witnesses. Similarly, only Counsel Assisting are able to tender documents.

4. On 8 June 2023, the Commissioner of Police was served with the June CPS. Those submissions are 291 pages long. They include a range of very serious assertions regarding the conduct of a number of persons who had not been notified of their potential interest in the subject matter of the proceedings; had not been called to give evidence; and had not otherwise been afforded the opportunity to respond – whether by way of submissions or evidence – to the assertions made by Counsel Assisting.

5. The June CAS also propounded criticisms relating to various events and documents, despite the fact that Counsel Assisting had not obtained evidence from key participants in the relevant events or the author/s of the relevant documents.

6. The Commissioner of Police and a select few persons on behalf of whom leave to appear had been granted by the Inquiry (**together, the Represented Parties**), were on notice as to the general subject matter that had been considered during the course of Public Hearing 2. However, prior to the receipt of the June CAS, neither the Commissioner of Police, nor the Represented

Parties were on notice of the precise scope of the findings that would be propounded by Counsel Assisting or, obviously enough, the content of the suggested findings.

7. The Represented Parties aside, the persons subject to criticism in the June CAS had received no notice *at all* from the Inquiry. The vast majority of those persons are no longer employed by the NSWPF.

8. If Counsel Assisting anticipated that a person's interests might be affected by submissions that Counsel Assisting proposed to make, it was for Counsel Assisting and, ultimately, the Commissioner of the Inquiry, to ensure that person would be afforded procedural fairness.

9. Similarly, there was no reason for the Commissioner of Police or the Represented Parties to expect that findings that centred around the activities or knowledge of a particular persons would be urged by Counsel Assisting in the absence of an appropriate evidentiary foundation, particularly when the proposed findings involved very significant criticism.

10. In this respect, it is appropriate to note that Counsel Assisting may, for various reasons (including reasons associated with the challenging time limits confronting the Inquiry), properly determine that a particular witness should not be called. But the absence of evidence from a key witness as concerns a given issue may, in turn, prevent the making of findings in relation to matters to which that witness's evidence would have been critical.

11. Those representing the Commissioner of Police have notified the Inquiry of the persons represented. At no stage did those representing the Commissioner of Police give an indication that they represent all current or former employees of the NSWPF. Indeed, they could not sensibly do so – either as a matter of practicality or as a matter of law, having regard to the potential for conflicts of interest between different current or former NSWPF employees. This reality is recognised by Practice Guideline 1 issued by the Inquiry, which expresses at [15] the Inquiry's "preference" that each person seeking to appear have separate and independent representation. Moreover, Practice Guideline 1 requires an assurance that no conflict of interest is anticipated if more than one person is to be represented by a given legal team, together with an undertaking to inform the Inquiry immediately upon recognising that a conflict has arisen.

12. Various statements were provided by the Commissioner of Police in response to the Inquiry's letter of 20 September 2022. At no stage did the Inquiry indicate that it required further statements addressing the issues those statements related to.

13. Again, the precise nature and extent of the investigations an Inquiry wishes to undertake in relation to a given subject matter is not a matter that can sensibly be regarded as within the knowledge or control of the interested parties to an Inquiry. The scope of an Inquiry is defined by the Inquiry itself, subject only to its terms of reference.

14. Moreover, the obligation to afford procedural fairness rests solely on the Inquiry and those assisting it.

15. The Commissioner of Police notes that a range of persons, who had previously been denied procedural fairness, have now been afforded the opportunity to give evidence and/or to make submissions to the Inquiry.

16. Those witnesses included:

    a) the officers who were responsible for the day-to-day activities of Strike Force (**SF**) Parrabell;

    b) the officer-in-charge of SF Neiwand, former Detective Senior Constable (**DSC**) Michael Chebl;

    c) former Detective Chief Inspector (**DCI**) John Lehmann;

    d) Detective Sergeant (**DS**) Penny Brown; and

    e) former DCI Pamela Young.

17. Nevertheless, Counsel Assisting appears to be labouring under an ongoing misapprehension as to the extent to which the provision or otherwise of evidence from such persons is a matter within the control of the Commissioner of Police.

18. As concerns CAS [18], for example, it is not correct to say the Commissioner of Police "chose not to provide a statement from Mr Chebl". Mr Chebl left the NSWPF in October 2021. As acknowledged at CAS [114], Mr Chebl declined to provide a statement or to give oral evidence on health-related grounds. Presumably on account of those health concerns, the Inquiry has not compelled Mr Chebl to give evidence.

19. The first obvious difficulty with Counsel Assisting's submission regarding Mr Chebl is that the Commissioner of Police does not have the capacity to compel *any* witness, let alone one suffering from such health concerns.

20. The second – even more obvious – difficulty with Counsel Assisting's submission is that those representing the Commissioner of Police do not represent Mr Chebl on account of the potential for a conflict between the interests of the Commissioner of Police and those of Mr Chebl. The notion that the Commissioner of Police should be subject to criticism for failing to provide evidence from a person with whom she has a potential conflict of interest is contrary to established principle.

21. One or both of these considerations apply to the each of the persons whose evidence was identified by the Commissioner of Police as critical to the submissions advanced on behalf of Counsel Assisting.

22. In many important respects, the evidence given by the witnesses called during the September / October block of Public Hearing 2 runs obviously counter to submissions previously advanced by Counsel Assisting.

23. Repeatedly, the persons who have now been afforded the opportunity to respond to criticisms advanced by Counsel Assisting in the June CAS have refuted those submissions in the strongest possible terms.

24. As will be considered further in Parts C – G of these submissions, the evidence of these persons has emphasised the fact, already identified in the June CPS, that many of the findings propounded by Counsel Assisting are devoid of any proper foundation.

25. No doubt, a number of those persons will also seek to make submissions to the Inquiry challenging the positions advanced by Counsel Assisting.

26. Those representing the Commissioner of Police sought to bring these issues to the attention of the Inquiry to prevent the Inquiry falling into error by making findings without any proper evidentiary foundation, or findings that were contrary to the interests of persons who had not been afforded procedural fairness. It is extraordinary that Counsel Assisting would now seek to criticise the Commissioner of Police, and those who represent her, for doing so. The alternative approach – that is, remaining silent on the issue – would almost certainly have resulted in a series of challenges to any findings made in line with Counsel Assisting's submissions by the persons who have now been granted leave to appear before the Inquiry.

27. What is more, Counsel Assisting's submissions are incongruous with the fact that, in recognition of the reality that the relevant persons are "substantially and directly interested in any subject-matter of the Inquiry" and/or that their "conduct has been challenged to [their] detriment", the

Commissioner of the Inquiry has granted leave to those persons to be represented.[1] Having regard to the terms of s. 12(2) of the SCOI Act, the grant of leave is itself a significant indicator that the Inquiry is (and was) obliged to afford procedural fairness to each of the relevant persons.

Strike Force Parrabell

28. It is readily apparent from the evidence of AC Crandell given in December 2022, that he was not involved in the day-to-day minutiae of the operations of SF Parrabell.[2]

29. Indeed, the Inquiry recognised as much: in a question asked on 8 December 2022, for example, the Commissioner of the Inquiry observed "am I getting the impression that you were so far above the detail of this that you really didn't have a hands on role…"[3] before, in the next question, noting "this is not the first time you have used the term "believe"….By your use of the term "believe" does that mean you are signalling to me that you don't have any personal or direct recollection of what occurred or you don't have any or did not have any involvement in how, in fact, these discussions, the balance of probabilities conclusions, was arrived at?"[4]

30. AC Crandell responded to this question by saying "The only – the only – involvement that I had was when we would have monthly meetings that I would go to."[5] Immediately thereafter, AC Crandell stated:

> "I was not involved in the induction of officers and I was not involved in the day-to-day determinations of these matters."[6]

31. Promptly thereafter, Counsel Assisting had the following exchange with AC Crandell:

> "Q. So you didn't, among other things, do any of the actual reviewing yourself of any case?
> A. No.
>
> Q. Or complete any of the forms yourself?
> A. No.

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[1] See s. 12(2) of the *Special Commissions of Inquiry Act 1983*.
[2] See, for example, Transcript of the Inquiry, 7 December 2022, T705.10-23 T753.20-754.8; T793.11-37 (TRA.00012.00001); Transcript of the Inquiry, 8 December 2022, T833.6-28; T833.41-834.10 (TRA.00013.00001).
[3] Transcript of the Inquiry, 8 December 2022, T833.7-10 (TRA.00013.00001).
[4] Transcript of the Inquiry, 8 December 2022, T833.14-21 (TRA.00013.00001).
[5] Transcript of the Inquiry, 8 December 2022, T833.22-23 (TRA.00013.00001).
[6] Transcript of the Inquiry, 8 December 2022, T833.26-28 (TRA.00013.00001).

Q. So you went to the monthly meetings?

A. Yes - not every monthly meeting. I think I've said that earlier in evidence.

Q. Okay. Some monthly meetings?

A. Yes.

Q. And they were attended by yourself, the three lead officers that you've mentioned and others --

A. Yes.

Q. -- or just you and those three?

A. No, I think it would have been other officers as well, as in the investigators.

Q. All of them or some of them?

A. The ones that were working on the cases that were to be reviewed.

Q. All right. And apart from attending some of those monthly meetings - and I don't say this critically either - you had no other actual involvement in the process?

A. No."[7]

32. Having regard to these exchanges, and various other aspects of his evidence, the reality that AC Crandell was not involved in the day-to-day operation of SF Parrabell could hardly have been any clearer.

33. AC Crandell's evidence repeatedly identified the persons who were, in fact, involved in the day-to-day operation of SF Parrabell namely Detective Superintendent (**DSupt**) Craig Middleton, Detective Inspector (**DI**) Paul Grace and Detective Acting Sergeant (**DAS**) Cameron Bignell.[8]

34. Nevertheless, the Inquiry did not request evidence from any of those persons, call them to give evidence, or otherwise notify them of their potential interest in the proceedings until after the June CAS (and, indeed, after the June CPS).

[7] Transcript of the Inquiry, 8 December 2022, T833.45-834.27 (TRA.00013.00001).

[8] See, for example, Transcript of the Inquiry, 7 December 2022, T746.37-747.10; T752.41-45; T786.11-17 (TRA.00012.00001); Transcript of the Inquiry, 8 December 2022, T833.30-39 (TRA.00013.00001); Transcript of the Inquiry, 12 December 2022, T1021.20-36 (TRA.00015.00001).

35. The absence of such a request is a very clear indication that Counsel Assisting did not consider that evidence from those officers as to their activities was necessary to enable to Inquiry to examine the issues to the extent considered necessary for the Inquiry to properly discharge its function.

36. As to CAS [28], the exchanges set out at [29]-[31] above make it plain that Counsel Assisting appreciated, at an early stage, that AC Crandell was not in a position to address the day-to-day operations and methodology of SF Parrabell in detail. Otherwise, CAS [28] mischaracterises the submissions advanced by the Commissioner of Police. At none of the paragraphs referred to at CAS [28][9] (or anywhere else) does the Commissioner of Police advance a submission that it was necessary to call all 16 officers who participated in SF Parrabell. What was said on behalf of the Commissioner of Police was:

a) That Counsel Assisting has not called evidence from DSupt Middleton, DI Grace or DAS Bignell, such that the Inquiry had "no evidence in relation to the thought processes of those officers in relation to the creation of the relevant documents and the ongoing discourse between them and the subordinate members of SF Parrabell regarding the appropriate approach to their review of each of the cases" (June CPS, [508]).

b) If Counsel Assisting wished to examine the authorship of the BCIFs or the day-to-day review processes in detail, evidence could readily have been called from DSupt Middleton, DI Grace and DAS Bignell (June CPS, [513]).

c) To the extent there is doubt, on the face of the available documents, about the processes actually followed on a day-to-day basis by members of SF Parrabell, those doubts could have been readily resolved by calling appropriate members of the team. (CPS, [520]).

d) Various matters that were said to have been unclear on the evidence could have been elucidated had Counsel Assisting elected to call appropriate members of SF Parrabell beyond AC Crandell (June CPS, [542] – [547]).

e) No evidence has been called from the senior investigators (i.e. DSupt Middleton, DI Grace or DAS Bignell) in relation to the extent to which they reviewed the original files (June CPS, [554]).

[9] Namely June CPS, [508], [510], [513], [520], [542] – [547].

f) Counsel Assisting's assertions in relation to the meaning of certain terms DSupt Middleton employed in emails had to be approached with caution in circumstances where he had not been called to give evidence about those issues or otherwise (June CPS, [571]).

37. Some observations should also be made about CAS [29], regarding Dr Danielle Tyson, Jacqueline Braw and Dr Phillip Birch (none of whom are employed by the NSWPF, and two of whom have never been employed by the NSWPF):

a) As concerns Ms Braw, all that was said is that AC Crandell and Ms Shobha Sharma's speculation as to the intentions of Ms Braw in relation to an email that they had not authored (nor even been copied in on) could not be relied upon (see June CPS, [650], [661] – [670]. Ms Braw is not an employee of the NSWPF. The Commissioner of Police cannot direct her to provide a statement to the Inquiry. If Counsel Assisting considered that the words employed by Ms Braw in particular emails or documents was a subject of importance to the Inquiry, then she should have been called to give evidence. That remains as true today as it was at the time of the June CPS.

b) As concerns Dr Tyson, it cannot seriously be suggested that it was not incumbent upon Counsel Assisting to afford Ms Tyson the opportunity to respond to the extraordinarily serious allegations advanced at June CAS [1282] – [1283].

c) As concerns Dr Birch, it was not submitted that he needed to be called to give evidence, though as identified at June CPS, [45] – [49], [595] – [596], his evidence could have shed light on matters that Counsel Assisting appears to regard as worthy of exploration.

38. Again, the question of whether the available evidence adequately addresses the issues the Inquiry wishes to have addressed is not one for the interested parties to an Inquiry to answer. It is for Counsel Assisting to place before the Inquiry such evidence as is required for the Inquiry to adequately investigate the matters it wishes to investigate.

39. At CAS [32] – [33], Counsel Assisting seek to abrogate their core responsibility, placing the blame for their determination not to call particular witnesses (and the resultant lacuna in the evidence) on the shoulders of a party to the Inquiry. Such a submission ignores the reality that it is Counsel Assisting, and Counsel Assisting alone, that is privy to the extent to which the Inquiry wishes to explore a particular issue.

40. As observed above, it was entirely appropriate for the Commissioner of Police to proceed on the basis that Counsel Assisting would specifically request any further evidence considered necessary or desirable by the Inquiry. Again, no such requests were received.

41. If Counsel Assisting had limited their submissions to the witnesses notified of their interest and granted leave to be represented, and the evidence that had actually been obtained, no difficulties of the type complained of in the June CPS would have arisen.

42. Instead, the June CAS relied heavily on inference and supposition, in lieu of evidence from persons such as DSupt Middleton, DI Grace and DI Bignell, and advanced strident criticisms of persons who had not been notified of their potential interest in the proceedings, nor afforded the opportunity to respond.

43. Accordingly, it was necessary and appropriate for those representing the Commissioner of Police to draw the Inquiry's attention to the fact that the evidence did not provide a proper foundation for many of the submissions advanced by Counsel Assisting and that should the Inquiry wish to make findings in relation to the full range of matters canvassed in Counsel Assisting's submissions, further evidence would be required.

Bias Crimes, Bias Crimes Coordinator and Bias Crimes Unit

44. As concerns the submissions at CAS [34] – [42], the Commissioner of Police repeats the submissions advanced at [3]-[27] above; it is not for a party to an Inquiry to discern the precise extent to which each of the issues identified need to be the subject of evidence in order to allow the Inquiry to examine those issues to the full extent it wishes to examine them. That responsibility falls squarely upon the shoulders of Counsel Assisting.

45. Something further should be said about the submissions the Commissioner of Police made regarding the paucity of evidence concerning resourcing issues within the NSWPF. In particular, the observation at CAS [39(a)] does not reflect the nuance in those submissions. At [29] of the June CPS, the Commissioner of Police observed that the raw number of police officers who make up the NSWPF was meaningless in isolation, and that the evidence before the Inquiry would not allow for a proper consideration of "the availability of resources, and the appropriate distribution of them among the various competing priorities of the NSWPF". The submission at June CPS [56] was to similar effect. The point is not only that such evidence has not been obtained, but that the absence of evidence illustrates the fact that the relevant issues cannot properly be explored within the confines of an Inquiry such as the present.

46. As was recognised by Counsel Assisting in submissions filed in the Investigative Practices Hearing[10], questions as to the appropriate resourcing of particular units of the NSWPF necessarily raise "complex social and policy considerations." With that in mind, Counsel Assisting submitted that the "question of the appropriate allocation of resources to the UHT is not one that falls within the purview of the Inquiry".[11] In those circumstances, it is hard to understand why the submissions at [29] and [56] June CPS might be controversial; consistent with the position urged by Counsel Assisting in connection with the Investigative Practices Hearing, the Inquiry is not (and never could be) in a position to conduct a comprehensive analysis of the various competing demands upon the resources of the NSWPF. Such an exploration simply does not fall within the purview of an Inquiry such as the present (the Terms of Reference for which do not, in any event, authorise an investigation of such resourcing considerations).

Strike Force Neiwand

47. The submissions made at [3]-[27] apply equally to the position advanced by Counsel Assisting at CAS [43] – [52].

48. More specifically, as observed at [18] – [20] above, the Commissioner of Police did not "choose" not to provide a statement from Mr Chebl.

49. Mr Chebl is not employed by the NSWPF. The Commissioner of Police has no capacity to direct or compel him to participate in the Inquiry. Equally fundamentally, those representing the Commissioner of Police do not represent Mr Chebl in circumstances where the potential for a conflict of interest to emerge was perceived. That being so, the suggestion that those representing the Commissioner of Police should have obtained a statement from Mr Chebl is entirely incomprehensible (CAS, [51]).

50. The absence of evidence from Mr Chebl again falls entirely at the feet of Counsel Assisting. Similarly, the need to afford procedural fairness to Mr Chebl prior to making extraordinarily serious criticisms of the type advanced in the June CAS ought to have been patently obvious to Counsel Assisting. It is trite to say that the obligation to afford such procedural fairness rests upon the Inquiry, and those assisting it, not upon the interested parties to it.

51. As concerns CAS, [50], the Commissioner of Police's submission identifies that DS Bowditch has not been called to give evidence and that investigative decisions he made have not been

[10] See Counsel Assisting Submissions regarding Investigative Practices Hearing dated 15 September 2023, [911].
[11] Ibid.

explored with him (June CPS, [242]). The Commissioner of Police has repeatedly made submissions in connection with the "documentary tender" cases, drawing attention to the fact that relevant officers (one of which was former DS Kenneth Bowditch) had not been notified of their potential interest in the proceedings or afforded the opportunity to respond.[12] The submission at June CPS [242] simply echoed those submissions. It should hardly be controversial to suggest that a person subject to criticisms as serious as those levelled at Mr Bowditch[13] should be afforded the opportunity to respond to them. The Inquiry has since confirmed that between August and October (i.e. after receipt of the June CPS), the Inquiry contacted a variety of former police officers (including Mr Bowditch) in connection with the documentary tender cases in order provide them an opportunity to put on a statement or submission.[14]

52. The June CAS include (at [625]-[630]) a section entitled "Role of DCI Lehmann". Put simply, submissions of the type advanced in that section should not have been made without notifying Mr Lehmann of his potential interest in the proceedings, exploring the relevant assertions with him in evidence, and giving him an opportunity to contradict them by way of evidence and/or submissions.

Strike Force Macnamir

53. Regarding CAS [53]-[59], the Commissioner of Police again reiterates the submissions at [3]-[27] above.

54. Specifically as concerns CAS [53] – [54], while the Inquiry's 'expectation' that Mr Willing could potentially speak to the establishment of SF Macnamir and his role in connection with it, his ability to speak to the actual work of SF Macnamir was necessarily limited (cf CAS, [54]).

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[12] See written submissions of Commissioner of Police (Cuthbert, Raye, Stewart, Stockton), 12 April 2023, [55]; written submissions of Commissioner of Police (Cawsey, Jones, Baumann), 10 July 2023, [56], [90], [95]; written submissions of Commissioner of Police (Rooney, Slater, Rath, Wark), 1 June 2023, [16], [18], [32], [65]; written submissions of Commissioner of Police (Bedser), 7 June 2023, [25]; written submissions of Commissioner of Police (Hughes, Paynter, Payne, Dutfield, Lloyd-Williams, Currie, Walker), 21 February 2023, [10], [66], [67], [107], [110]; written submissions of Commissioner of Police (Sheil), 18 April, [9], [16]; written submissions of Commissioner of Police (Waine), 23 June 2023, [15], [27]-[28], [41], [55]; written submissions of Commissioner of Police (Dye, Allen), 22 August 2023, [35]-[36], [39], [42], [54], [94]-[95]; written submissions of Commissioner of Police (Mattaini, Warren, Russell), 13 July 2023, [16], [20], [44], [49]-[50]; written submissions of Commissioner of Police (Brennan, Meek), 7 July 2023 [95], [128], [132]; written submissions of Commissioner of Police (Miller), 30 June 2023, [21], [46]; written submissions of Commissioner of Police (Rose), 16 June 2023, [19].

[13] Written submissions of Counsel Assisting the Inquiry (Mattaini, Warren, Russell), 27 June 2023, [75].

[14] See Reply Submissions of Counsel Assisting regarding the Investigative Practices Hearing dated 19 October 2023, [46].

55. In that respect, Mr Willing's statement makes it clear that SF Macnamir was one of 60-80 active investigations that fell within the purview of his responsibilities.[15] He also provided an outline of his actual involvement in SF Macnamir[16], which demonstrates that Mr Willing's activities vis-à-vis the Strike Force occurred at a high level (including via contact with the State Coroner and the Crime Commission). It plainly shows that he was not, for example, involved in the conduct or direction of the investigation proper. Those matters, however, were comprehensively addressed in the statement Ms Young prepared for the purposes of the third Inquest into Mr Johnson's death, which Mr Willing annexed to his statement.[17]

56. The position as concerns the fact that the Inquiry was in possession of a statement from Ms Young from on or about 17 April 2023 onwards will be returned to at Part D below. For present purposes it is sufficient to note that the existence of that statement was not disclosed to the Commissioner of Police until Monday, 25 September 2023, that is, four days after the resumption of Public Hearing 2 and more than three months after the June CAS.

57. The contents of that statement directly contradict key aspects of the June CAS. The fact that, at the time of its receipt, the Inquiry's deadline had not yet been extended does not explain the failure to serve the statement (or, indeed, the Evidentiary Statement of Ms Young[18]):

    a) first, the statement was obtained more than three weeks before Mr Willing gave evidence in May 2023;

    b) second, Ms Young was, in fact, present in the hearing room during at least part of Mr Willing's evidence; and

    c) third, the making of findings in line with the June CAS, in circumstances where Ms Young's statement was in the possession of the Inquiry but had not been disclosed to the parties, would have constituted a denial of both substantive and procedural fairness.

The asserted "straw man" submissions

58. It is true that Counsel Assisting's submissions do not employ the term "conspiracy". That fact aside, the submissions at CAS [60] – [61] are without foundation.

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[15] Exhibit 6, Tab 252, Statement of Mr Michael Willing dated 30 January 2023, [47] (SCOI.82369.00001).
[16] Exhibit 6, Tab 252, Statement of Mr Michael Willing dated 30 January 2023, [48]-[56], [61]-[63] (SCOI.82369.00001).
[17] Exhibit 6, Tab 252, Statement of Mr Michael Willing dated 30 January 2023, [63] (SCOI.82369.00001).
[18] Exhibit 6, Tab 521B, Evidentiary Statement of Pamela Young dated 2 August 2019 (SCOI.85912_0001).

59. In seeking to assert that the Commissioner of Police's submissions make "straw men" of the submissions advanced in the June CAS, Counsel Assisting themselves mischaracterise the submissions put on behalf of the Commissioner of Police.

60. At June CPS [15], for example, the Commissioner of Police observed:

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

61. How that submission makes a "straw man" of Counsel Assisting's submissions is unclear. Counsel Assisting have not sought to explain their contention in respect of that paragraph (or, indeed, the others referred to at CAS [61(a)]).

62. The submissions at June CAS [638] – [641] referred to at June CPS [15] read as follows (emphasis added):

> "638. However, the evidence of coordination and overlap between the three strike forces suggests that there was something more than coincidence or tacit shared thinking. That coordination does not seem to have been directed primarily at the substance of the cases.
>
> 639. Rather, it was coordination directed primarily at discrediting (publicly in the cases of SF Macnamir and SF Parrabell, and non-publicly in the case of SF Neiwand) claims that *so many* deaths were or might have been gay hate crimes (which claims carried with them, explicitly or implicitly, that police had not investigated some or many of those deaths satisfactorily).
>
> 640. There were differences in approach, however. For example, as will be seen in Part I, the Parrabell Report is at some pains to acknowledge the extent of the violence against the LGBTIQ community during the period under review and the role that it played in the marginalisation of that community.
>
> 641. On the other hand, the two UHT Strike Forces adopted a more obviously adversarial approach. SF Macnamir persisted throughout in propounding the suicide hypothesis in the case of Scott Johnson, and DCI Young saw the Johnson family as "*opponents*" to be

> "*defeated*". SF Neiwand bluntly sought to undermine and discredit Operation Taradale, the work of Mr Page and the findings of Coroner Milledge – and to do so unbeknown to Mr Page, to Coroner Milledge, to the families of then three deceased men, and to the public. The way in which SF Neiwand treated Mr Page (both ruthless and unfair, it is submitted, for the reasons outlined below) would tend to reinforce the 'company line' and (intentionally or not) to send a message to other police officers about the investigation of LGBTIQ hate crimes."

63. At June CAS [638] - [639], Counsel Assisting alleges that members of the NSWPF engaged in a process of "coordination" that was directed not at the "substance of the cases" but rather at "discrediting (publicly in the cases of SF Macnamir and SF Parrabell, and non-publicly in the case of SF Neiwand) claims that *so many* deaths were or might have been gay hate crimes".

64. The submission at [817] of the June CAS is also of particular importance to a consideration of what Counsel Assisting describes as the "straw man" submissions. Set out in full,[19] that paragraph reads as follows (emphasis added):

> "It is submitted that the evidence supports a finding that the rationale of AC Crandell, and that of the NSWPF, for establishing SF Parrabell, included at least the following factors:
>
> a. to combat negative publicity about the NSWPF, stemming from as far back as early 2013 and including publicity about the events of 13 April 2015;
>
> b. to refute the suggestion, and perception, that there had been a significant number of gay hate motivated homicides, as found in the "list of 88" and publicity relating thereto;
>
> c. to show that claims of 88 gay hate murders, 30 of them unsolved, were exaggerated;
>
> d. to refute the suggestion that NSWPF had not adequately investigated gay hate crimes; and
>
> e. to assert that the true position was that only a small proportion of the 88 cases were gay hate murders, and that the number of those that were unsolved was much less than 30."

65. It is difficult to see how the summary of Counsel Assisting's submissions put at June CPS [15] (i.e. "Counsel Assisting submits that there was a conspiratorial coordination between those three Strike Forces, aimed at discrediting suggestions that there had been a significant number of gay-hate murders.") does not accurately reflect the clear imputation of the submissions made by

[19] Noting that the matters at June CAS, [817(a)-(e)] were, in fact, set out in full at [463] of the June CPS.

Counsel Assisting. Whether the word 'conspiratorial' or 'conspiracy' was specifically used by Counsel Assisting is beside the point, having regard to the implications of the June CAS that would be plainly apparent to any reasonable and independent reader.

66. Elsewhere (see June CPS, [144], [155]), the term "conspiracy" is used as a convenient shorthand for what is the clear implication of Counsel Assisting's submissions regarding the alleged "coordination" between the Strike Forces directed to minimising the incidence of LGBTIQ bias murder. The overall submission advanced by the Commissioner of Police is summarised at June CPS [156]:

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

67. Contrary to CAS [61(a)], the submission advanced at June CPS [423] also accurately reflects the clear implication of the submissions advanced by Counsel Assisting. It reads as follows:

> "Having regard to those matters, and to the fact that DSC Chebl has not been called to give evidence, the Inquiry could not properly or fairly conclude that the position expressed by DSC Chebl and, in turn, SF Neiwand was anything but an honest reflection of the views he reached having reviewed the SF Taradale material and conducted the additional investigative steps (albeit relatively limited) he set out in the SF Neiwand summary. That is not to say that DSC Chebl *should* have departed from the conclusion reached by Deputy State Coroner Milledge. The fact of the departure from the Coroner's view, however, is not evidence that his views were formed and propagated as part of a conspiratorial attempt to "reinforce the company line" as asserted by Counsel Assisting (cf, [641])."

68. As with the other paragraphs identified at CAS [61], Counsel Assisting has not identified how this paragraph fails to capture the clear import of the submissions advanced in the June CAS.

69. As to [61(b)], what was said in June CPS [147] was that "A finding that Mr Willing sought to defeat the Johnson family by opposing and preventing a finding of homicide, effectively asserts Mr Willing sought to pervert the course of justice and cannot be made in the absence of clear evidence". The relevant submission, by Counsel Assisting, was that "the evidence permits a finding that he did share the views of DCI Young as to defeating the Johnson family by opposing and preventing a finding of homicide". That submission may not have been intended to convey

a view that Mr Willing had, in fact, sought to "defeat" the Johnson family "by opposing and preventing a finding of homicide". If that was not intended, then Counsel Assisting should say as much explicitly and publicly. However, the submission conveys a clear imputation that that Mr Willing sought to "oppose" and "prevent" a finding of homicide. Consistent with June CPS [147], a finding that Mr Willing engaged in such conduct would, "effectively" amount to an assertion that Mr Willing "sought to pervert the course of justice".

70. The observation at CAS [61(f)] is addressed at [151]-[153] of Part D below. As set out therein, the submissions at June CAS [327] – [328] clearly imply that what Mr Lehmann said on Australian Story was untruthful. Indeed, the terms of CAS [149] suggest that Counsel Assisting continues to press such a contention.

71. As concerns CAS [61(g)], the submission at June CPS [135(b)] does not say or imply that Counsel Assisting asserts that Mr Lehmann's views were not honestly held. The submission simply records that Mr Lehmann's views were expressed in good faith and were not unreasonable, having regard to the material available to him. The same is true of June CPS [278]. Both submissions were made to counter the clear implication in Counsel Assisting's submissions that there was something untoward in Mr Lehmann's activities and those of the three strike forces generally (see, in that respect, the submissions at June CAS [625]-[630] and, in particular, the submission at June CAS [627]).

72. It is apparent from the various statements of current and former police officers tendered following the resumption of Public Hearing 2 that those persons – and no doubt any independent reader of the June CAS – have garnered the impression that Counsel Assisting considers that various officers were engaged in a coordinated effort, quite possibly animated by some kind of prejudice, to refute the suggestion that there was a high-incidence of anti-LGBTIQ violence and/or homicide. In that respect, Mr Lehmann's view is instructive:

> "In reading the written submissions of Counsel Assisting the Inquiry I detect undertones of me having a homophobic bias against victims who were gay. This could not be further from the truth. I have family members who are gay whom I love very much. My decisions in prioritising and pursuing unsolved homicide cases were purely based on their solvability prospects. Race, sexual preference, religious or political leanings, the

criminality or otherwise of victims, had no bearing on my duties and decisions at the UHT or at any other time during my career in NSWPF."[20]

73. The impression arrived at by Mr Lehmann is one that any independent reader of submissions such as those advanced at June CAS [609], [627], [635]-[641], and [817] would be likely to share.

74. As is set out at length in the June CPS and, and considered further at Parts C - G below, such submissions are without any proper foundation.

75. If Counsel Assisting are resiling from the submissions regarding the allegedly coordinated efforts of the three police Strike Forces to refute the suggestion that there had been a significant number of gay hate homicides[21], then that is welcomed by the Commissioner of Police.

76. Counsel Assisting have not explicitly done so. It is submitted that if the relevant submissions are not pressed, they should be expressly and publicly disavowed; the ongoing presence of such submissions (which involve assertions of serious impropriety) in the public domain has the potential to do grave reputational damage to the persons to whom they relate.

Strike Forces Macnamir, Parrabell and Neiwand

77. The submissions at [3]-[27] above also apply to the observations made by Counsel Assisting at CAS, [62] – [64].

78. As acknowledged above, the Commissioner of Police and the Represented Parties were on notice as to the *general subject matter* that had been considered during the course of Public Hearing 2. However, prior to the receipt of the June CAS, neither the Commissioner of Police, nor the Represented Parties were on notice of the precise scope or content of the findings that would be propounded by Counsel Assisting.

79. In any event, the matters set out at CAS [63] in no way detracted from the obligations of the Inquiry to afford procedural fairness to persons with an appropriate interest in the subject matter of the proceedings.

80. Similarly, those matters in no way diminish the reality that the party responsible for ensuring that the areas the Inquiry wishes to explore are the subject of appropriate evidence is Counsel Assisting (and, ultimately, the Inquiry itself). Nor do they derogate from the expectation that

[20] Exhibit 6, Tab 513, Statement of Mr John Lehmann dated 29 August 2023, [43] (SCOI.85495).
[21] See, for example, June CAS [342]-[362], [609], [627], [635]-[641], [817].

Counsel Assisting will not urge the making of findings unless those findings are supported by an appropriate factual foundation.

The NSWPF as a model litigant

81. The submissions made at CAS [65]-[67] are again answered by the matters raised at [3]-[27] above.

82. What is more, the submissions at CAS [65] – [67] fail completely to account for the special role played by Counsel Assisting an Inquiry relative to that of the parties granted leave to appear.

83. Again, the task of delimiting the precise scope and extent of inquiries to be undertaken is one for the Inquiry, and those assisting it.

84. The role played by all of the witnesses from whom evidence has been adduced in the September and October tranche of Public Hearing 2 was apparent from the statements and material provided by the Commissioner of Police and the other Represented Parties at an early stage of the Inquiry. The limitations of the evidence that those witnesses provided, and were able to provide, was similarly apparent (see, for example, the consideration of AC Crandell's evidence at [29]-[33] above).

85. However, it is not for the parties to an Inquiry to identify whether the evidence that has been given is, or is not, sufficient for an Inquiry to undertake its work. Rather, the obligation to ensure that the evidence obtained enables the relevant issues to be examined to the extent considered necessary by the Inquiry is an obligation that falls squarely upon those assisting the Inquiry (and, in turn, the Inquiry itself). This is so for good reason; Counsel Assisting are, by virtue of their role, uniquely positioned to determine which issues are regarded by the Commissioner of the Inquiry as warranting exploration, and to what extent those issues should be explored. Moreover, as noted above, the power to compel witnesses to give evidence is held only by the Commissioner of the Inquiry, and the power to call witnesses is reposed in Counsel Assisting.

86. That being so, the submissions at CAS [65] – [67] must be rejected.

87. Before leaving this subject, having regard to the very seriousness of the assertions made at CAS [65] – [67], it is appropriate to note that during the course of this Inquiry it has frequently been necessary for those representing the Commissioner of Police to meet extremely constrained deadlines. Deadlines that run over weekends, or indeed, expire on weekends have regularly

been set. In some instances, the period provided for a response has begun outside business hours, and expired either before or at the commencement of the next business day.

88. Extraordinary efforts have been made to comply with those deadlines to the extent possible. Very substantial costs have been incurred by the NSWPF in connection with those efforts.

89. Various NSWPF employees and those representing the Commissioner of Police have routinely worked on weekends, during public holidays, and late at night to facilitate expeditious responses to requests from the Inquiry for documents, statements, consideration of proposed protective orders and the like.

90. Those NSWPF employees, as well as the internal and external solicitors engaged to assist the Commissioner of Police to expeditiously respond to the various requirements of the Inquiry, take their professional obligations, including those owed under the Model Litigant Policy, seriously. They should be commended for their enormous efforts. To date, there has been no such public recognition from the Inquiry.

91. The suggestion – perhaps unintentional – that emerges from CAS [65] – [67] is that that those representatives have somehow failed to "act with complete propriety, fairly and in accordance with the highest professional standards". That suggestion should be withdrawn. It is entirely baseless.

Procedural fairness

Principles

92. The requirement to afford a party procedural fairness arises both from the terms of the SCOI Act and general common law principles.

93. In particular, s. 12 of the Act includes, relevantly, the following:

> "(2) Where at a Special Commission it is shown to the satisfaction of the Commissioner that any person is substantially and directly interested in any subject-matter of the inquiry, or that the person's conduct in relation to any such matter has been challenged to the person's detriment, the Commissioner may authorise the person to appear before the Special Commission, and may allow the person to be represented by counsel or solicitor.

94. Section 12 of the SCOI Act is framed in discretionary terms, however, the common law makes it clear that the obligation to afford procedural fairness is not a matter for the Inquiry's discretion.

It is well settled that procedural fairness is implied as a condition of the exercise of a statutory power through the application of a common law principle of statutory interpretation, namely that: "a statute conferring a power the exercise of which is apt to affect an interest of an individual is presumed to confer that power on condition that the power is exercised in a manner that affords procedural fairness to that individual." [22]The presumption operates unless clearly displaced by the particular statutory scheme.[23]

95. In *Annetts v McCann* (1990) 170 CLR 596 at 599, Mason CJ, Deane and McHugh JJ noted that the rules of natural justice had developed to apply to public inquiries "whose findings of their own force could not affect a person's legal rights or obligations".[24]

96. The "fundamental obligation of the inquiry" is to "give a person, whose interests might be affected by the decision of the Inquirer, a reasonable opportunity to be heard before a decision which may affect their interests is made."[25] Accordingly, the Inquiry cannot make any finding adverse to the interests of a person "without first giving them an opportunity to answer the matters put against them and to put submissions as to the findings or recommendations that might be made."[26]

97. The content of the implied procedural fairness requirements has been addressed by the High Court in a variety of decisions. In *Minister for Immigration and Border Protection v SZSSJ* [2016] HCA 29, for example, the Court noted:

> "82…compliance with an implied condition of procedural fairness requires the repository of a statutory power to adopt a procedure that is reasonable in the circumstances to afford an opportunity to be heard to a person who has an interest apt to be affected by exercise of that power. The implied condition of procedural fairness is breached, and jurisdictional error thereby occurs, if the procedure adopted so constrains the opportunity of the person to propound his or her case for a favourable exercise of the power as to amount to a "practical injustice".
>
> 83. Ordinarily, affording a reasonable opportunity to be heard in the exercise of a statutory power to conduct an inquiry requires that a person whose interest is apt to be affected be

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[22] *Minister for Immigration and Border Protection v SZSSJ* [2016] HCA 29 at [75].
[23] Ibid. See also: *Saeed v Minister for Immigration and Citizenship* (2010) 241 CLR 252, 259 [14]-[15] (French CJ, Gummow, Hayne, Crennan and Kiefel JJ).
[24] *Annetts v McCann* (1990) 170 CLR 596, 599.
[25] *Lawrie v Lawler* [2016] NTCA 3 at [180].
[26] *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 581; see also *Annetts v McCann* (1990) 170 CLR 596 at 600–601; *NCSC v News Corp Ltd* (1984) 156 CLR 296 at 314–315.

> put on notice of: the nature and purpose of the inquiry; the issues to be considered in conducting the inquiry; and the nature and content of information that the repository of power undertaking the inquiry might take into account as a reason for coming to a conclusion adverse to the person."[27]

98. The notion of an "interest apt to be effected" has been broadly construed. The types of interests of individual persons which may be protected by the implication of procedural fairness in relation to the exercise of a particular statutory power include legal rights, proprietary interests, financial interests, reputation, status, personal liberty, preservation of livelihood and social interests.[28] A person's interest must be affected in a way that it is substantially different from the manner in which its exercise is apt to affect the interests of the public.[29] The interests must be affected in an individual capacity as distinct from his or her capacity as a member of the general public or a class of persons within the general public.[30]

99. Importantly, a threat to a person's reputation is sufficient to activate the obligation to afford procedural fairness.[31] As an example, parents are regarded as having an interest in the protection of the reputation of a deceased in the conduct of a Coronial Inquest, whether that interest is regarded as an interest of the deceased person, or an interest of the parents themselves.[32]

100. In *Ainsworth v Criminal Justice Commission* [1992] HCA 10; (1992) 175 CLR 564 Mason CJ, Dawson, Toohey and Gaudron JJ observed that, so far as the common law duty of procedural fairness was concerned, "the law proceeds on the basis that reputation itself is to be protected."[33]

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[27] Per French CJ, Kiefel, Bell, Gageler, Keane, Nettle and Gordon JJ.
[28] *Kioa v West* (1985) 159 CLR 550 at 582 per Mason J, at 616-19 per Brennan J, at 632 per Deane J.
[29] *Kioa v West* (1985) 159 CLR 550 per Brennan J
[30] *Kioa v West* (1985) 159 CLR 550 at 632 per Deane J; *OzEpulse Pty Ltd v Minister for Agriculture Fisheries and Forestry* (2007) 163 FCR 562 at [60] per Emmett J.
[31] *Fisher v Keane* (1878) 11 Ch D 353 at 362, 363; *Heatley v Tasmanian Racing and Gaming Commission* (1977) 137 CLR 487 (issue of a 'warning off' notice by a trotting authority); *Kioa v West* (1985) 159 CLR 550 at 582, 616-19, 632; *Annetts v McCann* (1990) 170 CLR 596 at 608; 97 ALR 177 per Brennan J; *Independent Commission Against Corruption v Chaffey* (1993) 30 NSWLR 21.
[32] *Annetts v McCann* (1990) 170 CLR 596 at 599 per Mason CJ, Deane and McHugh JJ.
[33] *Ainsworth v Criminal Justice Commission* [1992] HCA 10; (1992) 175 CLR 564, at 577 – 578.

Application of the principles

101. At CAS [81], Counsel Assisting contends that "[n]one of the findings or conclusions which the NSWPF contends have been proposed by Counsel Assisting affects an interest held by any of those officers as individuals".

102. That submission should be rejected in no uncertain terms. In particular, the distinction Counsel Assisting seeks to draw between an officer's "personal reputation" and findings relating to their professional conduct is completely unsustainable. First, the authorities do not confine the protected reputational interests to an individual's "personal reputation". Second, and in any event, it is obvious that a person's "professional reputation" is often inextricably intertwined with their "personal reputation". Almost invariably, Inquiries such as the present are concerned with the conduct of persons in their professional rather than personal capacity. Similarly invariably, the potential for an Inquiry's findings to impact upon the professional reputation of such persons is regarded as central to the question of whether steps should be taken to afford procedural fairness.

103. It is noteworthy that Counsel Assisting's submissions in this respect appear to depart from those advanced (by different Counsel Assisting) in reply to the Commissioner of Police's Investigative Practices Hearing submissions (**CA IPH Reply**). In that context, Counsel Assisting acknowledged that an individual officer's reputational interest might be affected by a particular proposed criticism,[34] though suggested that the extent of the obligations of procedural fairness must be construed by reference to the scope of the task being undertaken by the Inquiry, noting that the obligations of procedural fairness should not frustrate the purpose for which statutory power was conferred.[35]

104. Even assuming that is correct, it would not – as accepted by Counsel Assisting at [57] of the CA IPH Reply – "preclude a more onerous obligation arising in respect of an officer who might be the subject of a serious finding: for example, a finding that their conduct, as an individual, was negligent, or was actuated by bias".

105. Plainly, many of the findings propounded as appropriate by Counsel Assisting, particularly those concerning the conduct of Mr Lehmann, Ms Young, DS Brown, Mr Middleton and Mr Chebl (as

[34] See reply submissions of Counsel Assisting regarding the Investigative Practices Hearing dated 19 October 2023, [52] – [53].
[35] Reply submissions of Counsel Assisting regarding the Investigative Practices Hearing dated 19 October 2023, [54], by reference to *Kioa v West* (1985) 62 ALR 321 at 349 per Mason J.

well as some of the officers whose conduct was considered in the context of documentary tender cases) are very serious in nature; such findings would very likely have substantial negative consequences for the reputations of the relevant persons. The relevant officers are named explicitly by Counsel Assisting and their professional conduct is impugned. Their interest is undoubtedly substantially different from the general public. Indeed, it is substantially different from the interest of police officers generally and, for instance, from that of other members of the Homicide Squad.

106. It should also be noted that a further consideration, not addressed by Counsel Assisting in either the CA IPH Reply or the CAS, is the impact of s. 12(2) of the SCOI Act. As noted above, s. 12(2) provides that leave to appear and be represented may be granted to a person "substantially and directly interested in any subject-matter of the inquiry" and/or a person whose "conduct in relation to any such matter has been challenged to the person's detriment." While this provision does not create an *obligation* to grant leave to all persons who meet either of those criteria, it may well bear upon the assessment of whether a person's interest is such that procedural fairness must be afforded to them; it is strongly arguable that, as a consequence of s. 12(2), the Inquiry is not able to refuse leave a person "substantially and directly interested in any subject-matter of the inquiry" and/or a person whose "conduct in relation to any such matter has been challenged to the person's detriment" unless there is some relevant discretionary consideration telling against a grant of leave.

107. In any event, the terms of s. 12(2) must be regarded as creating an entitlement in persons with such an interest to *apply* for leave to be represented. Such an entitlement would be meaningless if the Inquiry were not obliged to notify persons it regards as potentially meeting either or both of the criteria in s. 12(2) of their potential interest. No such notification was provided to any of the persons identified at CAS [4] and [5] until after receipt of the June CPS.

108. Finally, as concerns CAS [81] – [86], Counsel Assisting appears to continue to conflate two distinct aspects of the Commissioner of Police's submissions regarding the calling of particular witnesses. The first of these aspects relates to the requirement for a person whose interests are affected to be notified and afforded an opportunity to respond (including by way of evidence if appropriate). The second relates to the fact that, in the absence of particular evidence – for example evidence from Ms Young and DS Brown as to SF Macnamir, or DSupt Middleton, DI Grace and DAS Bignell as to SF Parrabell – a variety of the submissions advanced by Counsel Assisting did not have the requisite evidentiary foundation.

The Inquiry's approach to the matters and the current position

109. As concerns the submissions at CAS [87] – [109], the Commissioner of Police repeats the submissions made above at [3]-[27] and those advanced regarding each of the Strike Forces and the Bias Crimes Unit at [28]-[80] above.

110. As to the state of the evidence as at the making of the June CAS, for the reasons expressed at length in the June CPS, many of the submissions advanced by Counsel Assisting in the June CPS simply did not have a proper evidentiary foundation.

111. Regarding the fact that particular witnesses identified by the Commissioner of Police and/or Mr Willing as capable of providing relevant evidence had not been called, the Commissioner of Police reiterates that the responsibility for securing an appropriate evidentiary foundation for the findings to be propounded rests with Counsel Assisting, not the parties granted leave to appear at an Inquiry. As concerns CAS [103] and [104], it should be noted that the great majority of those persons are no longer employed by the NSWPF.

112. There may be any number of reasons a person who would be capable of giving important evidence before an Inquiry may, if not compelled to give evidence, decide not to provide a statement. Indeed, in the absence of a summons to give evidence, it is wholly unsurprising that most of the persons referred to at CAS [103] – [104], did not seek to open themselves up to additional public and/or media scrutiny by participating in the Inquiry.

113. It is telling that, as concerns the persons identified at CAS [92(b)-(j)] (that is, the persons identified as having been denied procedural fairness), all bar Mr Chebl have sought and been granted leave to appear and have provided evidence to the Inquiry. Mr Chebl's decision not to participate is, to the knowledge of the Commissioner of Police, attributable to his health, not to any view that a response to Counsel Assisting's assertions about him was not warranted.

Terms of reference issues

114. The terms of the CAS do not explicitly abandon *any* of the submissions made in the June CAS. For the reasons set out in the June CPS, and considered further at Parts C – G below, the Commissioner of Police considers that a substantial number of the submissions advanced by Counsel Assisting are not able to be maintained.

115. Nevertheless, presuming the submissions in the June CAS are, in fact, maintained, those submissions – together with the CAS – assist in crystallising a matter which the Commissioner

of Police has agitated on a number of occasions before, namely the proper scope of the Inquiry's terms of reference.

116. Specifically, those submissions invite the Commissioner of the Inquiry to make certain findings for particular reasons. Should the Inquiry make the findings as submitted by Counsel Assisting, it is possible to consider whether doing so in the manner submitted would or would not fall within the Terms of Reference. In that respect, it is relevant to note that in the Commissioner of Police's submission, there is a distinction to be drawn between the investigation phase of a Commission of Inquiry, and the authorisation to "report and make recommendations".

117. Respectfully, the Commissioner of Police contends that many of the findings, in the terms in which they are sought and for the reasons they are sought, would continue to fall outside the terms of reference.

118. Those representing the Commissioner of Police have sought to identify each relevant finding in **Annexure A** to these submissions, together with a brief reason as to why it is submitted that finding falls outside the Terms of Reference. As will be seen, there is considerable repetition in the reasons advanced. By way of general explanation, the Commissioner of Police's approach is as follows.

119. Paragraphs A and B delimit the parameters of the Commissioner of the Inquiry's task.

120. In completing that task, the Commissioner of the Inquiry must consider the sources in Paragraph C. But the Commissioner of the Inquiry must do so for the purpose of determining the manner and cause of death in the unsolved cases referred to, and not as an end in itself and not for any other end.

121. Respectfully, the Commissioner of Police considers that Counsel Assisting's submissions demonstrate and crystallise that findings are sought for reasons that do not go to Paragraphs A and B in any way. The direction to have regard to inquiries and reports must be for the purpose of Paragraphs A and B.

122. As for Paragraph F, findings about the adequacy of any past inquiry could conceivably be made for the purpose of determining whether or not to inquire or continue to inquire into a particular matter. But the findings are for that purpose only. In the Commissioner of Police's respectful submission, any findings sought to be justified on that basis are beyond the scope of that paragraph.

123. Importantly, Paragraph F must be considered in the light of Paragraphs A and B, because satisfaction under Paragraph F takes the matter outside of the matters to be inquired into under Paragraphs A and B. To be "sufficiently and appropriately dealt with" in that context means that the relevant inquiry the sufficiency of which is being considered was an inquiry into the manner and cause of death. That is not, for example, what SF Parrabell was about.

PART C: BIAS CRIME

124. As identified at [45] and [46] above, determinations as to the appropriate allocations of resources within different units of the NSWPF (and as between those units) are:

a) not able to be reliably made on the basis of the evidence the Inquiry has before it; and

b) in any event, not within the purview of the Inquiry.

125. A proper analysis of the matters addressed at Part C of the CAS would require evidence to be adduced from a variety of former senior officers of the NSWPF, including then Deputy Commissioner Owens and then Assistant Commissioner Michael Fuller. Neither Mr Owens nor Mr Fuller are currently employed by the NSWPF (Mr Owens retired from the NSWPF in 2012, Mr Fuller in 2022). In the absence of evidence from, in particular, Mr Fuller, the Inquiry does not have a proper understanding of, among other things, the rationale for the establishment of the Fixated Persons Unit; the basis for the decision (likely taken by Mr Fuller) to incorporate the Bias Crimes Unit into the Fixated Persons Unit; the resources that could potentially have been available; and the competing demands upon those resources. Supt Andrew Hurst's statement identifies that the other key decision-maker involved in the relocation of the Bias Crimes Unit appears to have been former AC Mark Murdoch.[36] Mr Murdoch is no longer a member of the NSWPF, having retired in 2017.

126. Again, as set out at [3]-[27] above, the responsibility for obtaining evidence from persons such as Mr Fuller or Mr Murdoch lies with Counsel Assisting.

127. Supt Hurst's remarks regarding his inability to comment on the rationale for the re-structure occurring in the NSWPF[37] speaks to the fact that the reasoning process underpinning the restructure undertaken in 2017 is something that only a small number of persons are likely to be able to effectively comment upon. Having regard to his rank, Sgt Steer is not a person who would

[36] Exhibit 6, Tab 514, Statement of Supt Andrew Hurst dated 19 September 2023, [32] (NPL.9000.0030.0015).
[37] Exhibit 6, Tab 514, Statement of Supt Andrew Hurst dated 19 September 2023, [44] (NPL.9000.0030.0015).

be expected to have any meaningful understanding as to the determinations made by senior NSWPF officers regarding resourcing and the structuring of different units within the NSWPF The person who is most likely to have such knowledge in respect of both the Fixated Persons Unit and the Bias Crimes Unit, is Mr Fuller. That the Inquiry has not obtained evidence from Mr Fuller (or from Mr Murdoch, who is similarly identified in Supt Hurst's statement) is a matter for the Inquiry and those assisting it. Again, the Commissioner of Police has no power to compel Mr Fuller or Mr Murdoch to prepare a statement or otherwise participate in the Inquiry.

128. As identified at June CPS [373], a Special Commission of Inquiry is not an adversarial civil or criminal proceeding. That being so, and having regard to the responsibility of Counsel Assisting for adducing evidence as well as the inability of a party to compel a person to give evidence, it is inappropriate for inferences to be drawn from the mere absence of evidence from a person such as Mr Fuller.

129. Otherwise, the evidence of Mr Steer summarised at CAS [127] – [130] speaks to the depth of Sgt Steer's resentment. For the reasons expressed at June CPS [30] – [36], any analysis of Sgt Steer's evidence must be approached cautiously, having regard to both his obvious disgruntlement and his lack of insight into the various considerations informing determinations made by senior police such as Mr Fuller and Mr Murdoch regarding resourcing and the restructure.

130. There is, on the other hand, no reason to doubt the evidence of Supt Andrew Hurst, who was not called to give evidence by Counsel Assisting. Mr Hurst's evidence straightforwardly establishes that:

> "At no time during the BCU's restructure was Sgt Steer "forced out" of the Unit. Instead, the whole of the BCU was moved to the FPIU and rather than travel from Western Sydney to Hurstville, Sgt Steer voluntarily decided to seek a transfer to another position in the Hawkesbury LAC".[38]

131. In view of Sgt Steer's unwillingness to travel to the Hurstville office of the Fixated Persons Unit, Supt Hurst took steps to accommodate his wishes, including by facilitating his transfer to Sgt Steer's preferred Police Area Command.[39]

[38] Exhibit 6, Tab 514, Statement of Supt Hurst dated 19 September 2023, [43] (NPL.9000.0030.0015).
[39] Exhibit 6, Tab 514, Statement of Supt Hurst dated 19 September 2023, [39] – [43] (NPL.9000.0030.0015).

PART D: STRIKE FORCE MACNAMIR

June 2012 – February 2013

132. On 27 June 2012, Deputy State Coroner Forbes returned an open finding in the second Scott Johnson Inquest, and referred the matter to "Cold Cases".[40]

133. Subsequent to that referral, the UHT undertook a further consideration of the case. That consideration began with a review conducted by DS Alicia Taylor (then DSC Alicia Taylor). DS Taylor's review included an extended consideration of anti-gay violence around Manly in the period from 1986 onwards.[41]

134. DS Taylor provided the following recommendation (emphasis added):

> "This investigation has been carefully scrutinised by two inquests, two investigations and two reviews. The initial Coroners findings were Johnson died as a result of suicide. In July 2012, the State Coroner Jeram conducted an inquest into the death of Scott Johnson at the State Coroners Court. The outcome was an open finding, the facts did not allow determination of the exact manner and cause of death.
>
> Without developing further lines of inquiry there is no reasonable prospect of determining if the death of Scott Johnson was suicide or homicide.
>
> There has been an identified outstanding task in relation to this matter in the previous review of Derek Henderson 2008 to locate and obtain statements from two witnesses in relation the previous suicide attempts of Scott Johnson. The statements are required to corroborate Noone's version that Johnson had previously attempted suicide prior to his death. To date this task is incomplete.
>
> Consideration should be given to offering a monetary reward for information to assist this investigation.
>
> From the available records no person has been interviewed in relation to their knowledge or involvement in any homosexual hate crime conducted in the Manly area. It may be a consideration to gather further information from those persons of interest involved in

[40] Exhibit 6, Tab 317, Second inquest into the death of Scott Russell Johnson – Findings of Deputy State Coroner Forbes, 27 June 2012 (SCOI.11115.00128).
[41] Exhibit 6, Tab 399A, Review of an Unsolved Homicide Case Screening Form – Death of Scott Johnson, undated, pp. 11 – 13 (SCOI.85777).

similar offences to determine any associates or knowledge of homosexual hate crimes in the Manly area in 1988.

Checks of archived records have identified sexual assault and assault and robbery offences against homosexual males within the Manly patrol since 1986. Only a limited number of these cases resulted in the identification of an offender.

The results of the initial investigation can not progress the matter further at this stage. However consideration should be given to undertake an investigation targeting known persons of interest who have been charged with offences against homosexuals in the Northern Beaches area over the period of Scott Johnson's death which may produce further lines of inquiry and enable covert opportunities to gather information."[42]

135. As noted by Counsel Assisting, DS Brown indicated that she agreed with these recommendations.[43]

136. A subsequent case prioritisation exercise was conducted by officers including then DCI Lehmann and DS Brown. That exercise included a consideration of a variety of pertinent features of the case, including the availability of witnesses and physical evidence; the existence or otherwise of a suspect; the potential for use of DNA technology to examine physical evidence; and the possibility of other leads that had not been fully explored.[44]

137. That review exercise ascribed the matter a score of 14, which equated to a priority "ranking" of "Nil".[45]

138. That score was informed by the absence of physical evidence and the consequent inability to effectively deploy DNA testing techniques, as well as the fact that no suspects were identified on the available material. Of particular note in the latter respect, there was no material available that could have conceivably led police to connect Scott White to Mr Johnson's death.

139. Counsel Assisting does not appear to take exception to the individual assessments conducted in determining the priority to be ascribed to Mr Johnson's case. It was not, for example,

[42] Exhibit 6, Tab 399A, Review of an Unsolved Homicide Case Screening Form – Death of Scott Johnson, undated, p. 15 (SCOI.85777).
[43] Transcript of the Inquiry, 3 October 2023, T6478.3-30 (TRA.00095.00001).
[44] Exhibit 6, Tab 399, Review Prioritisation Form – Case: Death of Scott Johnson 1988, 2 November 2012.
[45] Exhibit 6, Tab 399, Review Prioritisation Form – Case: Death of Scott Johnson 1988, 2 November 2012, p. 4.

suggested to either DS Brown or Mr Lehmann[46] that their evaluation of Mr Johnson's case was in some way wrong.

140. It is otherwise not clear whether Counsel Assisting takes issue with the approach to prioritisation implemented by the UHT in connection with Mr Johnson's case.

141. As outlined in the Commissioner of Police's submissions in relation to the Investigative Practices Hearing, the resources of the UHT are subject to very significant competing demands.[47] These submissions were accepted by Counsel Assisting in its submissions in reply in relation to the Investigative Practices Hearing.[48] It is regularly necessary for resources within the UHT to be redirected to assist with current investigations by the Homicide Squad[49] and to assist with the investigation of critical incidents, including during the investigation forming part of the relevant Coronial Inquest.[50] The latter process can take many months and include the taking of hundreds of statements, such that the entirety of the relevant officers' time is directed to work associated with the Inquest.[51]

142. In particular, the investigation of murders associated with organised crime has routinely impacted significantly upon the resources available for the work of the UHT.[52]

143. Of further import, neither the UHT nor the Homicide Squad is able to effectively control the timing or extent of demands upon officers' time in connection with the conduct of Court Proceedings or Coronial Inquests. Trials in relation to homicide offences are often long and complex, and involve substantial demands on officers' time. They are regularly vacated and rescheduled, often at the last minute. Similarly, Coronial Inquests in respect of critical incidents routinely involve lengthy hearings, and invariably include a variety of requisitions from Coroners and those assisting them.[53] In such circumstances, Homicide Squad members (including those in the UHT) are – entirely appropriately – bound to accommodate the timetabling requirements of the Court.

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[46] See Transcript of the Inquiry, 26 September 2023, T6065.10-20 (TRA.00091.00001); Transcript of the Inquiry, 3 October 2023, T6481.7-27 (TRA.00095.00001).
[47] Written submissions of the Commissioner of Police (Investigative Practices Hearing), 10 October 2023, [78] – [83].
[48] Written submissions in reply of Counsel Assisting (Investigative Practices Hearing), 19 October 2023, [31].
[49] Transcript of the Inquiry, 26 September 2023, T6114.10-14 (TRA.00091.00001).
[50] Transcript of the Inquiry, 26 September 2023, T6114.16-31 (TRA.00091.00001).
[51] Transcript of the Inquiry, 26 September 2023, T6114.33-47 (TRA.00091.00001); Exhibit 6, Tab 513, Statement of John Lehmann, dated 29 August 2023 [18] (SCOI.85495).
[52] Exhibit 6, Tab 513, Statement of John Lehmann dated 29 August 2023, [19] (SCOI.85495).
[53] See Exhibit 6, Tab 513, Statement of John Lehmann dated 29 August 2023, [18] (SCOI.85495) for an illustration of the impact of such requirements.

144. Indeed, this reality was recognised by State Coroner Barnes in his Honour's findings in the third Scott Johnson Inquest. There, at the conclusion of his findings, his Honour observed:

> "There are over 500 suspicious deaths that are awaiting further investigation, none of which has received the same level of scrutiny that this case has. In many of those cases families are also desperate for answers. There are finite resources that can be applied to those jobs. It is beyond the role of this court to direct how those resources should be applied. I am confident that if promising leads come to the attention of the NSWPF they will be pursued."[54]

145. Against that backdrop, it is necessary and appropriate for a process of prioritisation to be implemented. The considerations set out in the Review Prioritisation Form each relate to matters that are likely to have significant relevance to the question of whether a given case is, in fact, able to be solved. Such a prioritisation process is entirely appropriate.

146. As noted by Counsel Assisting (CAS, [145]), unsolved cases are never closed unless or until a person is arrested and charged.[55] New information may be received, for example, in response to the announcement of a reward. That new information may serve as the catalyst for a new investigation.

147. As concerns a reward, an application for a reward in relation to Mr Johnson's death had in fact been made by the UHT on 20 November 2012.[56] That application was signed by the Police Minister in the meeting with the Johnson family on 12 February 2013.[57]

148. The fact of a reward – the application for which long pre-dated the Australian Story episode and the establishment of SF Macnamir – makes it clear that police were, from an early stage, open to the possibility that Mr Johnson's death was a homicide and were seeking to elicit information that might, in accordance with DS Taylor's recommendation, allow the matter to be productively re-investigated.

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[54] Exhibit 6, Tab 232, Third inquest into the death of Scott Russell Johnson – Findings of State Coroner Barnes, 30 November 2017, [284] (SCOI.11064.00018).
[55] Transcript of the Inquiry, 26 September 2023, T6057.29-30 (TRA.00091.00001); Transcript of the Inquiry, 3 October 2023, T6479.22-6480.10 (TRA.00095.00001); Transcript of the Inquiry, 5 October 2023, T6644.20 (TRA.00097.00001).
[56] See Exhibit 6, Tab 232, Third inquest into the death of Scott Russell Johnson – Findings of State Coroner Barnes, 30 November 2017, [22] (SCOI.11064.00018).
[57] Exhibit 6, Tab 521, Second Statement of Pamela Young dated 22 September 2023, [35] (SCOI.85816).

149. Indeed, in her interview with Ms Alberici on 10 April 2015, Ms Young observed that "We really hoped and expected, like [the Johnson family] did, that that would generate a lot more spontaneous and new information, but it has not".[58]

150. Again, in the absence of such information, it is appropriate for priority to be afforded to cases which have particular features that make them more susceptible to successful resolution, such as an identified suspect, or new opportunities for forensic testing.

February 2013: Australian Story

151. As set out at June CPS [114], the evidence of Mr Willing referred to at June CAS [327] is wholly irrelevant, given it relied on a response to a question that inaccurately stated the words spoken by Mr Lehmann. Counsel Assisting is correct that June CAS [328] does not include a submission that Mr Lehmann lied on national television. However, such an allegation is plainly what is conveyed in the words at CAS [327] that:

> "Mr Willing said he did not see and could not recall DCI Lehmann's interview on Australian Story; but he accepted that it was "false" for DCI Lehmann to have publicly declared the case was "open" when he had in fact participated in the decision to assign the case zero solvability and not to investigate it further."

152. Again, the evidence of Mr Willing referred to therein proceeded on a false premise. It was therefore irrelevant. Counsel Assisting's submissions, however, do not acknowledge that. In summarising the relevant exchange without acknowledging the inaccuracy in the question asked of Mr Willing, Counsel Assisting appears to endorse the conclusion that what Mr Lehmann said was "false". In any event, Counsel Assisting goes on to say that Mr Lehmann's account of the words he spoke "strains credulity" (CAS, [149]). To say that something "strains credulity" is, of course, to assert that it is "difficult to believe"; the submission at CAS [149] certainly suggests that, contrary to what is said at CAS [147], Counsel Assisting presses a contention that Mr Lehmann's statement during the Australian Story program was untruthful.

153. What Mr Lehmann actually said was "Certainly we haven't closed the books on this case, it's an open case".[59] That observation was correct. Should it have been accompanied by a further description of what, in the parlance of unsolved homicide investigators, it means to say that a case remains "open"? Quite possibly. Nevertheless, Mr Lehmann was an experienced unsolved

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[58] Exhibit 6, Tab 342, Transcript of Recorded Interview between Emma Alberici and DCI Pamela Young in the Lateline Studio, 10 April 2015, p. 21.6-8 (NPL.2017.0004.0549).
[59] Exhibit 6, Tab 319, Transcript of 'On The Precipice', *Australian Story*, ABC News, 11 February 2013, p. 8 (SCOI.82485).

homicide detective, not a seasoned media operator. Again, his statement was accurate. The implication, at CAS [148] – [149], that Mr Lehmann deliberately created an inaccurate impression in the minds of the viewers of Australian Story, should be rejected.

February 2013: establishment of SF Macnamir

154. The meaning of the submission at CAS [153] is unclear.

155. In any event, the fact that SF Macnamir was instituted prior to the meeting between the Johnson family and the Police Minister further undermines any suggestion that the broader NSWPF had adopted and approved a position that the Police Minister was "kowtowing" to the Johnson family.

156. Ms Young's description of the Minister as "kowtowing" to the Johnson family was derived from her observation of the Minister's conduct during the meeting and subsequent events.[60] As will be considered further below, it was in no way a view that she was authorised to espouse as a representative of the NSWPF.

The conduct of SF Macnamir, including the consideration of suicide

157. For the reasons set out at June CPS [160] – [162], the evidence given by Mr Willing as to the possible state of mind of Ms Young was of no real probative value. Extraordinarily, the submissions at June CAS [367] – [381] (which relied substantially on the examination of Mr Willing regarding Ms Young's possible views) were made in circumstances where the Inquiry had already received a copy of a statement from Ms Young, dated 17 April 2023.

158. On 21 April 2023, that is – more than 3 weeks before Mr Willing gave further evidence on 15 May 2023 – the Inquiry wrote to Ms Young to indicate that it did not propose to tender Ms Young's statement or to call her to give evidence.[61]

159. Ms Young's statement (and the evidence she could have given orally) was squarely relevant to a wide variety of matters about which Counsel Assisting made submissions. Her statement addresses the formation and conduct of SF Macnamir and the Lateline interview, as well as the relative attention she devoted to the different potential causes of Mr Johnson's death.[62]

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[60] Exhibit 6, Tab 521A, First Statement of Pamela Young dated 17 April 2023, [26] – [29] (SCOI.85815); Transcript of the Inquiry, 5 October 2023, T6646.18-31 (TRA.00097.00001).
[61] Exhibit 6, Tab 521, Second Statement of Pamela Young dated 22 September 2023, [6] (SCOI.85816).
[62] Exhibit 6, Tab 521A, First Statement of Pamela Young dated 17 April 2023, [37] – [41], [69] (SCOI.85815).

160. What is more, Ms Young's statement plainly communicates a desire to be heard on the very subjects Counsel Assisting made submissions. Relevantly for present purposes, Ms Young's statement observed:

> "Any person who communicates by any means any material which tends to suggest that I determined that Scott Johnson had suicided and that I ignored, wilfully or otherwise, information or evidence that he may have died from homicide or misadventure, defames me.
>
> Any person who communicates by any means any material which tends to suggest that I attempted to influence the State Coroner, other persons in authority, or the public at large to believe that Scott Johnson had suicided, defames me."[63]

161. Counsel Assisting's determination not to call Ms Young to give evidence at any stage prior to the making of submissions on 7 June 2023 is inexplicable. As is the fact that Counsel Assisting advanced submissions in Part C of the June CAS that were contradicted by the terms of Ms Young's statement, without informing the Commissioner of Police or Mr Willing of the existence of the statement. It is similarly extraordinary that Ms Young does not appear to have been afforded the opportunity to make submissions in response to the June CAS (or the June CPS and Mr Willing's submissions for that matter).

162. The Commissioner of Police has addressed the potential import of Ms Young's opinion at June CPS [163] – [180]. As set out therein, whatever Ms Young or DS Brown's views were, they were arrived at following a careful investigation. That investigation was assessed as "comprehensive and thorough" by an independent review undertaken by the NSW Crime Commission.[64]

163. It is by no means inappropriate for an investigator to form views as a result of such an investigation; indeed, it would be unusual if they did not.

164. The submission at CAS [158] is addressed at June CPS [224] – [230]. None of the evidence that has emerged since those submissions alters the position set out therein. The evidence simply does not permit a finding that Ms Young and Mr Willing wished "to "defeat" the Johnson family by resisting a finding of homicide, particularly one of gay hate homicide".[65]

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[63] Exhibit 6, Tab 521A, First Statement of Pamela Young dated 17 April 2023, [69] – [70] (SCOI.85815).
[64] See June CPS, [164] – [170] (SCOI.84211) and the evidence cited therein.
[65] CAS, [158] (SCOI.84380).

165. It was not suggested to DS Brown that she was hoping to in some way "defeat" the Johnson family by resisting a homicide finding or otherwise. The submission at CAS [158] in no way follows from the evidence given by DS Brown.

166. Counsel Assisting explored DS Brown's attitude to the findings of the third Scott Johnson Inquest with her in the following way (emphasis added):

> "Q. What do you say your reaction actually was when the findings came down?
> A. I was perplexed by the findings based on the evidence that went over the inquest, and there were 38 witnesses who gave evidence at that inquest. So based on the evidence presented at the inquest, I was perplexed that the actual finding was so precise, because the evidence didn't support such a precise finding.
>
> Q. Were you disappointed by the finding of homicide?
> A. Not at all, no.
>
> Q. Were you disappointed that the finding represented a win for the Johnsons?
> A. No.
>
> Q. Were you disappointed that the Coroner had not preferred the suicide theory?
> A. No.
>
> Q. You are aware of course, now, that some years later a suspect was arrested and charged for the death of Mr Johnson?
> A. Yes.
>
> Q. And that that suspect eventually pleaded guilty - initially to murder and later to manslaughter?
> A. Yes.

Q. And that he has now been convicted and sentenced for manslaughter?
A. Yes.

Q. And thus, in those circumstances, the suicide theory was wrong and the death was a homicide?
A. Yes. It's not a gay hate --

Q. Sorry?
A. It's not a gay hate homicide.

Q. It was a homicide?
A. It was a homicide, yes."[66]

167. A number of things flow from this exchange. DS Brown was, understandably, "perplexed" by the precision of State Coroner Barnes' findings. She made it clear that she was not disappointed that the State Coroner had not preferred the suicide theory, nor that the finding represented a "win" for the Johnson family. She confirmed her understanding that Scott Johnson's death has since been found to have been a homicide. The fact that she added an addendum that the death was not a "gay hate homicide" in no way supports the inference Counsel Assisting seeks to draw from it. DS Brown's observation in that respect is simply consistent with her earlier evidence (extracted above) that she was "perplexed" by the finding because the evidence "didn't support such a precise finding".

168. DS Brown made clear that her view was that "[i]f an objective review was conducted of Strike Force Macnamir, of the work that I did, it would be shown, and it would be established, that the whole three - the three possibilities were explored. Every line of inquiry was explored".[67]

169. This observation accords with observations State Coroner Barnes made in his findings.

170. Indeed, ultimately, the work undertaken by SF Macnamir provided the foundation on which State Coroner Barnes reached the conclusion that Scott Johnson was the victim of a gay hate attack

[66] Transcript of the Inquiry, 3 October 2023, T6489.3-44 (TRA.00095.00001).
[67] Transcript of the Inquiry, 3 October 2023, T6490.2-6 (TRA.00095.00001).

perpetrated by multiple persons (erroneous though that conclusion was). In that respect, his Honour observed:

> "Officers from the strike force re-interviewed police and members of the community spoken to during the course of the original investigation as well as interviewing other persons who knew Scott or were identified as possibly being able to provide further information or insights as to his personality, relationships, work and life plans, as well as his possible final movements during the week and days leading up to his death. Strike Force Macnamir also investigated the possible involvement of a number of persons of interest.[68]
>
> ...
>
> The work of Strike Force Macnamir has continued throughout the course of the preparation and hearing of this third inquest and is ongoing. Information continues to be received and is still being processed. Nothing currently to hand warrants delaying the delivery of these findings further."[69]

171. The clear evidence as to the thoroughness of the investigation, and in particular the fact it examined the possible involvement of various persons of interest, is fatal to Counsel Assisting's submission that those involved in the investigation somehow sought to "defeat" the Johnson family by resisting a finding of homicide, particularly one of gay hate homicide.

172. As concerns the submissions at CAS [160] – [162], it is submitted at the outset that Counsel Assisting seeks to place undue weight on a semantic parsing of the precise words spoken by Ms Young during her "practice session" with Ms Alberici. Engaging in a word-by-word analysis of terms spoken during the course of an interview of the type engaged in by Ms Young is liable to inflate the significance of individual words. As was the position in relation to Mr Lehmann, Ms Young was not a seasoned media operator, conveying a word-perfect message that had been curated and drilled into her. She was a police officer (albeit a very experienced detective) giving a response during the course of an off-the-record "practice session".

173. When called upon to engage with the kind of semantic analysis that Counsel Assisting have conducted, Ms Young gave the following evidence (emphasis added):

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[68] Exhibit 6, Tab 232, Third inquest into the death of Scott Russell Johnson – Findings of State Coroner Barnes, 30 November 2017, [24] (SCOI.11064.00018); see also [180] where his Honour observed "Strike Force Macnamir investigated the possible involvement of a number of other potential persons of interest in connection with the death of Scott Johnson".
[69] Ibid, [28].

"MR GRAY: Q. The expression you used was that you "put to the test the findings", so what I want to suggest to you is that you were putting them to the test - that is, the findings - in the sense of challenging them, challenging the findings of Coroner Milledge about the Bondi cases, but you reject that, do you?
A. I do. It's a small "f" findings, not a capital "F" findings.

Q. What do you mean by that?
A. Oh, well, coronial findings, I would just - it's an official title for something. So it's what they found out. So my - what I tried to say, maybe clumsily, it was what Taradale found out, we were looking at what they found out, to see if it could be of benefit to us looking at what happened to Scott.

Q. Do you say that Coroner Milledge didn't make findings?
A. No. I'm saying when I used the word "test" what Taradale found out, that's what my intent was in saying that."[70]

174. When asked about her *actual* state of mind, and what she intended by those words, Ms Young gave a clear explanation – "I wanted the body of work, I wanted the facts, the information, the intelligence… I wanted to learn about the gangs operating in Sydney in a coastal area similar to where Scott had been found".[71]

175. Were Ms Young, by those comments, actually seeking to undermine the suggestion that gay hate was involved in those cases, she would surely have indicated to Ms Alberici that there was reason to doubt the conclusion reached by Deputy State Coroner Milledge in relation to those cases. She did not.

176. Similarly, if Ms Young had an interest in challenging the conclusions reached by Deputy State Coroner Milledge, that would surely have appeared on the face of the 2013 Issues Paper she

[70] Transcript of the Inquiry, 5 October 2023, T6665.24-44 (TRA.00097.00001).
[71] Transcript of the Inquiry, 5 October 2023, T6667.36-37; T6667.41-42 (TRA.00097.00001).

assisted Mr Lehmann to prepare (**2013 Issues Paper**). Instead, the conclusions set out in that document align with those expressed by Deputy State Coroner Milledge in connection with the Taradale Inquest.[72]

177. That being so, and having regard to the matters set out at June CPS [279] – [281], the submission at CAS [162] should be rejected.

The Lateline broadcast

178. The Lateline broadcast was a key focus of the submissions made by Counsel Assisting in June 2023. Those submissions were made in the absence of evidence from any of the key actors in the relevant events, save for Mr Willing.

179. Not until submissions were made on behalf of the Commissioner of Police and Mr Willing drawing attention to the procedural fairness deficits that would result, and the absence of a proper evidentiary foundation for various of the submissions made, did Counsel Assisting seek to adduce evidence from those key actors and afford them the opportunity to respond to the criticisms advanced.

180. The submissions made at [157]-[161] above regarding the failure to call Ms Young or to tender her statement dated 17 April 2023, which had been in the possession of the Inquiry for a number of weeks before Mr Willing gave evidence in May 2023, bear repeating.

<u>The origins of the media strategy</u>

181. As noted at CAS [168], Mr Willing's view was that the initial discussions (the timing of which he did not recall[73]) he had with Ms Young did not extend to her going on the record.

182. Rather, the discussions centred around providing select journalists with information about the extent of inquiries that had been conducted by police in connection with Mr Johnson's death.[74] That information could be used as a contextual foundation upon which the relevant journalists could conduct their own inquiries.[75]

183. The suggestion that Mr Willing (or any other senior police or media personnel) were aware of the 30 January 2015 meeting with Ms Alberici does not accord with the documentary record.

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[72] Exhibit 6, Tab 47, Issues Paper from DCI John Lehmann re: Assessment of 30 potential 'gay hate' unsolved homicides by the Unsolved Homicide Team (UHT) to determine if any bias motivation existed, 25 September 2013 (SCOI.74906).
[73] Transcript of the Inquiry, 6 October 2023, T6789.35 (TRA.00098.00001).
[74] Transcript of the Inquiry, 6 October 2023, T6790.32-36; T6790.45-6791.2 (TRA.00098.00001).
[75] Transcript of the Inquiry, 6 October 2023, T6790.45-6791.2 (TRA.00098.00001).

Consistent with the account of Georgina Wells, the available material makes it clear that (DS Brown and Ms Young aside) police were not aware that the ABC person to whom Ms Young intended to speak was Ms Alberici until either 8 or 9 April 2015.

184. Indeed, Ms Young confirmed in evidence that she "very likely" did not disclose the fact of her 30 January 2015 meeting with Ms Alberici to any of her superiors (i.e. Mr Willing and those above him) or to the NSWPF Media Unit.[76]

185. The NSWPF Media Unit did not become aware of Ms Young's proposal to speak with journalists until 1 April 2015 when Ms Wells, the Media Supervisor within the State Crime Command[77] (whose responsibilities included media for the Homicide Squad[78]) had separate discussions with Mr Willing and Ms Young regarding the possible third Coronial Inquest into the death of Scott Johnson.[79] During Ms Wells' discussion with Ms Young, Ms Young suggested that she could conduct 'backgrounders' with journalists from different publications.[80]

186. By this time, not only had Ms Young met with Ms Alberici (which again occurred on 30 January 2015[81]), Ms Young had provided a copy of her statement to Ms Alberici (which occurred soon after 17 February 2015[82]). Despite this, Ms Young did not give any indication that she had already had discussions with *any* journalists, let alone that she had provided a copy of her statement to Ms Alberici.[83]

187. Ms Wells nominated Daniel Box from The Australian and Lorna Knowles from the ABC as appropriate journalists for the purposes of the backgrounding.[84]

188. It was agreed that these 'backgrounders' would be off-the-record, such that no quotes could be attributed to Ms Young and no information about the statement could be published unless it was

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[76] Transcript of the Inquiry, 5 October 2023, T6754.35 (TRA.00097.00001).
[77] Exhibit 6, Tab 510, Statement of Siobhan McMahon dated 1 September 2023, [17] (NPL.9000.0025.0009); Exhibit 6, Tab 347, Email from Georgina Wells to John Kerlatec and Kenneth Finch (copied to Bradley Monk, Michael Willing and Pamela Young), 7 April 2015 (NPL.0138.0001.0037).
[78] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [7] – [8] (NPL.9000.0027.0001); Exhibit 6, 512, First Statement of Strath Gordon dated 5 September 2023, [11] (NPL.9000.0028.0001).
[79] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [10] (NPL.9000.0027.0001); Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 1 (NPL.0147.0001.0001).
[80] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [10] (NPL.9000.0027.0001).
[81] Exhibit 6, Tab 521, Second Statement of Pamela Young dated 22 September 2023, [98] (SCOI.85816); Exhibit 6, Tab 345, Email from Emma Alberici to Bruce Belsham, 30 January 2015 (SCOI.82662).
[82] Exhibit 6, Tab 519, First Statement of Detective Sergeant Penelope Brown dated 19 September 2023, [14] – [15] (SCOI.85747); Exhibit 6, Tab 346, Email from Detective Sergeant Penelope Brown to Pamela Young, 17 February 2015 (NPL.0138.0001.0072).
[83] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [10] (NPL.9000.0027.0001); see also Transcript of the Inquiry, 5 October 2023, T6754.41-6755.4 (TRA.00097.00001).
[84] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [10] (NPL.9000.0027.0001).

made public by the Coroner.[85] Ms Young did not discuss the release of her statement itself to journalists with Ms Wells.[86]

189. During the course of the conversation between Ms Wells and Ms Young on 1 April 2015, the possibility of going on the record was raised. In that respect, Ms Wells indicated in the interview conducted with Ashurst solicitors on 27 April 2015 that there would be the "possibility of going on the record if the statement was released by the Coroner. But anything on the record I understood to just be along the lines of the media release ie. to welcome the Inquest".[87]

190. As to the question of whether the 'backgrounder' would automatically become on the record subsequent to the release of the statement, Ms Wells said the following in her interview on 27 April 2015:

> "Pam and I discussed it previously and she asked 'once the statement is released does the backgrounder become on the record?" I said 'no, there needs to be a separate interview'."[88]

191. Ms Young denied that such a conversation ever took place.[89] Ms Wells gave evidence that she did, in fact, have such a conversation with Ms Young[90] at the time the 'backgrounder' strategy was discussed around 1 April 2015.[91] Ms Wells' evidence on this point should be preferred to Ms Young's.

192. First, Ms Wells' account accords with the approach ultimately adopted by Ms Young – that is, she conducted the 'backgrounder' (perhaps better characterised as a "practice session") on 10 April 2015 and then, subsequent to release of the statement, conducted a further interview on 13 April 2015. Second, Ms Wells impressed as a credible witness (unlike Ms Young, who Counsel Assisting describes as 'in many respects unreliable'[92]). Ms Wells is no longer a police employee, and plainly does not have the same 'investment' in the relevant issues as Ms Young.

193. Beyond the observations she made regarding the need for a further interview, Ms Wells did not explicitly indicate to Ms Young that further approval would be required before any on the record interview was conducted; she (entirely understandably) assumed that she did not need to explain

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[85] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [11] (NPL.9000.0027.0001).
[86] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [11] (NPL.9000.0027.0001).
[87] Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 1 (NPL.0147.0001.0001).
[88] Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 3 (NPL.0147.0001.0001).
[89] Exhibit 6, Tab 521, Second Statement of Pamela Young dated 22 September 2023, [108] (SCOI.85816).
[90] Transcript of the Inquiry, 29 September 2023, T6340.23-29 (TRA.00094.00001).
[91] Transcript of the Inquiry, 29 September 2023, T6341.7 (TRA.00094.00001).
[92] CAS, [248](c).

that to an officer of Ms Young's seniority.[93] It should be recalled in this respect that Ms Young did not make *any* mention of the possibility of a *studio* interview to Ms Wells.[94]

194. Ms Wells discussed the proposed media strategy with Strath Gordon, the Head of Public Affairs for the NSWPF on Thursday, 2 April 2015. Mr Gordon approved 'backgrounders' with Mr Box from The Australian and Ms Knowles from the ABC.[95]

The media strategy and the approval process

195. As noted by Counsel Assisting (CAS, [177]), section 3.2.3 of the applicable NSWPF Media Policy (**NSWPF Media Policy**) provided that:

> "Participation in live interviews on current affairs style shows and major news bulletins is restricted to the Commissioner, Deputy Commissioners, Corporate Spokespeople, Assistant Commissioners, and personnel authorised and appropriately trained for that environment".[96]

196. Ms Young was a Detective Chief Inspector; the Assistant Commissioner level is three ranks above her position. She had received no training in relation to the delivery of studio interviews (either in a general sense or specifically as concerns the circumstances of the Scott Johnson case). The question of authorisation aside, she was therefore not capable of giving an interview on Lateline in accordance with the NSWPF Media Policy.

197. The NSWPF Media Policy also provided relevantly:

> "3.2.5 Government Policy
>
> Do not criticise:
>
> - existing or proposed police policy or wider Government policy or legislation
> - parliament
> - a court decision
> - any other government department or agency."[97]

[93] Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 2 (NPL.0147.0001.0001).
[94] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [15], [18] (NPL.9000.0027.0001).
[95] Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 2 (NPL.0147.0001.0001); Exhibit 6, 512, First Statement of Strath Gordon dated 5 September 2023, [11], [13] (NPL.9000.0028.0001).
[96] Exhibit 6, Tab 527, NSWPF Media Policy, May 2013, p. 13 [3.2.3] (NPL.0226.0001.0001).
[97] Exhibit 6, Tab 527, NSWPF Media Policy, May 2013, p. 14 [3.2.5] (NPL.0226.0001.0001).

198. Further guidance regarding Coronial matters is provided at Part 5 of Schedule 1 to the NSWPF Media Policy.[98] There, the NSWPF Media Policy provides:

> "During investigations involving deaths, no public comment should be made without the authorisation of the relevant Region Commander or specialist Commander equivalent *and* the Coroner, following consultation with the Police Media Unit.
>
> …
>
> … Police media statements should never speculate about cause of death. It is legally a matter for the Coroner to determine and media inquiries should be referred to the Coroner's Office.
>
> …
>
> Public speculation or commentary about matters before the Coroner could jeopardise coronial proceedings."[99]

199. On 7 April 2015, Ms Wells sent an email to former Detective Chief Superintendent John Kerlatec and former Acting Assistant Commissioner Kenneth Finch, Mr Willing's then superiors within the State Crime Command (**media strategy email**).

200. The media strategy email was in the following terms:

> "Ken, John,
>
> The Directions Hearing in relation to a possible third Inquest re: the death of Scott Johnson is to be held on Monday 13 April 2015 at Glebe Coroner's Court. As you are aware, this has been a case of intense media interest, partly as a result of campaigning by and on behalf of the Johnson family and a reporter hired to assist them, Daniel Glick. The ABC, The Australian and the SMH have been the main outlets following the matter.
>
> A statement has been prepared for the Coroner by Det Ch Insp Pamela Young. It totals some 445 pages and, while a non-publication order has been sought by Det Ch Insp Young, it is possible it could be made available to the media for reporting as soon as

[98] Exhibit 6, Tab 527, NSWPF Media Policy, May 2013, pp. 47 – 48 (NPL.0226.0001.0001).
[99] Exhibit 6, Tab 527, NSWPF Media Policy, May 2013, p. 47 (NPL.0226.0001.0001).

Monday. The concern is that media, in lieu of not being able to adequately review such a large document in a short time frame in order to compile a full report, may instead rely on commentary from the Johnson family for any media reporting.

As such, we would like to provide a background briefing to the ABC and The Australian prior to Monday so they can take a look at the report and have a chat to police about what's in it. The briefing would be for background information only and off the record. They would also be informed that there is a possibility there may be a non-publication order on the report. We do not intend to approach the SMH as their reporter, Rick Feneley, is biased in his reporting and not willing to consider any information provided to him by police. If and when the statement is made public, we would be happy to go on the record then, plus address any media requests from all media (including Rick Feneley).

Additionally, Det Supt Mick Willing intends to advise the Coroner that we will be backgrounding a number of reporters on the statement as a courtesy.

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

Kind regards,
Georgie Wells
Media Supervisor, State Crime Command
NSW Police Force"[100]

201. The terms of the email (in particular the indication that "we would like to provide a background briefing…") make it clear that while Mr Gordon approved it from a police media perspective, it was subject to the views of more senior police, specifically Mr Finch and Mr Kerlatec.

202. Consistent with this, the media strategy email was considered at a meeting held on 8 April 2015. This meeting is the subject of a contemporaneous diary note made by Mr Willing. The terms of that note are important. It reads:

[100] Exhibit 6, Tab 347, Email from Georgina Wells to John Kerlatec and Kenneth Finch (copied to Bradley Monk, Michael Willing and Pamela Young), 7 April 2015 (NPL.0138.0001.0037).

> "1250pm – With JK [John Kerlatec] – brief DCOP NK [Nick Kaldas] re S/F Macnamir media strategy – approved backgrounding of select media – briefing note required"[101]

203. To the extent there was any doubt, this note makes it abundantly clear that all that was authorised was the "backgrounding of select media". Were a studio interview contemplated, it no doubt would have been the subject of discussion in the meeting (and recorded in this note).

204. The suggestion that a studio interview could have been approved – particularly in a matter subject to intense public scrutiny – without any contemporaneous record of that approval, or any knowledge of the NSWPF Media Unit, or any decision to involve the NSWPF Media Unit in the preparation for that interview, simply defies belief.

205. Further events on and after 8 April 2015 further solidify the position that there was not, in fact, any approval of Ms Young's studio interview with Ms Alberici.

206. At 8.21am on 8 April 2015, Ms Wells sent Mr Willing an email in which she stated:

> "The lurgy has got me and I'm off sick today but on the mobile. Happy to chat on the phone though.
>
> Dan Box's story is on p3 today and reinforces to me that we need to fill him in on the statement. Have a chat to Pam for her availability this week and once Nick Kaldas has been briefed I'm happy to organise those chats with Dan as well as Lorna from ABC. I'll organise for Siobhan to sit in."[102]

207. This email makes three things abundantly clear:

a) at the time of this email, Ms Young had not yet given any indication to NSWPF personnel other than DS Brown that she had been speaking with Ms Alberici;

b) the media strategy related to background "chats" with Mr Box and Ms Knowles only – there was no contemplation of a studio interview; and

c) the backgrounding strategy required further approval from police senior to both Ms Young and Mr Willing – in particular, Mr Kaldas.

208. Also on 8 April 2015, Ms Wells had a handover discussion with Siobhan McMahon during which Ms Wells informed Ms McMahon that Ms Young was going to conduct 'backgrounders' with Mr

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[101] Exhibit 6, Tab 380, Handwritten diary entries of Michael Willing, April 2015, p. 1 (NPL.0138.0009.0185).
[102] Exhibit 6, Tab 526, Email from Georgina Wells to Michael Willing, 8 April 2015 (NPL.2017.0001.0150).

Box and Ms Knowles. Ms Wells indicated that the backgrounder with Mr Box had been scheduled for Friday, 10 April 2015 at the State Crime Command office. Ms Wells asked Ms McMahon to attend the 'backgrounder' with Ms Young.[103] Ms McMahon indicated that it was common practice for a person from the NSWPF Media Unit to attend such 'backgrounders'.[104]

209. At 3.59pm on 8 April 2015, Ms Wells (who was off sick that day) indicated to Ms Young that Mr Box was "very keen to meet with you on Friday" and "has agreed to the discussion being off the record and for background purposes only, with any background information used only if/when the statement is made public by the Coroner".[105]

210. It was not until sometime on 8 or 9 April 2015 that Ms Young informed Ms Wells that she had contacted Ms Alberici to conduct the 'backgrounder' in lieu of Ms Knowles.[106]

211. This is made very clear from an email exchange between Ms Wells and Ms McMahon in which Ms McMahon asks:

> "Georgie - was I supposed to organise the other person to come tomorrow as well? (Lorna Knowles, I think you said?)."[107]

212. Ms Wells responded:

> "No, Pam has spoken directly with Emma Alberici from ABC. Sorry, forgot to mention."[108]

213. This exchange demonstrates that as at the time of their handover discussion (which occurred on 8 April 2015), Ms Wells informed Ms McMahon that, consistent with her understanding at that time, the recipient of the backgrounder was to be Ms Knowles.

214. At the time of the handover, Ms Wells was still not aware of any prior dealings between Ms Young and Ms Alberici.[109] Plainly, Ms Wells was not aware that any of the discussions between Ms Young and Ms Alberici would occur in a studio or otherwise be recorded (either in audio or video form).[110]

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[103] Exhibit 6, Tab 510, Statement of Siobhan McMahon dated 1 September 2023, [17] (NPL.9000.0025.0009).
[104] Exhibit 6, Tab 510, Statement of Siobhan McMahon dated 1 September 2023, [18] (NPL.9000.0025.0009).
[105] Exhibit 6, Tab 351, Email from Georgina Wells to Pamela Young (copied to Michael Willing, Siobhan McMahon, John Kerlatec, Kenneth Finch and Blake Clifton), 8 April 2015 (NPL.0138.0002.2959).
[106] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [15] (NPL.9000.0027.0001).
[107] Exhibit 6, Tab 351, Email from Siobhan McMahon to Georgina Wells, 9 April 2015 (NPL.0138.0002.2959).
[108] Exhibit 6, Tab 351, Email from Georgina Wells to Siobhan McMahon, 9 April 2015 (NPL.0138.0002.2959).
[109] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [15] (NPL.9000.0027.0001).
[110] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [15] (NPL.9000.0027.0001).

215. The evidence of all three of the witnesses who were employed in the NSWPF Media Unit at the time of these events could scarcely be clearer.

a) Ms Wells confirmed that a 'sit-down' studio interview had never been discussed with her; that such an interview would need to have been considered by the senior police executive and approved by the Director of Public affairs; that a Media Liaison Officer would have been required to attend any 'sit-down' interview; that a 'sit-down' interview would need to have been preceded by an appropriate preparation session; and that to her knowledge approvals were neither sought nor obtained for the Lateline interview.[111]

b) Mr Gordon provided approval for 'backgrounders' with Ms Knowles and Mr Box (and only those 'backgrounders').[112] At the time he approved these 'backgrounders', the possibility of a 'sit-down' interview of any description was not raised with him. Mr Gordon's evidence is that he was aware that the matter was highly sensitive and before the State Coroner and in those circumstances would not have approved a 'sit-down' interview. Specifically as concerns Ms Alberici, Mr Gordon states that it would have been "very unusual to approve a sit-down interview with Ms Alberici for any significant NSWPF matter. At the time, Ms Alberici was the host of a later evening national news program that had little to no interaction with our media staff in any regular way".[113] Separately, Mr Gordon confirmed that he was not aware of the Lateline interview until the following morning.[114] Mr Gordon stated that, in circumstances where he had not approved it and was not aware it had occurred, he would have watched the Lateline interview on 13 April 2015 had he been told of it.[115] Mr Gordon's account has not been challenged.

c) Ms McMahon, who was not involved in the formulation of the media strategy,[116] but – as discussed above – had some involvement in connection with the 'backgrounder' of Mr Box, was not aware that any 'sit-down' interview had been authorised by anyone in the NSWPF.[117] Ms McMahon's evidence has not been challenged.

216. The NSWPF Media Unit made it clear to Ms Young that they wished to attend the background briefing with Mr Box on 10 April 2015. She did not tell them at all about the 'backgrounder' (or

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[111] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [19] (NPL.9000.0027.0001).
[112] Exhibit 6, Tab 512, First Statement of Strath Gordon dated 5 September 2023, [13] (NPL.9000.0028.0001).
[113] Exhibit 6, Tab 512, First Statement of Strath Gordon dated 5 September 2023, [16] (NPL.9000.0028.0001).
[114] Exhibit 6, Tab 512A, Second Statement of Strath Gordon dated 6 October 2023, [13] (NPL.9000.0038.0001).
[115] Exhibit 6, Tab 512A, Second Statement of Strath Gordon dated 6 October 2023, [10] (NPL.9000.0038.0001).
[116] Exhibit 6, Tab 510, Statement of Siobhan McMahon dated 1 September 2023, [22] (NPL.9000.0025.0009).
[117] Exhibit 6, Tab 510, Statement of Siobhan McMahon dated 1 September 2023, [23] (NPL.9000.0025.0009).

"practice session") with Ms Alberici on the same date. And she certainly did not tell them about the actual interview on 13 April 2015. Had she done so, they would have undoubtedly insisted on attending. So much is apparent from the disquiet the NSWPF Media Unit personnel expressed in connection with the fact that Ms Young was attending the 'backgrounder' with Mr Box without them.[118]

217. This evidence is further underscored by the email exchange between Mr Finch and Mr Gordon subsequent to the Lateline interview. At 10.24pm that evening, Mr Finch sent Mr Gordon an email stating:

> "So - the question is who organised - and approved Pam Young's interview with Emma Alberici? What was [the] purpose of it?"[119]

218. Mr Gordon responded to Mr Finch at 7.24am the following morning in the following terms (cc'ing Ms Wells):

> "My understanding is that there were background briefings to be conducted with both Dan Box and the ABCTV. We ruled out briefing SMH as Rick Fennelly was beyond convincing. I can't recall any discussion about an interview with Lateline. I've got a lousy memory but the strategy I discussed with Georgie was about background briefing some key journalists ahead of yesterday's hearing to provide them with some focus on Pam's submission."[120]

219. As concerns CAS [186], assuming Ms Young's email to herself faithfully transcribed the contents of Mr Kaldas' text message to her, it provides an indication that Mr Kaldas (who appears to have been away on holidays) wished to offer his personal support to Ms Young (with whom the content of the text messages suggests he was familiar on a personal level).[121] It does not give any meaningful insight into the question of whether the Lateline interview was, in fact, approved. In that respect, it is noteworthy that Ms Young's message did not include any indication that the interview had, in fact, been approved. If Ms Young had Mr Kaldas' approval (or anyone else's)

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[118] Exhibit 6, Tab 352, Emails between Siobhan McMahon, Blake Clifton, Strath Gordon and Georgina Wells, 10 April 2015 (NPL.0138.0004.7178); Exhibit 6, Tab 353, Emails between Siobhan McMahon and Georgina Wells, 10 April 2015 (NPL.0138.0005.2627).

[119] Exhibit 6, Tab 367, Email correspondence between Kenneth Finch, Strath Gordon, John Kerlatec and Georgina Wells, 13-14 April 2015, p. 2 (NPL.0138.0002.2771).

[120] Exhibit 6, Tab 367, Email correspondence between Kenneth Finch, Strath Gordon, John Kerlatec and Georgina Wells, 13-14 April 2015, p. 1 (NPL.0138.0002.2771).

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

to conduct the interview, she would almost certainly have made at least some reference to that fact in the course of the exchange.

220. Mr Kaldas has not been called to give evidence and the terms of his text message (again, assuming an accurate transcription) cannot be ascribed the import Counsel Assisting seeks to imbue them with. This is particularly true when the documentary evidence that is available – including a contemporaneous diary note regarding the meeting between Mr Willing, Mr Kerlatec and Mr Kaldas – clearly demonstrates that no such approval was given. It is not clear whether Counsel Assisting is suggesting that Mr Kaldas (or Mr Kerlatec for that matter) knew of the interview in advance. It is submitted that no such finding could properly been made in the absence of appropriate steps to draw any such submission to the attention of Mr Kaldas and Mr Kerlatec and provide them an opportunity to respond.

221. Before leaving the subject of the approval process, it is appropriate to make reference to the evidence of the NSWPF Media Unit personnel regarding what would have happened, had a studio interview actually been approved.

222. In Ms McMahon's experience, several steps were required to precede a high-profile sit-down interview between a journalist and a police officer. Of particular note, a practice question and answer session would occur between the Media Liaison Officer and the person being interviewed. Of further import, a Media Liaison Officer would be required to attend the interview.[122]

223. Consistent with this, Mr Gordon's evidence was that as a general rule, either he or a Media Liaison Officer would attend interviews given by NSWPF officers.[123] According to Mr Gordon, any 'sit-down' interview for a television show would include preparation. While reiterating that he never approved the Lateline interview, Mr Gordon indicated that "even if I had authorised an interview like that, it would have been accompanied by robust preparation. No preparation occurred prior to the Lateline Interview."[124]

<u>The provision of the Young coronial statement to Ms Alberici</u>

224. Contrary to CAS [193], the media strategy email does not indicate that the physical provision of Ms Young's email to the two journalists was a "central part of the media strategy". Rather, what

[122] Exhibit 6, Tab 510, Statement of Siobhan McMahon dated 1 September 2023, [24] (NPL.9000.0025.0009).
[123] Exhibit 6, Tab 512, First Statement of Strath Gordon dated 5 September 2023, [20] (NPL.9000.0028.0001).
[124] Exhibit 6, Tab 512, First Statement of Strath Gordon dated 5 September 2023, [20] (NPL.9000.0028.0001).

was contemplated was allowing the journalists to "take a look at the report and have a chat to police about what's in it."[125] Mr Willing's evidence that media personnel were to be taken through the statement is entirely consistent with the terms of the media strategy email.[126] The physical provision of the entire statement would have run counter to the fact that, at that time, police were seeking non-publication orders in respect of it.

225. Ms Wells' evidence makes clear that the release of the statement itself did not form part of the media strategy, in circumstances where that decision was one for the Coroner.[127]

226. Her evidence in that respect is consistent with what she said in her record of interview in 2015, where she observed: "I don't think we gave [a] copy of [the] statement, just a background chat regarding the contents of the statement".[128]

Communications prior to 13 April 2015

227. Key aspects of Ms Alberici's evidence regarding her interactions with police media personnel do not appear to be reliable. As noted by Counsel Assisting, in her statement Ms Alberici observed that she "had minor dealings with Police media who called me to check that I had everything I needed to conduct the interview with Pamela Young for Lateline."[129] In evidence she stated that she had dealings on the phone with a woman from police media around the time of receiving the statement.[130]

228. The evidence detailed at [206] – [214] makes it abundantly clear that as at the time the statement was provided in February 2015, neither police media, nor any other police personnel were aware that Ms Young was speaking with Ms Alberici.

229. Similarly, Ms Wells was off sick on 8 April 2015[131] (and, at least at the outset of that day, she understood the relevant journalists to be Ms Knowles and Mr Box[132]) while Ms McMahon did not find out about Ms Alberici's involvement until the following day. In those circumstances, Ms

[125] Exhibit 6, Tab 347, Email from Georgina Wells to John Kerlatec and Kenneth Finch (copied to Bradley Monk, Michael Willing and Pamela Young), 7 April 2015 (NPL.0138.0001.0037)..
[126] Transcript of the Inquiry, 6 October 2023, T6781.41-6782.8 (TRA.00098.00001).
[127] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [11] (NPL.9000.0027.0001).
[128] Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 1 (NPL.0147.0001.0001).
[129] Exhibit 6, Tab 524, Statement of Emma Alberici dated 25 September 2023, p. 3 (answer to question 4) (SCOI.85817).
[130] Transcript of the Inquiry, 28 September 2023, T6229.46-6230.7 (TRA.00093.00001).
[131] Exhibit 6, Tab 526, Email from Georgina Wells to Michael Willing, 8 April 2015 (NPL.2017.0001.0150).
[132] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [15] (NPL.9000.0027.0001).

Alberici's evidence that the reference to spending "the past hour in conversation with them all" in her email of 8 April 2015[133] included police media personnel should not be accepted.

230. Ms Wells' evidence was that she may have spoken to Ms Alberici once in the period prior to the interview, but that would have been the extent of their interaction.[134] She stated that any telephone call she had with Ms Alberici "probably lasted an entirety of 30 seconds, not an hour".[135]

231. Apart from Ms Alberici's evidence, there is nothing to suggest that Ms Wells' interaction with Ms Alberici included a conversation about a studio interview. As noted at [209] above, on the afternoon of 8 April 2015, Mr Box had "agreed [with Ms Wells] to the discussion being off the record and for background purposes only, with any background information used only if/when the statement is made public by the Coroner".[136] It stands to reason that any discussion between Ms Wells and Ms Alberici on that day was in similar terms; it would have been wholly incongruous for Ms Wells to have discussed an on the record studio interview with Ms Alberici earlier that day while seeking Mr Box's agreement that his discussion with Ms Young be off-the-record and used only as "background" if/when the statement was made public by the Coroner.

232. As will be considered further below, Ms Wells was not aware that Ms Young had done a studio interview for Lateline until after that interview had aired (cf CAS, [201] – [206]). Mr Willing's evidence in that respect is also subject to further consideration below.

233. As for Mr Willing's knowledge of Ms Young's intention to appear on Lateline, it should be noted that DS Brown's evidence was that she had been present during conversations "in the hallway" about the fact that Ms Young was going to go to the ABC and give an "interview".[137] According to DS Brown, there was no discussion, in those conversations, about the fact that the interview was to be off-the-record.[138] DS Brown did not, however, indicate that any of the conversations related to the giving of a 'sit-down' studio interview or that the conversations stated that the interview would be "on-the-record". In that respect, there is no inconsistency between DS Brown's evidence and Mr Willing holding an understanding that the interview to be conducted at

[133] Exhibit 6, Tab 348, Email correspondence between Emma Alberici and Lisa Whitby, 8 April 2015, p. 1 (SCOI.82992).
[134] Transcript of the Inquiry, 29 September 2023, T6314.47-6315.3 (TRA.00094.00001).
[135] Transcript of the Inquiry, 29 September 2023, T6357.38-40 (TRA.00094.00001).
[136] Exhibit 6, Tab 351, Email from Georgina Wells to Pamela Young, 8 April 2015 (NPL.0138.0002.2959).
[137] Transcript of the Inquiry, 3 October 2023, T6501.11-27 (TRA.00095.00001).
[138] Transcript of the Inquiry, 3 October 2023, T6501.29-35 (TRA.00095.00001).

the ABC was, in keeping with the approved media strategy, to be conducted as an off-the-record 'backgrounder'.

13 April 2015 – morning

234. On the morning of 13 April 2015, Mr Willing informed Ms Wells that he had discussed the provision of a brief statement by Ms Young to media representatives at the Coroners' Court following the directions hearing.[139]

235. On 9.21am on 13 April 2015, Ms Alberici sent an email to another ABC employee. That email read as follows:

> "Im thinking 8/9 for package - shot good stuff yesterday at Manly & have graphics etc plus new interviews today
>
> I'm thinking at least 13-15 with DCI Young
>
> I wont be on call cos court starts at 0930."[140]

236. The same email chain then includes discussion about Ms Young attending to give an interview at 5pm.[141] This email raises as a distinct possibility – though does not positively establish – that Ms Young was planning to give the interview regardless of the decisions made by the State Coroner that morning.

13 April 2015 – afternoon

237. After the hearing concluded on 13 April 2015, Ms Young told both Ms Wells and Mr Willing separately that no media representatives were present and that she had not spoken to the media.[142] She did, in fact, speak to a media representative.

238. Having regard to the nature of the questions asked, it seems very likely that, contrary to Ms Alberici's evidence,[143] the questions asked of Ms Young during the "doorstop" interview outside Court were in fact asked by her.

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[139] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [16] (NPL.9000.0027.0001).
[140] Exhibit 6, Tab 355, Email from Emma Alberici to Michael Doyle (SCOI.82683).
[141] Exhibit 6, Tab 355, Email from Emma Alberici to Michael Doyle (SCOI.82683).
[142] Exhibit 6, Tab 382A, 'Mick Willing notes', undated, p. 3 (NPL.2017.0001.0029); Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 3 (NPL.0147.0001.0001); Transcript of the Inquiry, 29 September 2023, T6323.6-10 (TRA.00094.00001); Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [17] (NPL.9000.0027.0001).
[143] Transcript of the Inquiry, 28 September 2023, T6247.17-19; T6256.37-47 (TRA.00093.00001).

239. It is curious that, having heard Ms Alberici's evidence that she did not conduct the doorstop interview, Ms Young sought to resile from the position, expressed in her statement,[144] that Ms Alberici conducted the doorstop interview.[145]

240. Whether or not it goes so far as to positively establish a deliberately deceptive course of conduct by Ms Young, this series of events undoubtedly calls into question her actions vis-à-vis the Lateline interview on 13 April 2015 and her reliability as a witness in relation to them. It also calls into question the reliability of Ms Alberici's memory of the relevant events.

241. At 12.29pm, Ms Wells sent Mr Willing and Ms Young a draft press release for their review. The press release was in entirely anodyne terms, and made clear that "Police have welcomed today's decision by the NSW Coroner to hold a third inquest into the death of Scott Johnson."[146] Its terms were approved by Mr Willing.[147] It was reflective of the approved position in connection with communications regarding the third Inquest into Scott Johnson's death as well as the strict limits in the NSWPF Media Policy in relation to commentary regarding ongoing Coronial Inquests.

242. The benignly positive terms of that press release[148] weigh further against a conclusion that Ms Young's interview was approved. The press release (which, again, was approved by Mr Willing) illustrates the favourable attitude to the third Inquest the NSWPF (including Mr Willing) wished to convey to the public; it is inconceivable that an approach as "risky" as a prolonged 'sit-down' studio interview for a national current affairs program would have been contemplated, let alone an interview that departed so far from the terms of the approved message.

<u>The 5pm telephone conversation between Ms Young and Mr Willing and the evening of 13 April 2015</u>

243. There were some inconsistencies in Mr Willing's account in relation to the telephone call that occurred at about 5pm on 13 April 2015. It might be thought that those inconsistencies are readily understandable, having regard to the lapse of time and the fact that additional contemporaneous records became available between his evidence in February and his evidence in May. The

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144 Exhibit 6, Tab 521, Second Statement of Pamela Young dated 22 September 2023, [117] (SCOI.85816).
145 Transcript of the Inquiry, 5 October 2023, T6693.11-35 (TRA.00097.00001).
146 Exhibit 6, Tab 356, Email correspondence between Georgina Wells, Michael Willing, Pamela Young and others, 13 April 2015 (NPL.0138.0004.7162).
147 Exhibit 6, Tab 356, Email correspondence between Georgina Wells, Michael Willing, Pamela Young and others, 13 April 2015 (NPL.0138.0004.7162).
148 Exhibit, Tab 361A, NSW Police Force Media Release – Third inquest into the death of Scott Johnson welcomed by police, 13 April 2015 (NPL.0138.0002.2951).

Commissioner of Police has previously made submissions in relation to matters surrounding the 5pm phone call at June CPS [214] – [220].

244. It is important to note that Ms Young's account is not that she was "likely" to use the word "kowtowing" if asked by Ms Alberici (cf CAS, [214]; June CAS, [433]).[149] Rather, her evidence is that she said "If I am asked, I will be tempted to use the word kowtowing when describing the police minister."[150] In that respect the submission initially made by Counsel Assisting in June (June CAS, [433]) accurately reflected the terms of the question put to Mr Willing, but not the words contained in Ms Young's statement dated 17 April 2023.

245. An indication that a person will be "tempted" to do something carries a very different implication to a statement that they are "likely" to do so. The former plainly conveys that while a person might want to do something, they will not, in fact, do so. If the words set out in Ms Young's statement were spoken, it would be wholly unsurprising for Mr Willing to laugh in response; the logical interpretation of Ms Young's phrase is that she did not mean it seriously. The contrary possibility – that she actively intended to tell a high-profile journalist (whether off-the-record or on) that she considered the Minister had "kowtowed" to the family of a deceased person, would be too incredible to take seriously.

246. As noted by Counsel Assisting, an entry in DS Brown's duty book records the following:

> "[T]ravel to ABC studios with DCI Young, on (sic) route to ABC studios, DCI Young, made a telephone call to Commander Willing on loud speaker - DCI Young advised Commander Willing of interview with journalist Emma Alberici & stated if she was asked she would say that she felt the MP @ the time kow tow to the request of the Johnson family."[151]

247. There is reason to think this duty book entry was not made until 16 April 2015,[152] by which time a very substantial controversy had well and truly erupted in relation to Ms Young's interview.

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[149] The term "likely" is used in Ms Young's evidentiary statement but the relevant paragraph does not purport to be in direct speech: Exhibit 6, Tab 521B, Evidentiary Statement of Pamela Young dated 2 August 2019, [120] (SCOI.85912_0001).
[150] Exhibit 6, Tab 521A, First Statement of Pamela Young dated 17 April 2023, [58] (SCOI.85816); Exhibit 6, Tab 521, Second Statement of Pamela Young dated 22 September 2023 [119] (SCOI.85816_0001).
[151] Exhibit 6, Tab 519, First Statement of Detective Sergeant Penelope Brown dated 19 September 2023, p. 12 (SCOI.85747).
[152] See Transcript of the Inquiry, 3 October 2023, T6502.37-6503.12 (TRA.00095.00001).

248. In any event, it should be noted that the duty book entry refers only to an "interview"; it made no reference to the fact that the interview would be in the studio, or otherwise for the purpose of broadcast.

249. The fact that DS Brown was not subject to any disciplinary action by the NSWPF following Ms Young's interview on Lateline is of no moment (cf CAS, [225]); there was not any suggestion of wrongdoing on the part of DS Brown herself in connection with the interview. She was Ms Young's direct subordinate and obliged to follow directions from her. Moreover, she was not herself privy to the various communications regarding the ambit of the approval that had been given to Ms Young, nor was she of a rank where contact with the media was such that she would have been expected to have the same level of familiarity with the NSWPF Media Policy as Ms Young.[153]

250. Having regard to the matters considered above, there was absolutely no foundation for a belief on Ms Young's part that if her statement was released, she was at liberty to give media interviews on the record.[154] Of course, in view of those same matters – and those explored below – there is very good reason to doubt that Ms Young in fact held such a belief.

251. The fact that the interview was neither approved, nor even in the contemplation of the NSWPF Media Unit prior to it occurring, is conclusively established by the media unit update issued by Ms Wells at 4.35pm on 13 April 2015. That update recorded that:

a) "A media release indicating police welcomed the Inquest and had in fact requested a re-examination of Mr Johnson's death in March last year was issued"; and

b) "Last week, backgrounders were facilitated by Det Ch Insp Pam Young with Dan Box (Australian) and Emma Alberici (ABC TV) about the contents of the police statement".[155]

252. An update was issued at 6.18pm to indicate that Ms Young had spoken to Ms Alberici "on camera".[156] It made no reference to a "studio interview".

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[153] Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 3 (NPL.0147.0001.0001).
[154] Transcript of the Inquiry, 5 October 2023, T6700.21-32 (TRA.00097.00001).
[155] Exhibit 6, Tab 361, Email from Georgina Wells to Kenneth Finch, John Kerlatec and Anthony Cooke, 13 April 2015, p. 1 (NPL.0138.0002.2947).
[156] Exhibit 6, Tab 362, Email from Georgina Wells to Kenneth Finch, John Kerlatec and Anthony Cooke, 13 April 2015, p. 1 (NPL.0138.0002.3238).

253. Ms Wells considered that the "on camera" appearance by Ms Young would be limited to "grabs" which she assumed were provided outside Court.[157] In Ms Wells' understanding, any police comment in advance of, or during, an Inquest would be "extremely limited" and "the thought of Pamela Young having a 'sit-down' studio interview did not cross [her] mind".[158] In the interview she participated in with Ashurst on 27 April 2015, Ms Wells indicated that "[o]nce I saw it I was speechless".[159]

254. As to the specific submissions advanced by Counsel Assisting at CAS [229]:

a) As indicated above, DS Brown's note is quite likely not to have been made until well after the extent of controversy surrounding Ms Young's interview had become clear. The words Ms Young is said to have spoken (i.e. that she would be "tempted" to use the term kowtowing) did not suggest that she actually intended to say the word; to the contrary, Ms Young's words were more consistent with a light-hearted expression of desire to say the Minister had "kowtowed", accompanied by a recognition that they could not properly be said. In short, if Mr Willing had, indeed, laughed in response to those words, it is very likely that he did so because he assumed – for good reason – that Ms Young was joking.

b) It is entirely unsurprising that Mr Willing would seek to inform the State Coroner that a doorstop interview was likely to be broadcast on Lateline. Counsel Assisting's submission at [229](b) is not sustainable. The media strategy email makes it clear that Mr Willing intended to advise the Coroner that the NSWPF "will be backgrounding a number of reporters on the statement as a courtesy."[160] Mr Willing had a good relationship with the State Coroner[161] but had not yet provided that information. It is to be expected that he would seek to do so before the program was broadcast. Moreover, and contrary to the submissions of Counsel Assisting, the terms of the text message[162] do not suggest that Mr Willing was aware Ms Young had conducted a studio interview:

(i) first, the message refers only to the fact that Ms Young had been "interviewed", with no mention that the interview occurred in-studio;

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[157] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [21] (NPL.9000.0027.0001); Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 3 (NPL.0147.0001.0001).
[158] Exhibit 6, Tab 511, Statement of Georgina Wells dated 4 September 2023, [21] (NPL.9000.0027.0001).
[159] Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 3 (NPL.0147.0001.0001).
[160] Exhibit 6, Tab 347, Email from Georgina Wells to John Kerlatec and Kenneth Finch (copied to Bradley Monk, Michael Willing and Pamela Young), 7 April 2015 (NPL.0138.0001.0037).
[161] Ibid.
[162] Exhibit 6, Tab 366, Text message from Michael Willing to State Coroner Barnes sent at 8.11pm on Monday, 13 April 2015 (SCOI.47469_0001).

(ii) second, the message notes that, consistent with the backgrounding strategy that had been approved, the interviews occurred with *both* the ABC *and* the Australian; and

(iii) third, the message indicates only that Ms Young will "most likely" be on Lateline tonight – if Mr Willing was aware of the nature of the interview, it is unlikely that he would have harboured any doubt as to whether or not Ms Young would, in fact, appear on the program.

c) The logic underpinning the submission at CAS [229](c) is difficult to follow. Again, the use of the term "tempted" suggests any observation Ms Young made to Mr Willing regarding the use of the word "kowtowing" was meant (or would reasonably be understood) in a light-hearted fashion, rather than as an attempt to earnestly inform Mr Willing of the statements she was going to make to Ms Alberici.

d) The significance of inconsistencies or inaccuracies in either Mr Willing's evidence (given eight years after the events) or the 2015 dot points, should not be overstated.

e) The submission at CAS [229](e) imputes an extraordinary degree of foresight to Mr Willing. Whatever the accuracy of his dot points, Mr Willing's position has been consistent from the date of the interview onwards; throughout, he has indicated that he was not aware that Ms Young was planning to give an on the record studio interview with Ms Alberici.

255. As appears to be accepted by Counsel Assisting (CAS, [230]), the comments made by Ms Young during the Lateline interview strayed far beyond the boundaries of her statement. Similarly, what she said went far beyond what was the media strategy email contemplated, which in any event related to off-the-record 'backgrounders', rather than a studio interview. What is more, the observations she made flagrantly contravened the restrictions in the NSWPF Media Policy.

256. Ms Young had no proper basis to conclude that she had approval to give a detailed in-studio interview to Lateline. If, which seems unlikely, she truly believed that the media strategy email authorised her to give an on the record in-studio interview, that belief was entirely irrational.

257. It goes without saying that Ms Young had no reason whatsoever to consider that she might have approval to say many of the things that she said during that interview.

Tuesday 14 April 2015

258. While Ms Wells was aware, as at 6.18pm on 13 April 2015, that Ms Young had spoken on camera to Lateline, she was not, as indicated above, aware that she had done a "studio interview". Ms Wells was understandably "shocked" when she saw the interview, in circumstances where, following the call she received from Mr Willing, she (again, entirely understandably) "assumed it would be quick grabs only, along the lines of the media release".[163]

259. Ms McMahon was not aware of the Lateline interview until 14 April 2015; she too was shocked by the content of the interview, and surprised that the interview had occurred at all as she was not aware that any 'sit-down' interview had been authorised by anyone within the NSWPF.[164]

260. Mr Gordon had not been told of the Lateline interview before it went to air. As noted above, had Mr Gordon been told that Ms Young intended to participate in a studio interview, he would have watched it, in circumstances where he did not approve any interview and would have wanted to know what was said, which would have been central to his role and responsibilities.[165]

261. Also as noted above, Mr Gordon did not actually become aware of the Lateline interview until reading an email on the morning of 14 April 2015 from Mr Finch. The fact that Mr Finch was unaware of the interview is a further powerful indicator that it was not approved. It also serves as a powerful indicator that nothing in the media strategy email constituted confirmation of approval for on the record interviews to be conducted without any further recourse to the media team or senior NSWPF leadership.

262. Counsel Assisting's analysis of the messages sent to Ms Young on 14 April 2015 by Mr Finch and Mr Kaldas, do not recognise the fact that those messages were (as detailed above at [219]-[220] regarding Mr Kaldas) statements of *personal* support to Ms Young. The submissions of Counsel Assisting ignore the important role of senior police in supporting their subordinates in a way that enhances the wellbeing of those officers and maintains morale in the broader NSWPF.

263. Mr Finch is no longer a member of the NSWPF. He has not been called to give evidence. The actual view of Mr Finch in relation to both the question of approval, and the content of the interview, is readily apparent from the curt message he sent Mr Gordon at 10.24pm on the night of the Lateline interview. He plainly did not authorise the interview, nor approve of its contents.

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[163] Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 1 (NPL.0147.0001.0001).
[164] Exhibit 6, Tab 510, Statement of Siobhan McMahon dated 1 September 2023, [23] (NPL.9000.0025.0009).
[165] Exhibit 6, Tab 512A, Second Statement of Strath Gordon dated 6 October 2023, [10] (NPL.9000.0038.0001).

264. Again, Mr Kaldas' message was a message of personal support, sent to an officer with whom he appears to have been personally familiar. The fact that he would offer such support does not allow the inference to be drawn – particularly in the absence of evidence from him – that he approved of what Ms Young had said. Again, and in any event, he did not approve the giving of the interview, let alone the contents of it.

265. At about 3.20pm on 14 April 2015, police issued a public statement describing Ms Young's remarks as 'inopportune'. That statement clearly sought to strike a difficult balance between recognising the inappropriateness of what Ms Young had done and acknowledging the dedication and efforts of Ms Young and the other members of SF Macnamir so as to preserve public confidence in the integrity of the investigation itself.

After 14 April 2015

266. It is apparent that in the wake of the Lateline interview, Mr Gordon went through a process to determine what had transpired. Relevantly, Ms Wells stated:

> "She did speak outside the Court to ABC I later found out. She didn't say she didn't speak to anyone outside Court – she said she didn't do a door stop. I'm not sure if she was being deliberately tricky. I didn't find out about the ABC news Interview until a few days later. Strath was going through it all trying to work out what had happened and he said 'I've got vision of her outside the Court house'."[166]

267. Ms Wells and Ms Young had a brief conversation the week prior to Ms Wells' interview with Ashurst. Ms Wells described that meeting as follows:

> "She said there was a bit of a misunderstanding regarding what was approved. She says it was approved. She is not a stupid person. She wouldn't take that as approved."[167]

268. On 15 April 2015, Mr Willing spoke with Ms Young at 12.40pm. He made a contemporaneous diary note of that conversation. The note includes the following;

> "Speak with PY. via phone.
>
> - Believes she was authorised to do Lateline IV
> - Will not react well if not backed by Executive

[166] Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 3 (NPL.0147.0001.0001).
[167] Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 2 (NPL.0147.0001.0001).

- Believes she could speak about the things she said because of the statement being public record."[168]

269. The extent to which Ms Young's understanding was entirely wrongheaded, if not deliberately deceptive, is illustrated by her evidence that she considered that journalists would be permitted to quote from what she said in the background briefing and attribute it to her.[169]

270. While very unlikely, the possibility that Ms Young simply misunderstood the effect of the media strategy email cannot be absolutely ruled out. Once again, any such misunderstanding was entirely irrational.[170]

271. As for the meeting between Mr Willing and Ms Alberici in 2017 (CAS, [243]), even setting aside Mr Willing's denials, there is reason to doubt the accuracy of Ms Alberici's recollection of the contents of that discussion; it might be thought to be inherently unlikely that Mr Willing, who was a highly-regarded very senior police officer, would make comments of that type to a prominent journalist.

272. Of course, in the unlikely event he did make those remarks, they provide further support for a conclusion that police leadership (and, in particular, the Commissioner of Police) did not, in fact, approve of the statements that Ms Young had made in the interview.

Submissions regarding Lateline

273. The foregoing consideration makes it plain that neither police media personnel nor any senior police officers with the capacity to authorise an in-studio interview knew that it was occurring until after it had gone to air.

274. The SF Macnamir investigation was one of the most highly publicised investigations then on foot in NSW.[171] It had garnered significant media attention and the direct political involvement of the Minister of Police. The matter was before the State Coroner of NSW, who was considering whether to initiate an unprecedented third Inquest into the death of Scott Johnson.

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[168] Exhibit 6, Tab 380, Handwritten diary entries, 15 April 2015, p. 4 (NPL.0138.0009.0185).
[169] Transcript of the Inquiry, 5 October 2023, T6736.47-6737.23 (TRA.00097.00001).
[170] Ms Wells described it as "such a long stretch" for Ms Young to think that she had approval to conduct the interview she conducted: Exhibit 6, Tab 384, Record of Interview with Georgina Wells, 27 April 2015, p. 4 (NPL.0147.0001.0001).
[171] Transcript of the Inquiry, 5 October 2023, T6745.25-38 (TRA.00097.00001).

275. Whatever the conclusion ultimately reached in connection with Mr Willing's level of knowledge, it must be recalled that he was not, himself, able to authorise an interview of the type Ms Young gave on Lateline.

276. In a vacuum, the persons that would have been required to authorise the conduct of the Lateline interview were Mr Kerlatec and/or Mr Finch. Given, in fact, that approval of the backgrounding media strategy was obtained from Mr Kaldas, the practical reality is that any further approval would have had to be sought from him.

277. Moreover, according to the NSWPF Media Policy, a 'sit-down' interview of the type given by Ms Young would, in circumstances where an Inquest was on foot, have required not only approval from Ms Young and Mr Willing's superiors, but also the State Coroner himself.

278. Shortly stated, the conduct of the interview was simply not approved. The only approved media strategy related to the giving of 'backgrounders'.

279. Had such an approval been granted – which it was not – the contents of any interview given in accordance with it would have needed to be wholly circumscribed. In the result, the interview departed dramatically from the terms of Ms Young's statement (and from any comment that could properly have been made by a police officer in connection with an ongoing Inquest).

SF Macnamir: the findings of State Coroner Barnes and the reaction to them

280. In their closing submissions, Counsel Assisting State Coroner Barnes (Kristina Stern SC as her Honour then was, and Rob Ranken) observed that the evidence in support of accident was not sufficient to support a positive finding on the balance of probabilities, but could not be excluded as a possibility;[172] described suicide as "a reasonable possibility";[173] and similarly described homicide as a "reasonable hypothesis",[174] before concluding:

> "Ultimately, it is a question as to whether the Court considers that the evidence relating to the prospect of foul play being involved in Scott's death, or of suicide, moves the Court

[172] Exhibit 6, Tab 332, Submissions of Counsel Assisting in the Inquest into the death of Scott Russell Johnson, 27 September 2017, [139] – [140] (SCOI.11069.00002).
[173] Exhibit 6, Tab 332, Submissions of Counsel Assisting in the Inquest into the death of Scott Russell Johnson, 27 September 2017, [155] (SCOI.11069.00002).
[174] Exhibit 6, Tab 332, Submissions of Counsel Assisting in the Inquest into the death of Scott Russell Johnson, 27 September 2017, [247] (SCOI.11069.00002).

to feel an actual persuasion that Scott died in that manner. If not, then the manner of Scott's death remains open."[175]

281. Sarah Pritchard SC (as her Honour then was) and Surya Palaniappan, on behalf of the Commissioner of Police, submitted that "the manner of Scott's death could be any one of three likely possibilities. The [State Coroner] should make an open finding as to the manner of Scott's death."[176]

282. Having regard to the duration and demands of the investigation, the available evidence, and the submissions made by both Counsel Assisting and on behalf of the Commissioner of Police, the fact that DS Brown and I446 (then I446) were "perplexed" or even "upset" following the findings of State Coroner Barnes is completely understandable. His Honour's findings represented the conclusion of a lengthy and demanding process that took a "toll" on the officers involved.[177] As identified by I446, the specificity of the finding was, to say the least, "unexpected".[178] Subsequent events have, of course, shown that the finding reached did not accurately reflect the events that led to Mr Johnson's death.

283. DS Brown and I446 have both given very clear evidence that they brought an open mind to the investigation into Scott Johnson's death.[179] No aspect of I446's evidence has been challenged. Together with the other officers (including Ms Young) involved in the investigation, they diligently pursued all available avenues. There is no basis for any inference to be drawn to the contrary from their reaction to the findings of State Coroner Barnes.

Conclusion

284. The foregoing consideration makes plain that there is absolutely no basis on which to conclude that the Lateline interview was authorised by those within the NSWPF who were capable of approving it.

285. As is also apparent from the above, the significantly better view is that Mr Willing was not, in fact, aware that Ms Young was planning to give a studio interview with Ms Alberici.

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[175] Exhibit 6, Tab 332, Submissions of Counsel Assisting in the Inquest into the death of Scott Russell Johnson, 27 September 2017, [248] (SCOI.11069.00002).
[176] Exhibit 6, Tab 333, Written submissions of the Commissioner of Police in the Inquest into the death of Scott Russell Johnson, 18 October 2017 [56] (SCOI.11069.00006).
[177] Exhibit 6, Tab 516, Statement of I446 dated 15 September 2023, [32] (NPL.9000.0031.0001).
[178] Exhibit 6, Tab 516, Statement of I446 dated 15 September 2023, [32] (NPL.9000.0031.0001).
[179] Exhibit 6, Tab 516, I446, [30] (NPL.9000.0031.0001); Transcript of the Inquiry, 3 October 2023, T6489.46-6490.6 (TRA.00095.00001).

286. The precise extent of Mr Willing's knowledge of that interview, however, is a red herring.

287. In giving the Lateline interview, Ms Young was animated by a sense of grievance that a wealthy family had exercised influence over a political process, with the result that very substantial police resources were allocated to the re-investigation of Mr Johnson's death, despite the earlier (accurate) determination that it was not likely to be able to be solved on the basis of the then available material and information.

288. However, there is nothing to give rise to even the faintest possibility that Ms Young, or any other officer involved in SF Macnamir, harboured any kind of LGBTIQ bias, or that they failed to carefully investigate the possibility that Mr Johnson died as a result of a hate crime. To the contrary, as acknowledged by State Coroner Barnes and his Honour's Counsel Assisting, SF Macnamir conducted very detailed investigations concerning the possible involvement of one or more persons in the death of Scott Johnson.[180] Indeed, such was the extent of investigations in that respect that Counsel Assisting the State Coroner noted that it was not possible to explore all of the evidence relating to all of the persons of interest considered by SF Macnamir during the course of the hearing of the third Inquest.[181]

289. Again, as noted above, the investigation was also assessed as "comprehensive and thorough" by an independent review undertaken by the NSW Crime Commission.[182]

290. Any suggestion to the contrary must be rejected.

291. Accordingly, the question of whether and, if so when, Mr Willing was aware of the Lateline interview has no bearing upon the Inquiry's central purpose.

PART E: STRIKE FORCE NEIWAND

The establishment of SF Neiwand

292. The Commissioner of Police has made submissions in relation to the rationale and purpose for the establishment of SF Neiwand at June CPS [285] – [321].

293. There remains little evidence as to the role played by media attention in the decision to initiate SF Neiwand. As acknowledged at June CPS [292], there is some intuitive appeal to the

[180] Exhibit 6, Tab 332, Submissions of Counsel Assisting in the Inquest into the death of Scott Russell Johnson, 27 September 2017, [25] – [26]; [35].
[181] Exhibit 6, Tab 332, Submissions of Counsel Assisting in the Inquest into the death of Scott Russell Johnson, 27 September 2017, [235].
[182] See June CPS, [164] – [170] and the evidence cited therein.

suggestion that media interest played a part in the decision to establish SF Neiwand. The same intuitive appeal appeared to have been acting on DS Brown when she offered that "[t]here must have been some media around that time".[183]

294. At any rate, as noted at June CPS [294], it is not inappropriate for police – at times – to seek to respond to public concerns by, for example, re-investigating particular cases that are the subject of significant community interest. Moreover, as observed at June CPS [320] – [321], the existence of media interest in the cases, and the possibility that such interest played a role (even a very significant role) in the decision to commence SF Neiwand, does not in any way detract from Mr Willing's evidence that SF Neiwand "was about identifying and seeing whether or not we could effect arrest for those matters" and that the "intent behind Neiwand was to investigate it again if there was a chance of uncovering evidence that led to an arrest or arrests, that was the desired outcome".[184]

295. Consistent with this, and as noted in the June CPS,[185] police had applied for very significant rewards in connection with the three Bondi deaths. The fact of those rewards makes it abundantly clear that police were seeking to elicit information that would lead to the resolution of those cases.[186] As observed at June CPS [284], the suggestion that SF Neiwand was designed as anything other than a genuine attempt to identify and charge the person/s responsible is conclusively refuted by the fact that substantial rewards of $100,000 in each case had been arranged and offered "for information which leads to the arrest and conviction of the person or people responsible for the deaths of Messrs Mattaini, Warren and Russell".[187]

296. The further evidence that emerged during the conduct of Public Hearing 2 in September and October, in particular that of Mr Lehmann – who was the Investigation Supervisor for SF Neiwand at the outset – offered significant support to Mr Willing's evidence in that respect.

297. In the 2013 Issues Paper, Mr Lehmann recorded the following regarding each of the relevant deaths:

a) Gilles Mattaini: "The matter has previously been investigated by Strike Force Taradale in conjunction with the suspected murders of Ross Warren and John Russell in 1989 where

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[183] Transcript of the Inquiry, 3 October 2023, T6514.12-13 (TRA.00095.00001).
[184] Transcript of the Inquiry, 21 February 2023, T1760.27-44 (TRA.00024.00001).
[185] See June CPS, [282], [284], [345].
[186] Exhibit 6, Tab 163, NSW Police Force Media Release – Deaths of Gilles Mattaini, Ross Warren and John Rusell, 23 June 2015 (SCOI.76962.00014); Transcript of the Inquiry, 26 September 2023, T6108.8-27.
[187] Exhibit 6, Tab 163, SW Police Force Media Release – Deaths of Gilles Mattaini, Ross Warren and John Rusell, 23 June 2015 (SCOI.76962.00014).

the victims were targeted by gangs of marauding youth intent on killing or causing serious harm to homosexual men. It should be noted though that the Mattaini case occurred 4 years before Warren and Russell. It is believed that Mattaini is a possible victim of 'gay hate' motivated crime."[188]

b) Ross Warren: "This case was previously investigated under the reference of SF Taradale along with the John Russell and Giles Mattaini cases. The deceased is believed to have met the same fate as John Russell, that is, targeted by a gang of young perssons [sic] intent on causing harm to gay males, assaulted and thrown to his death from the cliff tops at South Bondi. His body was never recovered. This case is probably a 'gay hate' motivated crime.[189]

c) John Russell: "It is the third case previously investigated by SF Taradale along with the deaths of Warren and Mattaini. Unlike those cases, the body of Russell was discovered below the cliff tops at South Bondi having suffered a number of injuries consistent with having been assaulted then thrown from the cliff. This investigation along with that of Warren's death was the subject of severe criticism at the coronial inquest by Deputy State Coroner Milledge in 2005, particularly as important physical evidence in the Russell case appears to have been lost. It is believed that Russell was the victim of a gang of marauding youth intent on assaulting and/or killing gay male persons. There are a number of suspects in a case that is probably 'gay hate' motivated."[190]

298. In evidence, Mr Lehmann confirmed that those assessments reflected the views that he held at the time he prepared the 2013 Issues Paper.[191]

299. Indeed, Mr Lehmann confirmed that he continued to hold those views (which aligned with the findings of Deputy State Coroner Milledge) as at the time SF Neiwand was established.[192] Further, he considered that the members of SF Neiwand would have been aware that he held those views and confirmed that he never expressed any views to the contrary.[193]

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[188] Exhibit 6, Tab 47, Issue Paper from Detective Chief Inspector John Lehmann re: Assessment of 30 potential 'gay hate' unsolved homicides by the Unsolved Homicide Team (UHT) to determine if any bias motivation existed, 25 September 2013, p. 3 (SCOI.7 4906).
[189] Ibid, p. 5.
[190] Ibid, pp. 5-6.
[191] Transcript of the Inquiry, 26 September 2023, T6106.2-12; T6108.39-6109.3 (TRA.00091.00001).
[192] Transcript of the Inquiry, 26 September 2023, T6109.9-11 (TRA.00091.00001).
[193] Transcript of the Inquiry, 26 September 2023, T6109.13-17 (TRA.00091.00001).

300. In his statement, Mr Lehmann "utterly rejects" the assertion that the actual objective of SF Neiwand was to attack and rebut the work of Operation Taradale and the findings of Deputy State Coroner Milledge.[194] When asked whether he wished to add anything to that observation in evidence, he stated:

> "It's quite scurrilous, it's quite offensive to suggest or assert that I would do or attempt anything untoward such as that. It's just totally wrong and offensive."[195]

301. As for what he understood the objective of SF Neiwand to be, Mr Lehmann observed:

> "To investigate as thoroughly as possible those deaths, those homicides, and hopefully identify persons responsible and to bring them ultimately to justice. That was the clear direction, the clear and sole purpose."[196]

302. Mr Lehmann confirmed that the allocation of resources within the UHT was taken very seriously.[197] On Mr Lehmann's account, he "didn't have the luxury" to allocate resources with a view to doing anything other than pursuing a genuine resolution of that case.[198]

303. DSC Paul Rullo, who participated in the investigations conducted by SF Neiwand, has denied the suggestion that SF Neiwand set out to identify faults with Operation Taradale or otherwise sought to skew the focus away from homicide.[199]

304. DSC Rullo also states that he "saw no bias from my colleagues on Strike Force NEIWAND. I find the suggestion that we were biased or had a set agenda for the re-investigation into Strike Force Neiwand matters offensive."[200] DSC Rullo's evidence has not been challenged by Counsel Assisting.

The conduct of SF Neiwand

305. The Commissioner of Police has previously made submissions in relation to the conduct of SF Neiwand (see June CPS, [322] – [327], [361] – [385], [443] – [453]).

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[194] Exhibit 6, Tab 513, Statement of Mr John Lehmann dated 29 August 2023, [37] (SCOI.85495).
[195] Transcript of the Inquiry, 26 September 2023, T6109.31-33 (TRA.00091.00001).
[196] Transcript of the Inquiry, 26 September 2023, T6109.40-43 (TRA.00091.00001).
[197] Transcript of the Inquiry, 26 September 2023, T6110.11 (TRA.00091.00001).
[198] Transcript of the Inquiry, 26 September 2023, T6110.16 (TRA.00091.00001).
[199] Exhibit 6, Tab 520, Statement of DSC Paul Rullo dated 22 September 2023, [46] – [47] (SCOI.85772).
[200] Exhibit 6, Tab 520, Statement of DSC Paul Rullo dated 22 September 2023, [48] (SCOI.85772).

306. DCI Leggatt, who retired from the NSWPF in July 2022[201] regarded both DS Morgan and Mr Chebl as experienced investigators whose judgment could be trusted.[202]

307. Shortly after starting in the team DCI Leggatt was told by Mr Chebl that further targeting of the persons of interest (**POIs**) the subject of Operation Taradale was thought to have a "very low likelihood of success."[203] At least to the knowledge of the Commissioner of Police, it does not appear that the Inquiry has uncovered any information to suggest that assessment was inaccurate. This assessment has not been explored with Mr Chebl.

308. Of particular importance was the fact that the main POIs had given evidence at the Taradale Inquest. This was thought likely to render any further targeting of those groups difficult "including because the nature of the evidence given in open court and the notice to them of police interest in their activities and possible involvement in these matters".[204]

309. Mr Leggatt observes that:

> "In making the decision to undertake such a large scale operation (as would have been involved in a detailed re-investigation of each of the potential persons of interest), the decision to deploy such resources must be made while weighing up the probative value of the evidence that might have been collected by such an operation. The decision not to pursue the targeting of the Taradale POIs had been made prior to my involvement with SF Neiwand. At the time I joined the UHT, I did not regard the targeting of the Taradale POIs to be an effective deployment of the resources of the UHT."[205]

310. Mr Lehmann gave evidence that it is common for recommendations regarding potential investigative steps to be provided in the context of reviews conducted regarding unsolved homicides.[206]

311. Mr Lehmann agreed that the conduct of such investigative steps would need to be carefully considered and reconsidered in the context of an investigation as it unfolded.[207] According to Mr Lehmann, such consideration would include taking "into account the practicalities of some of those strategies, their viability, resources, staff, particularly from the experts, from outside, that

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[201] Exhibit 6, Tab 515, Statement of Mr Stewart Leggatt dated 15 September 2023, [18] (SCOI 85707).
[202] Exhibit 6, Tab 515, Statement of Mr Stewart Leggatt dated 15 September 2023, [31] (SCOI 85707).
[203] Exhibit 6, Tab 515, Statement of Mr Stewart Leggatt dated 15 September 2023, [37] (SCOI 85707).
[204] Exhibit 6, Tab 515, Statement of Mr Stewart Leggatt dated 15 September 2023, [38] (SCOI 85707).
[205] Exhibit 6, Tab 515, Statement of Mr Stewart Leggatt dated 15 September 2023, [40] (SCOI 85707).
[206] Transcript of the Inquiry, 26 September 2023, T6110.22 (TRA.00091.00001).
[207] Transcript of the Inquiry, 26 September 2023, T6110.27 (TRA.00091.00001).

we would be relying on to implement some of those strategies. Many, many things had to be taken into account".[208]

312. Such considerations would quite properly extend to include the ability to conduct investigations that did not infringe upon police protocols or legal principles.[209] They also extended to the extent of resources that would be required to implement a particular strategy; in particular, Mr Lehmann agreed that the resources that might be required to implement a surveillance strategy or an undercover strategy might be disproportionate to the importance of the information that such strategies might be likely to uncover.[210]

313. As was canvassed at [78] to [83] of the Commissioner of Police's submissions in relation to the Investigative Practice Hearing, there were very significant competing demands on the resources of the UHT at the time of SF Neiwand.[211]

314. These considerations provide some insight into the matters that no doubt played into the decision of DSC Chebl and, in turn, DS Morgan not to request additional resources to enable a thorough investigation of the potential POIs. Nevertheless, the Commissioner of Police continues to accept that, in circumstances where it was established in the hope of identifying suspect/s and, ultimately, laying charges, SF Neiwand could have – and should have – conducted significant further investigations of the potential POIs prior to its conclusion.

315. As was accepted at June CPS [441] and [442], and in line with Mr Leggatt's evidence, it is accepted that the findings of SF Neiwand should have been conveyed both to the State Coroner and to the families of each of the three men.

316. Otherwise as concerns CAS [289], it is appropriate to note that, in circumstances where the findings of SF Neiwand by no means ruled out the possibility of foul play, there is good reason why they would not necessarily have been communicated to the broader public – such communications had the potential to compromise any future investigation of the matters.

<u>The failure to afford Mr Chebl procedural fairness</u>

317. As addressed at [48]-[50], the Commissioner of Police did not "choose" not to provide a statement from Mr Chebl. Mr Chebl ceased employment with the NSWPF on 14 October 2021.

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[208] Transcript of the Inquiry, 26 September 2023, T6110.27-32 (TRA.00091.00001).
[209] Transcript of the Inquiry, 26 September 2023, T6110.41 (TRA.00091.00001).
[210] Transcript of the Inquiry, 26 September 2023, T6111.14 (TRA.00091.00001).
[211] Transcript of the Inquiry, 26 September 2023, T6011.41-6012.21 (TRA.00091.00001).

He is suffering from a health condition that prevented him from participating in the resumption of Public Hearing 2.

318. The Commissioner of Police has no power to compel witnesses to provide evidence, or to attend to give evidence. In that sense, only the Inquiry itself can, in truth, "choose" to obtain evidence. As addressed at length above, the obligation both to properly investigate a matter, and to afford procedural fairness to persons with an appropriate interest rests on the Inquiry, and the Inquiry alone.

319. Counsel Assisting's criticism in this respect is made all the more extraordinary by the fact that, as noted above, there is a potential conflict of interests between the Commissioner of Police and Mr Chebl.

320. Contrary to the position expressed at CAS [283] – [286], DS Morgan's evidence as to the relative roles played by he and Mr Chebl, and the extent of his responsibility for SF Neiwand, is entirely in keeping with the conventional – and well known – role played by the officer-in-charge of an investigation.

PART F: STRIKE FORCE PARRABELL

321. Various aspects of SF Parrabell are considered at June CPS (primarily at [454] – [811], but also in other parts of the submissions concerning, for example, the "overlaps" between different strike forces.

322. The position as concerns the evidence that the Inquiry obtained in relation to SF Parrabell and various procedural fairness issues is considered in Part B above.

323. As is discussed at [29]-[33] above, and as was apparent from the evidence he gave in December 2022, AC Crandell was not involved in the day-to-day running of SF Parrabell. It is therefore not surprising that he was unable to give evidence as to, for example, the activities undertaken by DSC Bignell and the other members of the SF Parrabell team.

324. Once again, subject to its Terms of Reference, it is for the Inquiry to determine the nature and extent of the examination it wishes to undertake in relation to a given issue. It is not for an interested party to an Inquiry to determine to what extent the Inquiry should examine a particular matter.

325. Questions as to the nature, extent and direction of Inquiries, and the evidence obtained in pursuit of them, are matters for an Inquiry. The position is no different in respect of Inquiries that focus – as many Inquiries do – on the activities of a particular Government agency.

326. Again, at no stage did the Inquiry indicate to the Commissioner of Police that it wished to undertake a more detailed examination of the evidence in relation to SF Parrabell than the evidence of AC Crandell and the other witnesses that were called in December 2022 and February 2023 would permit.

327. Following receipt of Counsel Assisting's submissions, it became apparent that Counsel Assisting was urging the making of findings that traversed well beyond the limits of the evidence that the Inquiry had gathered and would – if made – have led to a very substantial denial of procedural fairness to various persons.

328. As concerns CAS [300], for the reasons detailed above, it was not until receipt of Counsel Assisting's submissions that those representing the Commissioner of Police considered it necessary to approach DAS Bignell. Counsel Assisting's suggestion that this is both "astounding" and "most unfortunate" should not be indulged. It was at all times open for Counsel Assisting, who had full knowledge of the limitations of AC Crandell's role as a result of the evidence he provided in December, and knowledge that the key officers able to speak to the methodology included DAS Bignell, to request a statement from DAS Bignell (and DSupt Middleton and DI Grace) and, in turn, call him to give evidence. The submission at CAS [300] again fails to account for the unique position and responsibilities of Counsel Assisting. Blame for the absence of evidence from DAS Bignell cannot properly be shifted to the Commissioner of Police or to AC Crandell. As concerns AC Crandell, the suggestion at CA [322] that he, a witness called by the Inquiry, should be in some way held responsible for the absence of evidence from another witness (i.e. DAS Bignell) is patently untenable.

329. To the extent that the Inquiry wished to conduct a detailed exploration of the work of DAS Bignell, DI Grace and DSupt Middleton, it was for those assisting the Inquiry to facilitate it (including by affording procedural fairness to those persons). The suggestion that the absence of such evidence somehow reflects a failing on the part of the Commissioner of Police is unfair, unsupported, and wholly contrary to conventional practice in connection with inquisitorial proceedings generally (cf CAS, [298] – [300].

Reasons for the establishment of SF Parrabell

330. As observed at June CPS [464], there is no dispute that SF Parrabell took place in the wake of significant media and political interest. It was, as set out therein, to a significant extent a community relations exercise. In particular, it was designed to reassure the LGBTIQ community that their concerns were being taken seriously; that significant police resources were being applied to those concerns; and that the police considered their historical grievances both in relation to the violence that they suffered, and regarding the police response to it, to be valid.[212]

331. Otherwise, the submissions made by Counsel Assisting regarding the rationale for the establishment of SF Parrabell, as summarised at June CAS [817](b)-(e) are devoid of any proper foundation.

332. The further evidence obtained during the September and October hearings regarding Public Hearing 2 only serves to highlight the extent to which those submissions were misplaced.

333. Relevantly, DSupt Middleton, who oversaw the conduct of SF Parrabell, gave the following evidence regarding the purpose of SF Parrabell:

> "From my discussions with AC Crandell, I understood the purpose of SF Parrabell was a genuine and good faith attempt to respond to the concerns I have identified in paragraph 27 above, to demonstrate that NSWPF took these investigations seriously, and, were applying significant resources on these issues and improving investigations of bias crimes and engagement with the LGBTIQ community."[213]

334. DSupt Middleton's evidence in this respect has not been challenged. It should be accepted.

335. DI Grace, who served as the Investigations Manager for SF Parrabell, gives a detailed (and again unchallenged) account of the formation of SF Parrabell at [23] – [31] of his statement. That account makes it clear that SF Parrabell was a good faith attempt to address real concerns held by the LGBTIQ community as communicated during consultations with stakeholders including Alex Greenwich MP and ACON. In summing up the outcome of the various discussions that led to the establishment of SF Parrabell, DI Grace observes:

> "I recall that in the early discussions that culminated in the establishment of SF Parrabell that AC Crandell was adamant that something needed to be done to determine whether

[212] Exhibit 1, Tab 2 Statement of Shobha Sharma dated 28 October 2022, pp. 14 – 15 (SCOI.02632).
[213] Exhibit 6, Tab 507, Statement of DSupt Craig Middleton dated 8 September 2023, [28] (NPL.9000.0029.0001).

> the 88 cases contained an element of anti-LGBTIQ bias. I recall that AC Crandell expressed the view that the facts of each matter should be reviewed using an evidence-based approach and methodology which could arrive at a determination of whether the crime was motivated by anti LGBTIQ bias in a meaningful and respectful way."[214]

336. Unlike DI Grace and DSupt Middleton, DAS Bignell, who served as the Senior Investigator within SF Parrabell, was called to give evidence. DAS Bignell is a gay man and was serving as a Gay and Lesbian Liaison Officer.[215] He said the following about the purpose of SF Parrabell (and of his approach to the task):

> "26. To my knowledge, the purpose of SF Parrabell was to review the 88 historical deaths that were considered to have some material element of anti-LGBTIQ bias. Upon that review, SF Parrabell was to then conclude whether anti-LGBTIQ bias contributed to those deaths.
>
> ...
>
> 28. I was not ever told, nor did I ever get the impression, that SF Parrabell was established to obtain a particular result or outcome. I always understood SF Parrabell to be a genuine and good faith attempt at responding to community concerns regarding the prevalence of LGBTIQ hate crimes in NSW. As I have been trained to do as a police officer, I approached SF Parrabell and the review of the 88 historical deaths with an open mind, with no preconceived ideas of what the outcomes of the Strike Force or its review of individual cases should be."[216]

337. At CAS [301] Counsel Assisting extracts a portion of DAS Bignell's evidence regarding the possible motivations for SF Parrabell in which DAS Bignell was asked to draw "assumptions" (the probative value of which could only ever have been very limited). That extract, however, omits an important part of Counsel Assisting's exchange with DAS Bignell. In the result, a reader of CAS [301] is left with an inaccurate impression of DAS Bignell's evidence, which extended to include the following (emphasis added):

> "Q. You knew that the police thought that the accusations, whether by Sue Thompson or anyone else, that there were 88, that these 88 were gay bias deaths and that the police hadn't investigated them properly, were wrong?

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[214] Exhibit 6, Tab 508, Statement of DI Paul Grace dated 8 September 2023, [28] (NPL.9000.0024.0012).
[215] Exhibit 6, Tab 509, Statement of DAS Cameron Bignell dated 8 September 2023, [23], [25] (NPL.9000.0026.0007).
[216] Exhibit 6, Tab 509, Statement of DI Cameron Bignell dated 8 September 2023, Tab 509, [26], [28] (NPL.9000.0026.0007).

A. I think the view was that no-one had actually looked at that list. The list had been formed by Ms Thompson and then no-one had gone away and had a proper look at each of those names to make a proper determination.

Q. The view - and I will put this again - that you understood to be held in the police, including in Parrabell officers, Mr Middleton, Mr Grace, Mr Crandell, was that the accusations by Ms Thompson, or whoever, about the list of 88, were exaggerated or wrong, and that this review was designed to set out the true position?
A. I disagree with the fact it was saying that it was exaggerated or wrong. It was that no-one had actually looked at each of those deaths individually to make a proper determination.

Q. Are you saying that those who spoke to you, Mr Middleton or Mr Grace, or anyone else, were entirely neutral and thought that the accusations by Ms Thompson or others might have been perfectly true and, if so, then so be it?
A. I know for myself that the information that was provided to me from the onset of Parrabell, there would have been no issue if every one of those 88 deaths had been returned as being a victim of gay bias. It wouldn't have been an issue if that was my findings.

THE COMMISSIONER: Q. Yes, but the point is that the view held by you, I suggest, at the very least, was that Ms Thompson's allegations were suspect?
A. No. It was that we hadn't properly looked at each of those names.

Q. Did you think they had a basis in truth or did you think they were suspect?
A. I didn't have any opinion on that list.

THE COMMISSIONER: I see, okay.
MR GRAY: Q. And according to you, you detected no impression or opinion among any of the others you were working with; they were just a complete blank slate, were they?
A. Mr Crandell, Mr Middleton and Mr Grace did not offer any opinion as to that list to me.

> Q. No suggestion as to whether they thought the list might have been exaggerated or wrong in any way?
> A. As I said, I was told that the intentions of Strike Force Parrabell was to look at each of those 88 names and make a determination whether or not they were a victim of bias."[217]

338. DAS Bignell's evidence in this respect aligns with that given by AC Crandell and the unchallenged evidence of DSupt Middleton and DI Grace. It should be accepted; any other approach would involve a total departure from the evidence in favour of poorly-founded speculation.

339. Having regard to the above evidence, together with the matters addressed in the June CPS, the submissions made by Counsel Assisting regarding the rationale for, and purpose of, SF Parrabell are unsustainable.

Methodology of SF Parrabell

340. The methodology of SF Parrabell is addressed in detail in the Statements of DSupt Middleton, DI Grace and DAS Bignell.

341. First, documents were located and collated.[218] The records that had been obtained were then reviewed as part of a triage process to identify material of potential relevance to the question of bias.[219] Having done so, investigators would prepare a summary or synopsis of the relevant case.[220] The process of extracting the relevant material was a collaborative exercise between DAS Bignell and the investigators, during which the investigators regularly consulted with DAS Bignell regarding the appropriate approach to the identification of information.[221] This process was conducted in an "overly inclusive" way by the relevant investigators to minimise the possibility that potentially relevant material was overlooked.[222]

342. Second, on the basis of the material identified, DAS Bignell completed BCIFs for each of the matters, recording the information that he regarded as potentially bearing upon the presence or

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[217] Transcript of the Inquiry, 21 September 2023, T5882.25-5883.33 (TRA.00089.00001).
[218] Exhibit 6, Tab 508, Statement of DI Paul Grace dated 8 September 2023, [31(a)] (NPL.9000.0024.0012); ; Exhibit 6, Tab 509, Statement of DAS Cameron Bignell dated 8 September 2023, [51]-[56] (NPL.9000.0026.0007).
[219] Exhibit 6, Tab 508, Statement of DI Paul Grace dated 8 September 2023, [31(b)] (NPL.9000.0024.0012).
[220] Exhibit 6, Tab 509, Statement of DAS Cameron Bignell dated 8 September 2023, [57] (NPL.9000.0026.0007).
[221] Exhibit 6, Tab 509, Statement of DAS Cameron Bignell dated 8 September 2023, [59], [61] (NPL.9000.0026.0007).
[222] Exhibit 6, Tab 509, Statement of DAS Cameron Bignell dated 8 September 2023, [59]-[60] (NPL.9000.0026.0007).

otherwise of bias in the form.[223] The purpose of having each of the BCIFs completed by DAS Bignell was to ensure consistency in approach across all cases.[224]

343. Third, a review process was conducted to reach a determination in relation to each of the cases. As part of that, approximately once a month DCI Middleton, DI Grace and DAS Bignell would meet (occasionally with Jacqueline Braw or AC Crandell sitting in) and seek to arrive at a conclusion as to the appropriate categorisation for each of the cases.[225] As part of that process, the review panel considered not only the BCIFs, but also the relevant source documents that DAS Bignell had identified.[226]

344. As to the way the review process unfolded, DAS Bignell said the following:

> "The meetings were approached with open minds and with a focus on achieving the correct identification of whether anti-LGBTIQ bias affected the relevant case. We capitalised on each other's different life experiences, professional knowledge and skills throughout our discussions. These meetings were often full of robust discussion as we sought to challenge both our own and each other's way of thinking to reach the most appropriate categorisation for each case.
>
> I do not recall any instances where I felt pressured to change my opinion on the designation of a case, that my opinion had been unfairly shut down, or that I had disagreed with the final designation selected. No member of the review team had "veto power" or the final say on how to categorise the case, nor was hierarchy determinative of outcome where views differed. I was content with the final determinations that were reached in each of the cases during SF Parrabell." [227]

345. As was addressed at June CPS [539] – [541] and [557] – [562], the BCIFs were not employed in any mechanical process during the review process. Rather, the categorisation process centred on a synthesis of the features of each case identified during the review process and resulted in a considered judgment made with the benefit of the investigative experience of the officers involved. Consistent with this, DAS Bignell gave evidence that:

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[223] Exhibit 6, Tab 509, Statement of DAS Cameron Bignell dated 8 September 2023, [61] (NPL.9000.0026.0007).
[224] Exhibit 6, Tab 509, Statement of DAS Cameron Bignell dated 8 September 2023, [61] (NPL.9000.0026.0007).
[225] Exhibit 6, Tab 509, Statement of DAS Cameron Bignell dated 8 September 2023, [64] (NPL.9000.0026.0007).
[226] Exhibit 6, Tab 509, Statement of DAS Cameron Bignell dated 8 September 2023, [66]-[68] (NPL.9000.0026.0007); Transcript of the Inquiry, 21 September 2023, T5814.1-20 (TRA.00089.00001).
[227] Exhibit 6, Tab 509, Statement of DAS Cameron Bignell dated 8 September 2023, [68]-[69] (NPL.9000.0026.0007).

> "There was no, you know if a number of indicators were met, then it would fall within a particular category; it was looking at all the information as a whole and holistically to see, you know, where it would best fall. Obviously there was, in different cases, certain information that pointed more in one direction than the other, and we would assess all available information to make a determination. But there was no, you know, if one was met and one wasn't, then it would fall within a category; it was looking at every single case in its entirety based on what was available to us."[228]

346. It is also appropriate to note that DAS Bignell's evidence also made it clear – to the extent there was any doubt – that the existence of a dual motivation, for example, relating to robbery, would not prevent a case being classified as a bias crime.[229]

Interaction between SF Parrabell and the Flinders Academic Team

347. DSupt Middleton provides evidence in relation to the interactions between SF Parrabell and the Flinders Academic Team at [70] – [84] of his statement.

348. In general terms, DSupt Middleton observes:

> "…I was interested to see the output from the academic review. I was conscious that, to my knowledge, NSWPF had not undertaken a review like SF Parrabell before and I was keen to see what processes the academic review would employ that we could perhaps learn from."[230]

349. Regarding the meetings that occurred between SF Parrabell and the Flinders Academic Team, DSupt Middleton states (emphasis added):

> "I attended some meetings between the Flinders Academic Team and members of SF Parrabell in relation to the review, although I cannot now recall the dates of those meetings. A purpose of these meetings was to discuss the findings that each respective team had arrived at, and the processes used. I also considered that these meetings provided an opportunity for NSWPF to learn from the Flinders Academic Team and improve the police methodology used in the identification and investigating bias crimes.

[228] Transcript of the Inquiry, 21 September 2023, T5871.18-28 (TRA.00089.00001).
[229] Transcript of the Inquiry, 21 September 2023, T5870.10-18 (TRA.00089.00001).
[230] Exhibit 6, Tab 507, Statement of DSupt Craig Middleton dated 8 September 2023, [79] (NPL.9000.0029.0001).

> At the meetings, it was my observation that each team could and did speak freely and openly regarding the review methodology and the findings made.
>
> There were differences in views between SF Parrabell and the Flinders Academic Team on some cases. For those cases, the meetings were used to better understand the reasons why each team had determined a different finding and the rationale in which that finding was reached. The meetings were not used to try to change the position adopted by the Flinders Academic Team (to the extent the positions were different)."[231]

350. Mr Middleton's evidence also includes important clarification in relation to the contents of emails that Counsel Assisting had previously sought to rely upon, despite the fact that evidence had not been sought from DSupt Middleton himself[232] (see, in particular, [78] – [83] of his statement). Mr Middleton's evidence in that respect further emphasises that:

a) He was interested in seeing the Flinders Academic Team's output, with a view to examining "what processes the academic review team would employ that we could perhaps learn from" in circumstances where the NSWPF had not undertaken a review like SF Parrabell before.[233]

b) He was not concerned by cases where the Flinders Academic Team reached different conclusions to SF Parrabell, providing those conclusions were not diametrically opposed, in which case he was "interested to understand the reason for that difference, as it might tend to suggest one party had overlooked (or perhaps overemphasized) one aspect in comparison to the other party."[234] Cases in which opposing conclusions were reached "would lead to a dialogue to try to understand the reason for the difference, but it would not lead to one team trying to convince the other team that they were wrong and should change their result."[235]

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[231] Exhibit 6, Tab 507, Statement of DSupt Craig Middleton dated 8 September 2023, [74]-[76] (NPL.9000.0029.0001).
[232] Senior Counsel for the Commissioner of Police made a number of objections concerning lines of questioning by Senior Counsel Assisting the Inquiry as to AC Crandell being asked to comment on correspondence he did not author, see for example Transcript of the Inquiry, 7 December 2023, T766.3-40 (TRA.00012.00001); Transcript of the Inquiry, 9 December 2023, T906.34-44 (TRA.00014.00001).
[233] Exhibit 6, Tab 507, Statement of DSupt Craig Middleton dated 8 September 2023, [79] (NPL.9000.0029.0001).
[234] Exhibit 6, Tab 507, Statement of DSupt Craig Middleton dated 8 September 2023, [81], [83] (NPL.9000.0029.0001).
[235] Exhibit 6, Tab 507, Statement of DSupt Craig Middleton dated 8 September 2023, [83] (NPL.9000.0029.0001).

Conclusion – SF Parrabell

351. As addressed at [3]-[27] above, it was for the Inquiry, and those assisting it, to determine the nature of the evidence it needed to obtain in order to investigate a particular issue to the degree that it wished to investigate it.

352. At no stage prior to the filing of the June CPS did the Inquiry seek further evidence in relation to the SF Parrabell issues.

353. The responsibility for securing an appropriate evidentiary foundation for submissions Counsel Assisting wishes to make is borne by Counsel Assisting, not the parties to an Inquiry.

354. Similarly, the obligation to afford procedural fairness to persons with an appropriate interest is one that falls squarely on the Inquiry, and the Inquiry alone.

355. At no stage, prior to the filing of the June CPS, did the Inquiry take any steps to afford procedural fairness to DSupt Middleton, DI Grace, or DSC Bignell, all of whom were expressly or implicitly subject to significant criticisms in the June CAS.

356. For those reasons, as further addressed in Part B above, the suggestion that the Model Litigant Policy, Practice Guideline 1, and/or the Inquiry's letter of 20 September 2022, somehow changes this position is misconceived. Further, the suggestion that the Commissioner of Police has behaved in a manner that may be contrary to the Model Litigant Policy is completely unfounded. It may be true that, having regard to the findings Counsel Assisting sought to urge upon the Inquiry, the earlier absence of evidence from DSupt Middleton, DI Grace and DAS Bignell "has resulted in a considerable waste of time and public resources". The attempt to place the blame in that respect on the Commissioner of Police is, however, entirely misplaced.

357. Before leaving the subject of SF Parrabell, it is appropriate to reiterate that, to a very significant extent, the findings urged by Counsel Assisting in relation to the tender bundle cases align with the position reached by SF Parrabell (see June CPS, [617] – [622]). Similarly, the features identified by Counsel Assisting as potentially bearing upon the question of bias in each case are highly consistent with factors identified as potentially relevant in the BCIFs. These convergences between SF Parrabell and Counsel Assisting's approach to the cases render many of the criticisms Counsel Assisting levels at SF Parrabell illogical. SF Parrabell relied upon the considered judgments of a group of persons with a great deal of experience in criminal investigations informed by a series of features that were potentially indicative of bias. The

determinations propounded by Counsel Assisting in respect of each of the cases have followed a very similar process, undertaken by reference to very similar indicators of bias.

PART G: OVERLAP AND OTHER MATTERS

Awareness and impact of media coverage

358. It is not clear what Counsel Assisting seeks to draw from the evidence considered at CAS [325]-[340]. There is no doubt that various NSWPF officers were aware of the media coverage of potential gay hate homicides.

359. As observed at [293] above, while – as a general rule – the NSWPF seeks to conduct its investigations independent of public pressure, it is by no means inappropriate for the NSWPF to seek to respond to community concerns (as reflected in the media) from time to time.

360. Again, that does not detract in any way from the extensive evidence that SF Macnamir and SF Neiwand were established with a view to identifying and ultimately charging any persons who may have been responsible for the deaths of Mr Mattaini, Mr Warren, Mr Russell or Mr Johnson.[236]

361. Similarly, as observed at June CPS [454], it is wholly unremarkable that media attention played a role in the establishment of SF Parrabell.

362. Again, that fact does not in any way diminish the reality that SF Parrabell was initiated in order to conduct open-minded analysis of the causes of the relevant deaths and, in so doing, improve the NSWPF's understanding of hate-crime investigation and classification, while demonstrating to the LGBTIQ community that their concerns were being taken seriously by the NSWPF.

SF Macnamir

363. As detailed at length in Part D above (and in the June CPS), and in line with DS Brown's evidence referred to at CAS, [341], SF Macnamir was a comprehensive and thorough investigation that effectively considered all the information that could be gathered in respect of each of the three possible causes of Mr Johnson's death.

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[236] See, for example, Transcript of the Inquiry, 21 February 2023, T1760.31-44 (TRA.00024.00001); Transcript of the Inquiry, 26 September 2023, T6109.40-43 (TRA.00091.00001); Exhibit 6, Tab 520, Statement of DSC Paul Rullo dated 20 September 2023, [46] (SCOI.85772); Transcript of the Inquiry, 25 September 2023, T6001.46-6002.9 (TRA.00090.00001); see also June CPS, [164] – [170] and the evidence cited therein.

364. Given the various submissions advanced by Counsel Assisting regarding the "overlaps" between the Strike Forces, it is appropriate to note that Mr Leggatt was not involved with SF Macnamir "at all".[237] Neither was Mr Lehmann, who confirmed that he neither played any direct role in SF Macnamir, nor sought to influence the way it was conducted.[238]

SF Neiwand

365. DS Brown's involvement in SF Neiwand was very limited; her understanding is that she was selected as OIC because of her knowledge of the case in connection with the earlier reward application and subsequent media release.[239] Beyond the involvement in the preparation and provision of the list of 116 POIs, it appears that she had almost no involvement in SF Neiwand.[240]

366. Mr Lehmann rejected any suggestion that one of the motivations of SF Neiwand was directed to minimising the potential involvement of gay hate.[241] Similarly, he neither promoted, nor ever encountered another officer seeking to promote a "company line" that the number of gay hate crimes was exaggerated.[242]

367. DSC Rullo, who was involved in the investigation of both SF Neiwand and SF Macnamir, having now been afforded the opportunity to respond to Counsel Assisting's submissions, denied that there is or was any culture or company line on hate crimes.[243] He, quite unsurprisingly it must be said, regarded the submission put at June CAS [637] to be "offensive."[244] His evidence has not been challenged and is not addressed in Counsel Assisting's supplementary submissions.

368. In general terms, DSC Rullo – who again, has not been challenged – indicates that "there was no culture of peer pressure to adhere to any one or anyone's views. Again, there was no direction by any senior officers in these investigations or in the New South Wales Police Force to influence these investigations in any way for a desired outcome."[245]

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[237] Exhibit 6, Tab 515, Statement of Mr Stewart Leggatt dated 15 September 2023, [25] (SCOI 85707).
[238] Transcript of the Inquiry, 26 September 2023, T6111.40-47 (TRA.00091.00001).
[239] Exhibit 6, Tab 519A, Second Statement of DS Penelope Brown dated 29 September 2023, [5] (SCOI.85950).
[240] Exhibit 6, Tab 519A, Second Statement of DS Penelope Brown dated 29 September 2023, [6] (SCOI.85950).
[241] Transcript of the Inquiry, 26 September 2023, T6111.24 (TRA.00091.00001).
[242] Transcript of the Inquiry, 26 September 2023, T6111.28-33 (TRA.00091.00001).
[243] Exhibit 6, Tab 520, Statement of DSC Paul Rullo dated 22 September 2023, [50], [52] (SCOI.85772).
[244] Exhibit 6, Tab 520, Statement of DSC Paul Rullo dated 22 September 2023, [50] (SCOI.85772).
[245] Exhibit 6, Tab 520, Statement of DSC Paul Rullo dated 22 September 2023, [50] (SCOI.85772).

SF Parrabell

369. In line with Mr Willing's evidence referred to at CAS [344], he was not responsible for the establishment of SF Parrabell. As considered in the June CPS[246], Mr Willing had very little contact with members of SF Parrabell and played no role at all in its operations.

370. Consistent with this, Supt Middleton does not recall contact with the members of SF Macnamir or SF Neiwand in the course of SF Parrabell.[247] To his knowledge, none of the members of SF Neiwand and SF Macnamir sought in any way to influence the conclusions reached by SF Parrabell.[248]

371. Similarly, DI Grace did not have any interactions with the officers who were involved in SF Macnamir or SF Neiwand.[249] In that respect, DI Grace notes that he wanted the SF Parrabell process to be independent from officers who may have been involved in the prior investigation of those cases "to ensure that the cases were considered with 'fresh eyes' and to adequately address the community concerns about these cases".[250]

372. For his part, DAS Bignell did not seek the view of the investigators in SF Macnamir or SF Neiwand.[251] The only interaction he had with those Strike Forces was to gain access to the relevant files on e@gle.i for the purpose of collating the material required for the SF Parrabell reviews.[252]

373. There is no suggestion that AC Crandell had any contact with SF Macnamir or SF Neiwand. AC Crandell did, however, contribute to the ultimate resolution of the Scott Johnson case. He was the overall Commander of SF Welsford, serving as the supervisor of the lead investigator, Peter Yeomans; a matter that might be thought to tell powerfully against submissions such as those advanced at CAS [817].[253]

UHT

374. It is not clear what Counsel Assisting seeks to make of the fact that officers within the UHT worked in the same room and the investigators would have conversations regarding their work

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[246] See, for example, June CPS, [337] – [341].
[247] Exhibit 6, Tab 507, Statement of DSupt Craig Middleton dated 8 September 2023, [85] (NPL.9000.0029.0001).
[248] Exhibit 6, Tab 507, Statement of DSupt Craig Middleton dated 8 September 2023, [86] (NPL.9000.0029.0001).
[249] Exhibit 6, Tab 508, Statement of DI Paul Grace dated 8 September 2023, [75] (NPL.9000.0024.0012).
[250] Exhibit 6, Tab 508, Statement of DI Paul Grace dated 8 September 2023, [75] (NPL.9000.0024.0012).
[251] Exhibit 6, Tab 509, Statement of DAS Cameron Bignell dated 8 September 2023, [78] (NPL.9000.0026.0007).
[252] Exhibit 6, Tab 509, Statement of DAS Cameron Bignell dated 8 September 2023, [78] (NPL.9000.0026.0007).
[253] Transcript, T1042.40-T1043.27.

(CAS, [345]). In no way does the fact of such conversations provide meaningful support for the various submissions Counsel Assisting has made contending that there was some kind of ignoble 'coordination' afoot between the Strike Forces.

375. As noted by Counsel Assisting (CAS, [346] – [347]), a variety of witnesses have given evidence that:

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

b) that no-one to their knowledge had sought to promote a "company line" that gay hate crimes had been exaggerated; and/or

c) that to their knowledge there was no coordination between any of the strike forces directed to discrediting claims that so many deaths were gay hate crimes.[254]

376. In line with the observations made in Part B, that evidence was directly responsive to matters raised in the June CAS. The submission at CAS [348] implies that Counsel Assisting may not maintain a variety of the submissions to which the evidence discussed at CAS [346] – [347] relates. No attempt, however, has been made to formally withdraw any of the submissions Counsel Assisting has previously advanced. Indeed, in every instance where Counsel Assisting explicitly addresses the position in relation to submissions previously made, it is to note that the submissions advanced in the June CAS are maintained.[255] It is submitted that in circumstances where the June CAS have been in the public arena for many months, Counsel Assisting is obliged to precisely identify and publicise those submissions that are no longer maintained.

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[254] Exhibit 6, Tab 507, Statement of Supt Craig Middleton dated 8 September 2023, [87] (NPL.9000.0029.0001); Transcript of the Inquiry, 21 September 2023, T5876.1-7; 5876.46-5877.11 (TRA.00089.00001); Transcript of the Inquiry, 25 September 2023, T5997.17-22; T6001.33-36 (TRA.00090.00001); Transcript of the Inquiry, 26 September 2023, T6111.16-6112.7 (TRA.00091.00001); Transcript of the Inquiry, 3 October 2023, T6522.7-30 (TRA.00095.00001); Exhibit 6, Tab 517, Statement of DSC Alicia Taylor dated 20 September 2023, [39] (NPL.9000.0033.0001); Exhibit 6, Tab 520, Statement of DSC Paul Rullo dated 22 September 2023, [46] (SCOI.85772).

[255] See for example October CAS, [217], [229], [242], [286]..

377. For the reasons advanced in the June CPS, it was already readily apparent that a large number of the submissions advanced in the June CAS could not sensibly be accepted. That position has been significantly reinforced by the additional evidence obtained by the Inquiry in the context of the September / October hearings for PH2, which has further undermined a very wide array of the submissions made by Counsel Assisting in the June CAS.[256]

Mark Tedeschi KC
Wardell Chambers

Anders Mykkeltvedt
Maurice Byers Chambers

23 October 2023

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[256] The submissions that have been undermined by the September / October evidence include, for example and without limitation, those advanced at [74], [76], [184(c)], [313], [315], [328], [340], [343], [352], [359], [362(a)], [362(b)], [419]-[420], [435], [437], [451], [454], [466]-[469], [493]-[495], [502], [564], [569], [575], [578], [597], [599], [600], [609], [627]-[629], [631], [633], [634], [635] - [641], [648], [656], [657], [670(g)], [694],[773],[776], [782], [800]-[801], [816]- [817], [825](b)-(e)], [852], [871], [887]-[888], [894], [895], [912]-[914], [928], [941], [967], [980], [983], [1059], [1062], [1064], [1067].

ANNEXURE A
Further submissions on behalf of the Commissioner of Police (Public Hearing 2)
23 October 2023

Para	Proposed finding	Reason why outside ToR
Written Submissions of Counsel Assisting dated 7 June 2023 (Principal Submissions)		
PART B: HATE CRIME / BIAS CRIME: RESPONSES BY THE NSWPF		
285	The history of the role of the Hate Crimes Coordinator (later renamed Bias Crimes Coordinator), and subsequently of the Bias Crimes Unit, illustrates a distinct lack of any sustained institutional focus on the investigation and impact of bias crimes such as those against the LGBTIQ community.	The proposed finding in [285] (and the entirety of section B on the history and formation of the Bias Crimes Unit and its successors within the NSWPF) says nothing about the manner or cause of death in any unsolved homicide referred to in Paragraphs A and B of the ToR. The proposed finding has no connection to how the Commissioner should consider any evidence in any unsolved homicide referred to in Paragraphs A and B of the ToR, nor is any such connection expressed. The proposed finding is not connected to any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR.
289	Sergeant Steer considered that "internal politics", and "organisational cognitive dissonance", lay behind the Unit's radical reduction in 2017. The evidence available to the Inquiry is not such as to enable such a view to be discounted.	See row in relation to [285]
292	The perennial lack of sufficient staff, and the frequent moves to and from different Commands, suggests an institutional reluctance to bring some aspects of bias crime investigation into mainstream policing practice.	See row in relation to [285]
293	Finally, it appears that no "bias crimes identification tool" has yet been developed to replace the bias crimes indicators such as found in the SOPs drafted by Sergeant Steer and in the BCIF. This suggests that recommendation 3 of the Parrabell Report has not yet been acted upon. Rather, nine of the ten "indicators" in the BCIF are in fact still in	See row in relation to [285]

Para	Proposed finding	Reason why outside ToR
	use, via the 2022 Hate Crime Guidelines, as are three of the four available "findings" in the BCIF (that is, all except "Insufficient Information").	
PART C: STRIKE FORCE MACNAMIR		
317	Secondly, Mr Willing's evidence suggests that the zero-solvability rating was derived from a view (or assumption) that fresh forensic evidence was "unavailable". But no investigative or other steps appear to have been taken in 2012 in order to ascertain whether forensic evidence was indeed "available". This involves a circular logic, whereby a 'cold case' is assessed to be unsolvable (and further investigations are hence foreclosed) on the basis of existing gaps in the evidence, without any further attempts being made to 'solve' it by filling those gaps.	The matter of Scott Johnson is no longer "unsolved", and is thus outside paragraphs A and B of the ToR. The proposed finding has no connection to how the Commissioner should consider any evidence in any unsolved homicide referred to in Paragraphs A and B of the ToR, nor is any such connection expressed. The proposed finding is not connected to any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR.
318	Accordingly, it is submitted that Mr Willing's evidence that the 2012 UHT review was correct "at the time", in rating Scott Johnson's case as having zero solvability, should be rejected.	See row in relation to [317]
333	Mr Willing accepted that, but for "intense lobbying by members of the Johnson family", SF Macnamir would not have been established, given the outcome of the UHT case screening review in late 2012. It is submitted that that is plainly correct.	The matter of Scott Johnson is no longer "unsolved", and is thus outside paragraphs A and B of the ToR. The proposed finding has no connection to how the Commissioner should consider any evidence in any unsolved homicide referred to in Paragraphs A and B of the ToR, nor is any such connection expressed. The proposed finding about the establishment of SF Macnamir is not connected to any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR.

Para	Proposed finding	Reason why outside ToR
347	As discussed in more detail later in these submissions, all three Strike Forces arrived at strikingly comparable conclusions: a. as to SF Macnamir, in late 2017 the NSWPF were still submitting to the Coroner that the death of Scott Johnson was likely to have been a suicide and that a finding of homicide "would not be open"; b. as to SF Parrabell, its conclusion, arrived at by about late 2017 and published in June 2018, was that the vast majority (59) of the 86 deaths that were reviewed were not even "suspected" cases of bias crime;437 and as to SF Neiwand, its conclusion, also arrived at by late 2017, was that Coroner Milledge's 2005 findings (that two of the three deaths were homicides which were probably gay hate crimes, and the third was likely to have been) should be disregarded because other hypotheses (namely suicide or homicide) were as likely, or more likely, in each case.	Any finding about "strikingly comparable conclusions" says nothing about the manner or cause of death in any unsolved homicide referred to in Paragraphs A and B of the ToR. The proposed finding has no connection to how the Commissioner should consider any evidence in any unsolved homicide referred to in Paragraphs A and B of the ToR, nor is any such connection expressed. The proposed finding is not connected to any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
349	In that context, certain statements made by DCI Young and Mr Willing in April 2015 point to a commonality of objectives between SF Macnamir and SF Neiwand.	Any finding about a "commonality of objectives" says nothing about the manner or cause of death in any unsolved homicide referred to in Paragraphs A and B of the ToR. The proposed finding has no connection to how the Commissioner should consider any evidence in any unsolved homicide referred to in Paragraphs A and B of the ToR, nor is any such connection expressed. The proposed finding is not connected to any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
352	Given the unwavering view of DCI Young and SF Macnamir that Scott Johnson's death was suicide and not homicide, in particular not gay hate homicide, it is not surprising that SF Macnamir would have sought to cast doubt on ("put to the test") the findings of Coroner Milledge, which had so influenced the second Scott Johnson inquest.	See row in relation to [317].
353	And what SF Neiwand then did, from late 2015 to late 2017, was purportedly (and baselessly) to generate conclusions that the findings of Coroner Milledge should be	See row in relation to [317].

Para	Proposed finding	Reason why outside ToR
	disregarded.	
359	It is submitted that Mr Willing's evidence in this regard should be rejected, and that the evidence permits a finding that he did share the views of DCI Young as to defeating the Johnson family by opposing and preventing a finding of homicide.	See row in relation to [317].
362	That may perhaps be so. However, it is submitted that: a. the overlap in personnel, between SF Macnamir and SF Neiwand, at every level, meant that such "communication and/or cooperation" were inherent and ever-present; b. the strongly expressed views of DCI Lehmann and DCI Young, in the Lehmann/Young Issue Paper of 25 September 2013,451 endorsed as they were in January 2014 by Mr Willing as overall Homicide Commander, cannot have failed to influence and/or reflect the views of the members of the UHT generally; and c. while SF Parrabell was not conducted by the UHT, the evidence has shown that (inter alia) there was considerable and ongoing communication and cooperation between the UHT and SF Parrabell, from at least as early as 14 April 2016, and that AC Crandell had seen the Lehmann/Young Issue Paper as early as April 2015.	These findings say nothing about the manner or cause of death in any unsolved homicide referred to in Paragraphs A and B of the ToR. The proposed findings have no connection to how the Commissioner should consider any evidence in any unsolved homicide referred to in Paragraphs A and B of the ToR, nor is any such connection expressed. The proposed findings are not connected to any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
380	It is submitted that the Young Statement unmistakeably advances the view that suicide was the most likely hypothesis for Scott Johnson's death. As Mr Willing accepted on 15 May 2023,471 what DCI Young does in the 'Opinion' paragraphs is two things: a. she identifies factors that might support a homicide hypothesis, and then "refutes or debunks" each of those factors; whereas, by contrast, b. she identifies factors put forward against the suicide hypothesis, and then "refutes or debunks" each of those factors.	See row in relation to [317].
393	It is submitted that the tenor of the submissions filed on behalf of the Commissioner of Police permits an inference to be drawn that, in warning of a diversion of UHT resources away from other cases, a view was held amongst those who were instructing counsel (including DCI Young and DS Brown) that a further inquest into Scott Johnson's death was unjustified and profligate.	See row in relation to [317].

Para	Proposed finding	Reason why outside ToR
420	It is submitted that this evidence by Mr Willing is not credible. Nothing in the evidence, including Mr Willing's own evidence, contains any basis for a suggestion or possibility that whatever DCI Young was doing with Ms Alberici on Friday 10 April 2015 was not finished on that day.	Findings concerning the Lateline interview or Mr Willing's knowledge of it say nothing about the manner or cause of death in any unsolved homicide referred to in Paragraphs A and B of the ToR. The proposed findings have no connection to how the Commissioner should consider any evidence in any unsolved homicide referred to in Paragraphs A and B of the ToR, nor is any such connection expressed. The proposed findings are not connected to any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
437	For the reasons outlined in the following paragraphs, it is submitted that several of the answers given by Mr Willing in that passage were not true: see [449] below.	See row in relation to [420].
446 - 451	[446] It is submitted that the evidence (including in particular Mr Willing's own "dot points") establishes that, as at about 5:00pm on 13 April 2015, after his telephone conversation with DCI Young at that time, Mr Willing: a. knew that DCI Young had done a "backgrounder" with Ms Alberici on Friday 10 April 2015; b. believed, because DCI Young had told him, that she had not done a doorstop interview at the court earlier on 13 April 2015; and c. knew, however, that she had "recorded an interview" with Ms Alberici which would be on Lateline that night. [447] Hence when DCI Young told him, as she did in the 5:00pm conversation, that she had "recorded an interview" with Ms Alberici which would be on Lateline that night, his understanding could only have been either: a. that the supposed "backgrounder" with Ms Alberici on 10 April 2015 had actually been a recorded and filmed interview; or b. that she had recorded a filmed interview with Ms Alberici at the ABC that afternoon (13 April 2015).	See row in relation to [420].

Para	Proposed finding	Reason why outside ToR
	[448] It is submitted that the latter is far more probable. [449] However, it is submitted that either way, the consequence is that Mr Willing's answers in his evidence on 20 February 2023 contained a number of untruths. Contrary to what he said in evidence on that occasion: a. he was aware that DCI Young had given an interview that would be televised; b. DCI Young did tell him that she would be on air that night; and c. it did not come as a complete shock and surprise when he saw DCI Young on television that night. [450] Mr Willing sought to explain this earlier evidence as a "mistake" and not a deliberate misstatement. Given the clarity of his dot points, that explanation is unconvincing. [451] Mr Willing's attempt to delicately parse his notes of interview, and to suggest that they really referred to a doorstop interview (which at the time, on 13 April 2015, he believed had not occurred) should not be accepted. Mr Willing's dot points, being a near-contemporaneous record of his knowledge and understanding at the relevant times, are to be preferred to the strained and unlikely reinterpretation of those dot points which Mr Willing recently "put together".	
454	The reference to "on camera" is noteworthy. DCI Young had also told Ms Wells, as well as Mr Willing, that she had not done a doorstop at the court because "the media had left". That would indicate that Ms Wells must have understood, from what Mr Willing told her, that the interview that was going to feature on Lateline was not a doorstop. That in turn would tend to indicate that Mr Willing also had that understanding.	See row in relation to [420].
458	Having regard to the evidence discussed above, this suggestion is implausible.	See row in relation to [420].
464 - 465	[464] It is submitted that upon receiving this text message, some two hours or more before the Lateline programme aired, Mr Willing was on notice that DCI Young would be appearing on Lateline, in an "exclusive" (not a doorstop) interview; and that she	See row in relation to [420].

Para	Proposed finding	Reason why outside ToR
	believed she had been authorised to do so. [465] In those circumstances, if Mr Willing had believed, as he says he did, that she had not been authorised to do any such thing, he surely should have raised this with her, and/or with the several senior officers and other personnel who had been involved in considering and approving the media strategy. But he did not do so.	
469	Further, it is submitted that what Mr Willing told State Coroner Barnes was itself not true. According to Mr Willing's own evidence, what had been discussed "up to our Deputy Commissioner and head if (sic) public affairs" was not that DCI Young would be "interviewed", nor that she would be on Lateline. Those discussions had concerned "backgrounding" of two journalists, "off the record". Mr Willing's response, when confronted with this reality, was again to seek to resort to reliance on the doorstop interview outside the court. Again, that evidence should be rejected.	See row in relation to [420].
477	It is submitted that this evidence should not be accepted. If he was indeed "shocked" and "angry" – as presumably would have been the case if he truly had no idea that DCI Young was going to give such an interview and/or say any of these things – it beggars belief that he simply did nothing and waited for events to unfold the next day. The inference is available that he was not "shocked" or "angry", and that that is why he did nothing.	See row in relation to [420].
500	First, the creation of SF Macnamir was regarded, at least by DCI Young, as a politicised and unfair decision, made by the Minister for Police and Emergency Services at the behest of the influential Johnson family and in response to media pressure which had come to a head with the *Australian Story* episode on 11 February 2013.	Findings concerning the views of DCI Young regarding the reasons underlying the creation of SF Macnamir say nothing about the manner or cause of death in any unsolved homicide referred to in Paragraphs A and B of the ToR. The proposed findings have no connection to how the Commissioner should consider any evidence in any unsolved homicide referred to in Paragraphs A and B of the ToR, nor is any such connection expressed. The proposed findings are not connected to any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR

Para	Proposed finding	Reason why outside ToR
501	Secondly, both DCI Young and her successors at SF Macnamir (as well as Mr Willing) believed that a third inquest was unnecessary and would not result in any different finding from the open finding by Coroner Forbes in 2012.	The matter of Scott Johnson is no longer "unsolved", and is thus outside paragraphs A and B of the ToR. Findings concerning the views of DCI Young (her successors and Willing) regarding the necessity of a third inquest in Johnson matter say nothing about the manner or cause of death in any unsolved homicide referred to in Paragraphs A and B of the ToR. The proposed findings have no connection to how the Commissioner should consider any evidence in any unsolved homicide referred to in Paragraphs A and B of the ToR, nor is any such connection expressed. The proposed findings are not connected to any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
502	Thirdly, SF Macnamir did not adopt an open-minded approach to the reinvestigation of the death of Scott Johnson. Rather, for the whole time from the instigation of SF Macnamir in February 2013 to its conclusion on 30 November 2017, the unchanging and inflexible view held, and propounded, by SF Macnamir was that Scott Johnson's death was a suicide, and that the police objective was to combat, and prevent the acceptance, of the homicide hypothesis.	The matter of Scott Johnson is no longer "unsolved", and is thus outside paragraphs A and B of the ToR. Findings concerning the approach to the reinvestigation of the Johnson matter / SF Macnamir say nothing about the manner or cause of death in any unsolved homicide referred to in Paragraphs A and B of the ToR. The proposed findings have no connection to how the Commissioner should consider any evidence in any unsolved homicide referred to in Paragraphs A and B of the ToR, nor is any such connection expressed. The proposed findings are not connected to any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR

Para	Proposed finding	Reason why outside ToR
503	Fourthly, Mr Willing was on notice, at least some hours before the programme aired, that DCI Young would be appearing in an *"exclusive"* interview on *Lateline* on 13 April 2015. His failure to remonstrate with her at that point, and his initial inaction and nonchalance even after seeing her on the programme on 13 April, provide a basis for an inference that Mr Willing, and perhaps others in State Crime Command, personally supported what DCI Young had said or at least did not disagree with it.	See row in relation to [420].
PART D: STRIKE FORCE NEIWAND		
548-549	[548] It might be supposed that the findings of the Taradale Inquest would immediately have prompted a further reinvestigation of the deaths, particularly given the view of Coroner Milledge that the information gathered by Operation Taradale would provide an excellent source of information for any such investigation. … [549] This did not occur. On the evidence available to the Inquiry, police did not review or otherwise make any use of the findings of the Taradale Inquest for many years.	Comment about what may or should have occurred in light of findings says nothing about the manner and cause of death in in any unsolved homicide referred to in Paragraphs A and B of the ToR. The comments have no connection to how the Commissioner should consider any evidence in any unsolved homicide referred to in Paragraphs A and B of the ToR, nor is any such connection expressed. The comments are not connected to any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
553	Again, it might be thought that this would have prompted a reinvestigation of the deaths. Again, this did not occur.	See row in relation to [548]-[549].
559	It is submitted that Mr Willing's quote to Mr Feneley plainly did "stretch the truth". It gave the impression that the three Bondi cases were actually under investigation (which was not the case), and that they were under investigation for their own sake, which was also not the case	The finding about Mr Willing's quote: 1. Says nothing about the manner and cause of death in any unsolved homicide. 2. Says nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Says nothing about any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding

Para	Proposed finding	Reason why outside ToR
		within Paragraph F of the ToR
563	Again, it might be thought that this would have prompted a reinvestigation of the deaths. Again, this did not occur.	See row in relation to [548]-[549]
567	Two observations may be made at this stage about that answer: a. First, this was far from an accurate reflection of the findings of the Taradale Inquest. Coroner Milledge had not found two of the deaths to be "possible homicides"; her Honour had found those two (Mr Warren and Mr Russell) to be homicides in fact, and had added that the evidence supported the *"strong probability"* that both those two, and also Mr Mattaini , had met their deaths at the hands of *"gay hate assailants"*; and b. Second, it reveals that the perspective from which the UHT, *qua* SF Macnamir, was approaching the three Bondi deaths was to challenge (*"put to the test"*) Coroner Milledge's findings of homicide, which had so influenced the findings in the second Scott Johnson inquest in June 2012	The observations: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
575	It is submitted that one conclusion which, on the evidence, it is safe to reach, is that a significant reason for the establishment of SF Neiwand was the extensive and sustained media interest in matters involving suspected hate crime deaths, and criticism of the police investigation of those deaths. Another safe conclusion is that SF Neiwand was not just responsive to that criticism, but a reaction to it.	The reason for establishing SF Neiwand: 1. Says nothing about the manner and cause of death in any unsolved homicide. 2. Says nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Says nothing about any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
576	In its implementation and outcomes, it 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. It is difficult to resist the conclusion that the eventual implementation and outcomes were consistent with the original objectives, even if those original objectives were not written down.	The aim of SF Neiwand: 1. Says nothing about the manner and cause of death in any unsolved homicide. 2. Says nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Says nothing about any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently

Para	Proposed finding	Reason why outside ToR
		and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
597	As will be seen, SF Neiwand deliberately eschewed any focus on persons of interest; specifically sought to identify faults with Operation Taradale (an inference that Mr Willing agreed could be drawn); and sought to skew the focus of the investigation away from any suggestion that Mr Warren, Mr Russell or Mr Mattaini died by homicide. It did so despite the fact that Operation Taradale had received praise from multiple quarters, despite the findings of Coroner Milledge, and despite the recommendations of DSC Taylor of the UHT	These findings about SF Neiwand: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
601	This change, it is submitted (if change it was), must have occurred at a very early stage of SF Neiwand. The small SF Neiwand team never had sufficient resources to undertake the task of investigating the 116 POIs listed in the spreadsheet circulated by DS Brown amongst SF Neiwand members in February 2016. Nor did it ever ask for more.	See row in relation to [597].
604	As will be seen in more detail below, SF Neiwand was highly critical of Operation Taradale and of Mr Page, and it reached a radically different view in each case to the findings of Coroner Milledge.	See row in relation to [597].
613	The evidence before the Inquiry establishes that, among other things a. On 14 April 2016 there was a meeting attended by AC Crandell, Mr Willing and others at which SF Parrabell and SF Neiwand were discussed; b. Between 6 and 20 May 2016, there was email correspondence between AC Crandell, Mr Willing and others in relation to forthcoming media coverage of one or both Strike Forces; c. On 17 May 2016 there was another meeting between AC Crandell and Mr Willing, at Parliament House; d. On 21 and 22 May 2016, two articles appeared in The Sydney Morning Herald on successive days, the first about SF Parrabell and the second about SF Neiwand. (See further below).	These factual findings: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR

Para	Proposed finding	Reason why outside ToR
624	It is submitted that the "collaboration" between AC Crandell and Mr Willing in relation to these two articles, as early as May 2016, indicates that both men were well aware by at least that time of what both Strike Forces (SF Parrabell and SF Neiwand) were doing, and were collaborating inter alia in the way in which those matters were portrayed in the media	See row in relation to [613].
627	Whether DCI Lehmann approached the task of supervising SF Neiwand with the motivation of solving these cases, as homicides, is open to doubt. At the very least, his trenchantly-expressed views support a reasonable apprehension that he had quite a different motivation.	These findings about DCI Lehmann: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
634	It is submitted that his evidence on that point is plainly right and should be accepted.	These findings about resourcing: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
635	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).	See row in relation to [597].
636	The efforts and conclusions of all three strike forces ultimately reflected, in different but consistent ways, the views expressed by DCI Lehmann and DCI Young in the Lehmann/Young Issue Paper: that "*the suggestion of 30 'gay hate' related unsolved murders is a gross exaggeration*", and that the media criticism of the police for their approach to those cases was irresponsible and sensationalist.	These findings about the strike forces: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and

Para	Proposed finding	Reason why outside ToR
		appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
638	However, the evidence of coordination and overlap between the three strike forces suggests that there was something more than coincidence or tacit shared thinking. That coordination does not seem to have been directed primarily at the substance of the cases.	See row in relation to [636].
639	Rather, it was coordination directed primarily at discrediting (publicly in the cases of SF Macnamir and SF Parrabell, and non-publicly in the case of SF Neiwand) claims that *so many* deaths were or might have been gay hate crimes (which claims carried with them, explicitly or implicitly, that police had not investigated some or many of those deaths satisfactorily).	See row in relation to [636].
640	There were differences in approach, however. For example, as will be seen in Part I, the Parrabell Report is at some pains to acknowledge the extent of the violence against the LGBTIQ community during the period under review and the role that it played in the marginalisation of that community.	See row in relation to [636].
641	On the other hand, the two UHT Strike Forces adopted a more obviously adversarial approach. SF Macnamir persisted throughout in propounding the suicide hypothesis in the case of Scott Johnson, and DCI Young saw the Johnson family as "*opponents*" to be "*defeated*". SF Neiwand bluntly sought to undermine and discredit Operation Taradale, the work of Mr Page and the findings of Coroner Milledge – and to do so unbeknown to Mr Page, to Coroner Milledge, to the families of then three deceased men, and to the public. The way in which SF Neiwand treated Mr Page (both ruthless and unfair, it is submitted, for the reasons outlined below) would tend to reinforce the 'company line' and (intentionally or not) to send a message to other police officers about the investigation of LGBTIQ hate crimes	See row in relation to [636].
643	DS Morgan gave a summary of the work conducted by SF Neiwand, in the Morgan Statement at [53]-[67]. With the exception of paragraph [61] thereof, discussed below, it is not suggested that those paragraphs are inaccurate.	See row in relation to [597].
644	In considering what SF Neiwand did, it is important to have regard to what it did not do. In that regard, among other things: a. SF Neiwand did not implement the recommendations made by DSC Taylor in	See row in relation to [597].

Para	Proposed finding	Reason why outside ToR
	2012, namely (emphasis added): *It is my recommendation, due to the passage of time, separation of alliances and social isolation of the suspects from each other there exists an opportunity to engage the persons of interest via an undercover operation in relation to the murder of Russell and Warren.* *…* *Consideration of a reward may provide further avenues to generate information in conjunction with an undercover operation.* b. SF Neiwand did not 'investigate' any of the 116 POIs listed in the spreadsheet circulated by DS Brown on 1 February 2016; and c. SF Neiwand did not pursue the homicide possibility (with a partial exception in the case of Mr Warren, discussed below) and in particular did not pursue the gay hate homicide possibility, in any substantive way beyond what Operation Taradale had already done many years previously.	
645	When DS Morgan was shown the list of POIs circulated by DS Brown, he stated that one person, or potentially two people, on that list was interviewed by SF Neiwand. He then conceded that, apart from interviews, it was "*quite likely*" that none of those persons were the subject of any other means of investigation at all, whether overt or covert, by SF Neiwand. No evidence has been produced to the Inquiry to indicate that any such investigations took place, and it is submitted that the appropriate finding is that none in fact took place.	See row in relation to [597].
646	According to Mr Willing, the decision not to pursue POIs was not a choice made by him. He said it would have been made by the investigative team, and likely the OIC (namely, DS Brown or DSC Chebl). It is submitted that, in light of the email circulated by DS Brown in February 2016, which indicates that at least DS Brown had such investigations in mind, this decision was made by DSC Chebl as OIC and presumably approved by DS Morgan as Investigation Supervisor.	Who made any decision: 1. Says nothing about the manner and cause of death in any unsolved homicide. 2. Says nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Says nothing about any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR

Para	Proposed finding	Reason why outside ToR
648	It is submitted that for the Mattaini matter, SF Neiwand overwhelmingly, if not exclusively, pursued evidence supporting suicide, not homicide.	See row in relation to [597]
649	While some (ultimately unsuccessful) steps were undertaken in relation to DNA testing and obtaining medical and military records, it was clear that the overriding focus was pursuing information about Mr Mattaini's previous suicide attempts with Mr Musy.	See row in relation to [597].
656	As to Mr Warren's death, SF Neiwand pursued possibilities of suicide or misadventure, and, to a lesser extent, homicide of a domestic nature. It is submitted that, at no point, was homicide as a result of gay hate violence pursued.	See row in relation to [597].
658	DS Morgan could not recall if SF Neiwand had taken steps to inquire as to the possibility of gay hate gang violence, beyond reviewing the material from Operation Taradale. It is submitted that there is no evidence of any such steps being taken.	See row in relation to [597].
659	In relation to the investigation of Mr Russell's death, SF Neiwand pursued the possibility of misadventure, not homicide.	See row in relation to [597].
662	There was no Investigation Plan for SF Neiwand until September or October 2016, despite the strike force commencing around a year earlier, in October 2015.	See row in relation to [597].
663	The Investigation Plan, even when finally created, was rather sparse. It was just under three pages, with the first page and a half consisting of a brief summary of the background of the three cases.	See row in relation to [597].
664	Under the heading 'Strategies/Execution', there was very little information about the actual approach or methodology that SF Neiwand intended to adopt. The focus appeared to be collating and assembling material that was available elsewhere, as DS Morgan agreed.	See row in relation to [597].
665	While other steps, such as canvassing residents who resided around Marks Park in 1989-1990, and taking statements from "freshly identified witnesses", were proposed in the Investigation Plan, no such step was undertaken by SF Neiwand. Nor were any "freshly identified witnesses" approached other than family members.	See row in relation to [597].
666	Further, although the Investigation Plan provided that "a detailed list of persons of interest will be developed after an extensive review of all material", no such list was ever prepared. …	See row in relation to [597].
670	These Progress Reports starkly reveal the minimal steps taken by SF Neiwand to pursue the Operation Taradale POIs. …	See row in relation to [597].

Para	Proposed finding	Reason why outside ToR
670(g)	It is submitted that there plainly was not. [redacted] By the time of the next two Progress Reports, no such targeting had been mentioned as being done.	See row in relation to [597].
678	Such a claim, it is submitted, is ridiculous to the point of embarrassment. DS Morgan should be regarded as, and found to be, the joint author of, and jointly responsible for, each of the Neiwand Summaries.	The identity of the author of the Neiwand Summaries: 1. Says nothing about the manner and cause of death in any unsolved homicide. 2. Says nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Says nothing about any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
691	It is submitted that SF Neiwand had no proper or reasonable basis for contradicting the coronial findings in any way.	See row in relation to [597].
694	It is submitted that SF Neiwand had no proper or reasonable basis for contradicting the coronial findings in any way.	See row in relation to [597].
698	It is submitted that Mr Page's evidence as to factual matters, both in his statement and his oral evidence, should be accepted.	See row in relation to [597].
702	In relation to the possibility of misadventure, the Warren Summary makes a point of giving weight to the 1989 speculations of the original OIC, DS Bowditch. For SF Neiwand to do so, in the light of the devastating (and, it is submitted, deserved) criticisms of DS Bowditch's original investigation by Coroner Milledge, is remarkable.	See row in relation to [597].
708	This evidence was unchallenged. The points made by Mr Page are sound and are adopted. It is submitted that they should be accepted.	See row in relation to [597].
713	The level of hostility displayed in the Neiwand Summaries towards Operation Taradale, and the nature and extent of the accusations made against Operation Taradale and Mr Page, indicate that SF Neiwand was a deliberate attempt to undermine Operation Taradale, Mr Page, and the findings of Coroner Milledge. The egregious nature of the enterprise is only compounded by the fact, accepted by DS Morgan, that these criticisms were "*largely unwarranted*" and by Mr Willing that they were "*incorrect*".	See row in relation to [597].

Para	Proposed finding	Reason why outside ToR
720	It is submitted that SF Neiwand deliberately approached Mr Russell's matter with a view to bolstering a misadventure hypothesis in preference to Coroner Milledge's finding of homicide. The proposition that the absence of evidence *to date* meant that investigation *as a homicide* would not continue, is obviously absurd.	See row in relation to [597].
730	Again, this evidence was unchallenged, it is cogent, and it should be accepted.	See row in relation to [597].
746	It is submitted, having regard to all the evidence, that these accusations were not only entirely without basis, and very unfair, but demonstrably false. They should never have been made. Such attacks on Mr Page were completely unjustified and should be totally rejected.	Findings about Mr Page: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
749	Again, none of Mr Page's evidence, in relation to any aspect of Mr Mattaini's case, was challenged. Mr Page's evidence should be accepted.	See row in relation to [597].
756	It is submitted that SF Neiwand did not have any proper basis to recategorise any of Mr Warren's, Mr Russell's or Mr Mattaini's deaths, and that its criticisms of Operation Taradale in respect to these deaths were either overstated or baseless.	See row in relation to [597].
761	It is submitted that this state of affairs – whereby the damaging accusations about Mr Page and Operation Taradale in the Neiwand Summaries were available to all officers with relevant access on e@gle.i and directly provided to three high-ranking officers – was most unfair to Mr Page. So much was conceded by both Mr Willing and DS Morgan. It is submitted that the NSWPF should have both informed Mr Page of the criticisms made against him, and given him an opportunity to respond, before the POA or Summaries were distributed within the NSWPF	Further, what NSWPF should have done: 1. Says nothing about the manner and cause of death in any unsolved homicide. 2. Says nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Says nothing about any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
762	Remarkably, the distribution of the findings of SF Neiwand to key actors outside of the NSWPF was a completely different story.	Findings about distribution: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and

Para	Proposed finding	Reason why outside ToR
		cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
767	It is submitted, nevertheless, that such correspondence indicates that at least DI Leggat and perhaps others thought that the State Coroner needed to know SF Neiwand's findings. Mr Willing accepted that that was so, as is plainly the case.	See row in relation to [762].
771	It is submitted that, in light of the significance of the SF Neiwand findings, baseless as they were, the Coroners Court and the families, as well as Mr Page, should have been told of the outcome of SF Neiwand.	See row in relation to [762].
773	It is submitted that, in light of the significance of the SF Neiwand findings, baseless as they were, the Coroners Court and the families, as well as Mr Page, should have been told of the outcome of SF Neiwand. …	See row in relation to [762].
778	In the '*Key Findings*' section, DI Leggat states that "*Strike Force Neiwand investigators focused on victimology, associates and the last known movements of the three males*". As previously noted, this was an accurate summary of what (little) SF Neiwand actually did. Both Mr Willing and DS Morgan agreed with this proposition, and that this was different both from what had been proposed in the Investigation Plan and from what Mr Willing thought SF Neiwand was going to do.	See row in relation to [597].
781	As is apparent, there is a circular logic at work here, as Mr Willing outlined: the matters would only be reactivated if new and compelling evidence became available; however, as the matters were inactive, NSWPF would not be taking steps to obtain any such evidence.	Findings on next steps: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
782	Overall it is submitted that SF Neiwand was a secretive and shabby attempt, by those who conducted and supervised it, to avoid or negate the consequences of the Taradale Inquest and	See row in relation to [597].

Para	Proposed finding	Reason why outside ToR
	findings, including by mounting a baseless and unfair attack on Mr Page. DS Morgan, as the Investigation Supervisor, is among those who bear significant responsibility for this unfortunate episode in the troubled history of the NSWPF's approach to LGBTIQ bias crime.	
PART E: STRIKE FORCE PARRABELL – ORIGINS AND BEGINNINGS 2015/2016		
801	More fundamentally, however, it is submitted that the evidence amply establishes that there were other reasons for the establishment of SF Parrabell, as summarised below.	Findings about the reasons for establishing SF Parrabell: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
809	That answer, as at that time, on the evidence referred to above, would appear to have been inaccurate.	Accuracy of the statement in the Issue Paper: 1. Says nothing about the manner and cause of death in any unsolved homicide. 2. Says nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Says nothing about any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
817	It is submitted that the evidence supports a finding that the rationale of AC Crandell, and that of the NSWPF, for establishing SF Parrabell, included at least the following factors: a. to combat negative publicity about the NSWPF, stemming from as far back as early 2013 and including publicity about the events of 13 April 2015;	See row in relation to [801].

Para	Proposed finding	Reason why outside ToR
	b. to refute the suggestion, and perception, that there had been a significant number of gay hate motivated homicides, as found in the "list of 88" and publicity relating thereto; c. to show that claims of 88 gay hate murders, 30 of them unsolved, were exaggerated; d. to refute the suggestion that NSWPF had not adequately investigated gay hate crimes; and e. to assert that the true position was that only a small proportion of the 88 cases were gay hate murders, and that the number of those that were unsolved was much less than 30.	
837	It is submitted that none of these reasons is persuasive.	Utilisation of Sergeant Steer: 1. Says nothing about the manner and cause of death in any unsolved homicide. 2. Says nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Says nothing about any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
839	The choice by SF Parrabell, and by AC Crandell, to have such minimal engagement with Sergeant Steer and the Bias Crimes Unit, appears on the evidence to have been a deliberate one, not by any means an oversight	See row in relation to [837].
840	Why that choice was made is difficult to fathom, given inter alia: a. the structures and processes embedded in the Bias Crimes SOPs; b. the June 2016 agreement as reflected in the RFQ; c. the use by SF Parrabell of a BCIF which had been created by SF Parrabell officers by adapting documents devised (for other purposes) by Sergeant Steer; and d. the unsurprising view of the academic team that participation by Sergeant Steer would have been valuable; and e. the depth of bias crimes expertise which Sergeant Steer could have contributed to the work of the Strike Force (none of whose members had such expertise).	See row in relation to [837].

Para	Proposed finding	Reason why outside ToR
871	That evidence would suggest that AC Crandell's recollection (that the Investigation Plan had come into existence by some time prior to 30 August 2015) was not correct.	These findings: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
882	Even so, in the light of the evidence referred to above, AC Crandell's assertion (in response to a question from senior counsel for the Commissioner of Police) that "all of the police officers who were conducting the [SF Parrabell] review" used "the same BCI form", was somewhat less than comprehensive.	These findings about the BCI: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
884	The difficulty faced by the Inquiry is that none of this "relevant context" was provided, or even adverted to, by AC Crandell in his written or oral evidence, nor has the NSWPF produced any contemporaneous document supporting these contentions. Moreover, none of what is now advanced in the OGC letter, as to there having been multiple changes and amendments to the BCIF, even if accepted, supports or establishes the further assertion that SF Parrabell members actually used the BCIF in a "substantively similar way".	See row in relation to [882].
888	It is submitted that this is simply not so.	See row in relation to [882].
894	It is submitted that, even if it is assumed that all the assertions in the OGC letter are correct, it is impossible for the Inquiry to have any confidence that all the SF Parrabell officers understood and applied all the different variations in the constituent documents, and all the changes to the successive versions of the CIF, in the same way.	These findings about the constituent documents: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently

Para	Proposed finding	Reason why outside ToR
		and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
895-896	[895] It is submitted that the use of different standards of proof at different stages of the BCIF process was likely lead to confusion and inconsistencies. Moreover, to engage the lower (civil) standard at the "overall" stage, after the higher (criminal) threshold had been imposed at an earlier stage, is illogical and only adds to that likely confusion. [896] The notion that such problems might have been "teased out" is really no answer.	These findings about different standards of proof: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
897	It is also submitted that the application of the higher, criminal standard of proof almost inevitably meant that SF Parrabell found fewer cases where there was "evidence of bias crime" than it would have found if it had applied the lower, civil standard of proof …	See row in relation to [895]-[896]
904	It is submitted that it would have been preferable, and desirable, for SF Parrabell to inform ACON of the processes and methodologies being adopted by SF Parrabell. ACON may well have been able to offer insights as to the pros and cons of those processes and methodologies, including as to the appropriateness of the indicators generally and of the contents of the BCIF in particular.	Findings on the involvement of ACON: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
PART F: STRIKE FORCE PARRABELL – POLICE METHODOLOGY		
912	First, the constituent documents are inconsistent with each other. These differences could well have been confusing for the officers who worked on SF Parrabell. The nature of those differences is that it is not possible for a present-day observer to have confidence that each officer carried out the review process in the same way.	See row in relation to [882].
913	Secondly, the BCIF underwent several successive changes during the course of SF Parrabell. Each of those changes was significant. The following matters are quite unclear, both in the Parrabell Report and in the evidence before the Inquiry: a. The extent to which those changes were explained to the officers;	See row in relation to [882].

Para	Proposed finding	Reason why outside ToR
	b. The extent to which the officers understood those changes; c. The extent to which the officers changed their approach as a result of the changes to the BCIF; and d. The extent to which officers revisited cases that had already been reviewed after each of the changes to the BCIF.	
914	Thirdly, in his evidence, AC Crandell essentially maintained that any inconsistencies and changes were immaterial. For the reasons outlined in Part D, it is submitted that the inconsistencies and changes are indeed material.	See row in relation to [882].
917	However, there are various difficulties with these assertions made by the NSWPF: a. The Parrabell Report does not acknowledge, or indeed mention, any such changes in approach; b. AC Crandell did not give evidence of any of the matters asserted in the OGC letter, nor were any documents produced to the Inquiry by the NSWPF which supported those assertions; c. Dr Dalton did not appear to be aware of any changes to the BCIF over time, and appeared to be surprised when it was put to him "that the police changed their instrument" as part of an assumption he was asked to make; and d. Even if these assertions are accepted, the final iteration of the BCIF remained a deeply flawed instrument, for reasons which are outlined below.	See row in relation to [882].
928	It is submitted that such a system could not and, more importantly, did not ensure accuracy: a. As AC Crandell accepted, the narratives were not second-guessed by the senior investigators, in that they did not go back over the files to determine whether they agreed or disagreed with the narrative originally prepared. b. The Inquiry has before it examples of BCIFs with inaccurate or flawed narratives, such as the BCIF for the matter of Graham Paynter, where the reviewing officer copied and pasted sections from the BCIF relating to another deceased person, Peter Sheil. c.	See row in relation to [882].
938	However, it is submitted that in reality the BCIF obscured the true nature of the process and gave the appearance of scientific rigour which in reality was totally absent. In fact,	See row in relation to [882].

Para	Proposed finding	Reason why outside ToR
	as Dr Dalton agreed in his oral evidence, "the elaborate apparatus of the form was apt to conceal the near impossibility of the task". Associate Professor Lovegrove called it "faux science", and Ms Coakley expressed a similar view.	
939	A striking feature of the methodology of SF Parrabell, in practice, was its close collaboration with the academic team on the categorisation of cases.	Findings about the relationship with the academic team: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
941	It is submitted that the evidence establishes that the academic team and SF Parrabell sought to minimise any differences of opinion, as part of an overall effort to reach consensus on as many cases as possible. The evidence of that collaboration, and consensus-seeking, is extensive and compelling.	See row in relation to [939].
947	It is submitted that Dr Dalton's evidence in this regard is palpably correct and should be accepted.	See row in relation to [939].
960	It is submitted that AC Crandell's evidence on this issue should be rejected. The email makes it clear, over and over, that overall consensus, if it was possible, was indeed the objective	See row in relation to [939].
965	Again, it is submitted that the evidence of Dr Dalton on these matters (consistent as it is with the contemporaneous documents) should be preferred to that of AC Crandell (which is not).	See row in relation to [939].
972	The Strike Force led the search for consensus, and they were the dominant party in the relationship. This follows from the following facts: a. The NSWPF were paying the academic team; b. The NSWPF had access to more information than the academic team in the form of the historical material; and c. The NSWPF reviewed and sought changes to the Flinders Report, but the academic team did not review the Police Report.	See row in relation to [939].

Para	Proposed finding	Reason why outside ToR
981	However, even assuming that the participants genuinely believed in theory that there would be some differences between the SF Parrabell and academic team's classifications, the preponderance of evidence clearly shows that the overall expectation was that there would in practice be little difference in the classifications. Further, it was anticipated that any disagreements would be likely to be ironed out and consensus reached on such cases, through the process of discussion and collaboration that was undertaken.	See row in relation to [939].
982	The efforts to reach consensus necessarily undermined the independence of the academic team. It may be one thing for each side to explain its reasoning to the other, so as to achieve a greater understanding of each other's conclusions. It might also have been legitimate for each side to alter their views as a result of that greater understanding. However, if this was going to occur, it ought to have occurred after both sides had reached their conclusions, not while that process was underway.	See row in relation to [939].
983	The search for consensus, plainly engaged in from the outset or soon afterwards, meant that: a. the already subjective opinions of the SF Parrabell officers were then "subject to", and evidently in some cases changed as a result of, the views or opinions of the academic team; and b. the work of the academic team, in reviewing the work of the SF Parrabell officers, was not truly independent or "arm's length", but was in reality part of an ongoing collaborative process which included the aim of minimising any disagreement along the way.	See row in relation to [939].
1003	The views expressed by each of the experts on this issue were not challenged. They are persuasive and they should be accepted. The bias crime indicators were not developed for the purpose of identifying LGBTIQ hate crimes, still less such crimes in NSW between 1976 and 2000. NSW is not the US, hate against LGBTIQ people is not the same as hate on the basis of race, nationality or religion, and the manifestation of hate is not static over time	See row in relation to [882].
1004	The BCIF was therefore, for those reasons alone, not an appropriate instrument for the purposes of SF Parrabell. Little weight, if any, should be placed on results reached through the application of an instrument which was not fit for purpose.	See row in relation to [882].

Para	Proposed finding	Reason why outside ToR
1023	It is submitted that in the absence of any attempt to assess the validity and reliability of a process so dependent on the BCIF, the NSWPF ought not to have used it, contrary to AC Crandell's views.	See row in relation to [882].
1024-1028	[1024] It may be that not every tool or instrument used in policing would need to be developed in accordance with a process having all of the rigour outlined by Associate Professor Lovegrove. However, this does not justify the decision to use an untested instrument in these circumstances, for at least two reasons. [1025] First, Dr Dalton, who was engaged for the purposes of providing independent expert advice, advised SF Parrabell that the BCIF was "pretty appalling". The fact that the academic team dissociated itself from the BCIF ought to have given SF Parrabell pause. It underlined how deeply flawed SF Parrabell's methodology was [1026] Secondly, SF Parrabell was an unusual exercise for the NSWPF. Among other things, it is not an exercise in the direct "prevention and detection of crime" (see s. 6(3)(a) of the Police Act 1990 (NSW)), of the kind which the NSWPF might ordinarily undertake. Rather, SF Parrabell was attempting what was effectively a research project, where the NSWPF would purportedly derive, from historical materials, conclusions and/or inferences which would be presented to the public as reliable and as having "systemic validity". [1027] That being so, it ought to have adopted a methodology that actually did have at least some systemic rigour. Neither the compilation of the BCIF, nor its use by the SF Parrabell officers, had any such rigour. [1028] The evidence of Associate Professor Lovegrove in particular demonstrates that it was not a valid or reliable instrument for identifying LGBTIQ hate crimes. Only limited weight can be accorded to conclusions reached through the use of such an instrument.	See row in relation to [882].
1032	It is submitted that involving the LGBTIQ community in the process of SF Parrabell could have improved at least the "validity" of the exercise, if not its "reliability". Given that the list of 88 was created by members of the LGBTIQ community, one obvious	Findings about "validity" rather than "reliability: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and

Para	Proposed finding	Reason why outside ToR
	starting point for SF Parrabell might have been to ask those individuals why they thought that those deaths might have involved LGBTIQ bias.	cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1039	… Regardless of the reason why the original police investigation might have failed to notice, identify or record such matters, their absence irretrievably limited the capacity of SF Parrabell to *"arrive at"* a soundly-based view of any particular case.	This finding is not used to consider any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1047	Neither Associate Professor Lovegrove nor Professor Asquith was challenged on these aspects of their reports. Their views are cogently reasoned and should be accepted.	This finding is not used to consider any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1048	Neither Associate Professor Lovegrove nor Professor Asquith was challenged on these aspects of their reports. Their views are cogently reasoned and should be accepted.	See row in relation to [882].
1054	The evidence available to the Inquiry from the NSWPF does not provide clear answers to such questions.	This finding is not used to consider any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1059	… However, it is submitted that Associate Professor Lovegrove is correct to say that the use of different standards at different stages of the analysis was apt to cause confusion, and that the "beyond reasonable doubt" standard sets a high evidentiary bar in relation to the assessment of each indicator. He is also correct to say, as Mr Willing immediately appreciated, that the effect of setting that high evidentiary bar was to lower the likelihood that SF Parrabell would find that a particular case was a bias crime. That approach risked underestimating or downplaying the true number of bias crimes.	See row in relation to [895]-[896]
1060	The requirement of "beyond reasonable doubt" for a "finding" of "evidence of bias crime" (and also the presence of that concept in relation to the "suspected bias crime" "finding") is problematic for numerous reasons including: a. The criminal standard is obviously a high bar; b. The question being asked was whether there was evidence of bias crime, not	See row in relation to [895]-[896]

Para	Proposed finding	Reason why outside ToR
	whether a bias crime had in fact occurred; c. To impose the "beyond reasonable doubt" requirement on the possibility of a "Yes" response to that question (whether there was evidence) is both difficult to understand and difficult (if not impossible) to apply, in any intelligible or coherent way; and d. If it were now to be suggested that the "beyond reasonable doubt" requirement was actually to apply to whether a bias crime had occurred (and not merely to whether there was evidence of such a crime), then: i. that is far from clear from the words of the form: and ii. the likelihood of a "Yes" answer to that question would be lower still.	
1062	It is submitted that these observations and analyses are correct. They were not challenged, and should be accepted.	See row in relation to [882].
1064	Those conclusions are amply supported by the preceding analysis in the Lovegrove Report. They are essentially unchallenged. It is submitted that they should be accepted.	See row in relation to [882].
1067	It is submitted that Ms Coakley's conclusions, also largely unchallenged, should be accepted.	See row in relation to [882].
1069	As to the second of these points, Professor Asquith's observations are based only on what is evident from the Parrabell Report. The evidence before this Inquiry has shown that not only did the officers who constituted SF Parrabell have no particular training in hate crimes, but SF Parrabell chose not to utilise the expertise of the Bias Crimes Unit or Sergeant Steer in any substantive or comprehensive fashion.	These findings are not used to consider any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1071	It is submitted that the answer to that question, for the reasons outlined above, is no.	Whether it was worthwhile: 1. Says nothing about the manner and cause of death in any unsolved homicide. 2. Says nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Says nothing about any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR

Para	Proposed finding	Reason why outside ToR
PART G: STRIKE FORCE PARRABELL – CHOOSING THE ACADEMICS		
1094-1100	[1094] Tellingly, it is submitted, Dr Weatherburn observed that: As far as I know COPS doesn't reliably record whether a homicide is a gay hate homicide. Some sort of inference might be drawn from the homicide files but this would be a time-consuming task without any assurance of a reliable result (do the files contain reliable information on offender motive?) I simply don't have the staff to put on this sort of project. [1095] That observation, made as early as June 2015, succinctly drew attention to two fundamental problems confronting the methodology of the Strike Force: a. First, any review of the historical paper materials in connection with a given case, with a view to deducing or inferring – from those papers alone, without any re-investigation at all – whether the death in question was gay hate-related, was heavily dependent on the extent to which those who had authored those historic papers, at the time (mainly in the 1970s and 1980s), had given any attention to such a possibility, and on the quality and extent and expression of any such consideration in those papers; and b. Secondly, any authoritative or reliable review by academics, of the quality or effectiveness of the work done by the SF Parrabell officers, would require the academics to look at the same historic material that the police officers had looked at, and would be a very time-consuming exercise [1096] It is submitted that the first of those problems (the existence and inescapability of which AC Crandell readily acknowledged) meant from the outset that any "findings" by SF Parrabell, as to whether or not gay hate bias (or some similar concept) had been a factor in a death occurring decades earlier, would be of very limited value. [1097] As to the second problem, several observations may be made. To [1100]	These findings are not used to consider any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1108	It is submitted that these answers were disingenuous. Having regard to the whole of the evidence, one academic who was plainly the subject of that reference in Ms Braw's email was Professor Tomsen.	These findings: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide.

Para	Proposed finding	Reason why outside ToR
		3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1138	It is submitted that the evidence of AC Crandell in relation to the RFQ was unconvincing. He plainly was involved in its drafting; the introduction of an emphasis on "collaboration" was obviously significant; he did attempt to distance himself from that concept and that word; and (as Ms Sharma to some extent partially acknowledged) the inclusion of specific reference to a possible loss of objectivity if a researcher was "connected to the gay community " is difficult to understand other than as an indication that the teams which included "activists" such as Professor Tomsen or Professor Asquith would be at a disadvantage in the selection process.	These findings: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1159	It is submitted, however, that the experience and expertise of the Dalton/de Lint/Tyson team, in relation to the relevant subject matter namely hate crime, could not on any objective view be regarded as comparable to that of either of the other two teams. Dr Dalton positively disclaimed any such expertise, and neither Dr de Lint nor Dr Tyson claimed to have it. By comparison, both Professor Tomsen and Professor Asquith were widely regarded and respected as experts on the subject matter of hate crime	These findings about the experts: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1161	It is submitted that AC Crandell's determined resistance to the suggestion that Professor Tomsen and Professor Asquith were "experts" in the field, and his equally determined attempts to elevate Dr Dalton's standing in that regard (despite Dr Dalton's own frank disclaimer of such expertise), indicated a defensiveness about the way the selection process appeared to favour the Flinders team	See row in relation to [1159].
1171	It is submitted that the evidence points to the distinct possibility that the criteria were interpreted, whether deliberately or otherwise, in ways which advantaged the Dalton/de Lint/Tyson team, and disadvantaged both the Lee/Crofts/Tomsen team and the Asquith/Dwyer team, with the consequence that researchers with the most experience and expertise in the areas the subject of SF Parrabell were rejected in favour of academics with little if any experience in those particular areas.	See row in relation to [1159].

Para	Proposed finding	Reason why outside ToR
1172	The review by the Flinders team was later represented, in a variety of fora and a variety of ways, as an independent and arm's length exercise. However, as noted above, in his oral evidence AC Crandell actually disavowed having sought a "completely arm's length process". More fundamentally, in their apparent determination to choose a team without any history of "activism", meaningful connection to the "gay community", or prior associations (however objective and professional) with police, the NSWPF effectively excluded the possibility of engaging with an academic team with substantial and recognised expertise, which could have provided far more credible assessment and review of the process.	See row in relation to [1159].
PART H: SF PARRABELL – THE ACADEMICS' METHODOLOGY		
1212	The concerns raised by Dr Dalton are well-founded, and consistent with submissions that have been made in Part F. However, these concerns are by no means adequately reflected in the Flinders Report. Indeed, they are almost entirely absent from it. The Flinders Report conveys the distinct impression that the academic team had sufficient information to enable them to perform their task. As will be seen, that was not the case.	See row in relation to [1159].
1232-1233	[1232] It may be immediately observed that there is no basis for characterising a sexual relationship between a man aged between 18-25 and a "much older man" as paedophilia. A difference in age between adult sexual partners is not paedophilia. To characterise a relationship between a 25-year-old man and an older man as "paedophilia" is to stretch the meaning of the word past breaking point. [1233] This is only the first of many problems with the concept of "anti-paedophile animus" developed by the academic team. It begs the question as to why the academic team drew this distinction at all. The answer to that question is not entirely clear.	These findings about the experts: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1248	Each of these analyses, by each of these two experts, is well-reasoned and should be accepted. As noted above, in their oral evidence neither Dr Dalton nor Dr De Lint sought to adhere to or justify the distinction.	These findings about the experts: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding

Para	Proposed finding	Reason why outside ToR
		within Paragraph F of the ToR
1252	The effect of the academic team's approach, perhaps unintended, was to treat an offender's bigoted notions as reality. Despite their references to "public policy", the academic team's approach to this issue reflected, rather than rejected, the "historical slander that gays and paedophiles can be understood under a common moniker". If a perpetrator conflates members of the LGBTIQ community with paedophiles, that is itself a form of hate or bias against the LGBTIQ community. It is not a reason to conclude that the crime is not a crime involving LGBTIQ bias.	These findings about the experts: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1253	It is submitted that this approach by the academic team does little more than to obscure the results. By creating a separate category for these cases, the academic team reduced the number of cases which it classified as "anti-gay bias" (only 17, of 85). The academic team then provided a combined category of 29 total cases of "animus". However, if the categories could be combined so easily, it once again begs the question: why were they separated in the first place?	These findings about the experts: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1254	The concept of "anti-paedophile animus" was flawed not just in theory, but also in practice. The Case Summaries clearly indicate that there were cases categorised by the academics as involving "anti-paedophile animus" in circumstances where there was no evidence either that the victim was a paedophile or that the offender was motivated by such an "anti-paedophile animus". Several are cases where the (younger) offender claimed that the (older) victim had made an unwanted advance, but the offenders were themselves adults. In such circumstances, it is difficult to see how the academic team could positively, or defensibly, characterise the motivation as "anti-paedophile animus".	These findings about the experts: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1256	It is submitted that the tortured and confused nature of the attempted distinction, and the absence of any explanation for its apparently misconceived application, neither of which Dr Dalton or Dr De Lint attempted to justify, show that its effect, whether intended or not, was no more than to obfuscate and downplay the number of cases which were bias crimes.	These findings about the experts: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as

Para	Proposed finding	Reason why outside ToR
		findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1260	That evidence establishes that, by at least February 2017, the academic team had formed the view (at least provisionally) that: a. there was a "moral panic" in relation to the deaths the subject of SF Parrabell; b. this moral panic was being fuelled by "moral entrepreneurs" or "crusaders"; and c. the moral panic was not supported by evidence.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1262	It is submitted that the unambiguously partisan approach found in the 'Moral Panic' article is consistent with, and informed, the approach of the academic team to their review of SF Parrabell, from no later than February 2017	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1282	It is submitted that there is an inescapable inference that the academic team approached its review of the work of SF Parrabell, first, knowing that the NSWPF viewed the "88" number as a gross exaggeration and, secondly, sharing that view.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1283	That view, it is submitted, infected the academic team's approach to the SF Parrabell exercise from the outset. It is little wonder, then, that various aspects of their methodology had the effect of downplaying the number of cases of bias, and/or of obfuscating the issues. The extended treatment of the concept of "anti-paedophile animus", discussed above, is an egregious example of such obfuscation. Some other examples are discussed below.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1294	The force in these views, it is submitted, is obvious. If, as was the case, the academic team was entirely reliant on the BCIF, then any shortcomings in the BCIF would necessarily infect their own work. This is a fundamental flaw in the academic team's methodology. As Professor Asquith says, "dirty data in, dirty data out". It is a sufficient basis, by itself, to reject the academic team's conclusions.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1296	The academic team should have pursued access to the original documents. Unless they reviewed those documents themselves, their views on the adequacy or appropriateness of the contents of the BCIFs could have little if any weight. Of course it is true, as counsel for the Commissioner of Police several times noted, that such an	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR

Para	Proposed finding	Reason why outside ToR
	approach would have involved far more time and would have amounted to a very different exercise. But the logic is nevertheless inexorable: the "academic review", at its conceptual core, was flawed.	
1297	Another consequence, as part of this problem, flows from the academic team's reliance on the BCIFs. Because they therefore had far less information than the SF Parrabell team – a summary document but none of the source documents – it is not surprising that they categorised more cases (33) as "insufficient information" than SF Parrabell had done (25).	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1300-1301	[1300] The failure of the academic team to use appropriately inclusive terminology is significant in two respects. First, it is (no doubt unintentionally) disrespectful to the LGBTIQ community and to the diversity of that community. The all-encompassing use of the word "gay" erases bisexual men, transgender women, people with intersex characteristics, and other queer people whose deaths were the subject of SF Parrabell. This is particularly unfortunate, given the goals of SF Parrabell to "bring the NSWPF and the LGBTIQ community closer together", and to address "significant angst … within the LGBTIQ community". [1301] Secondly, it creates a risk of analytical error. As explained in the Asquith Report at [169], hate crime against transgender women has unique characteristics – it is not necessarily the same as hate crime against gay men. Transphobia and homophobia are overlapping but distinct concepts. Failing to recognise those distinctions created a risk of error.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1313	… That is, the Asquith Report suggests that victim perceptions are useful in identifying patterns of hate crimes before they escalate to homicide. Professor Asquith was not challenged on this point and her evidence should be accepted, although the point may be of limited assistance in relation to the identification of hate crime deaths, except where there have been hate crimes prior to the death, which form a pattern into which the death fits.	These findings say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1316	It is submitted that the evidence of both Professor Asquith and Associate Professor Lovegrove on these topics should be accepted.	These findings say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR

Para	Proposed finding	Reason why outside ToR
1318	The academic team do not appear to have appreciated the point being made by Professor Asquith and by Associate Professor Lovegrove. The point is not that members of the LGBTIQ community necessarily have knowledge about a particular case (although they may). The point is that members of the LGBTIQ community may have knowledge about the nature of hate crimes more generally, which should be taken into account in a review exercise of this nature (one that is seeking to form a view as to the presence or absence of an anti-LGBTIQ bias). It is knowledge and perspective of this kind which the academic team failed to seek. Indeed, it would seem that they did not consider such knowledge to be of any particular relevance: for example, they write in their response to the expert reports: "This is not the only constituency interested in the factual record, nor is it presumed by us that any and all individuals in this constituency may be presumed to prefer a particular outcome regarding findings."	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1320	SF Parrabell did not seek any such information or perspectives. The academic team for its part expressly disavowed the utility of such perspectives as "no better" than those of perpetrators and bystanders. It is submitted that the failure, or refusal, to seek such assistance was a flaw in the methodology of both SF Parrabell and the academic team. Their conclusions are all the poorer for it.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1324	What emerges from these analyses is that not only was the academic team dependent solely on the BCIF, but the "intuitive" way in which the BCIF was compiled and filled in meant that the claims of the academic team to have delivered an "objective" review are untenable.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1326	The academic team's claim to objectivity should be rejected for the reasons given by the experts. Whatever the outward appearance of the Flinders Report, the academic team's methodology was itself more intuitive than it was objective.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1328	Just as the SF Parrabell process, including as it did the centrality of the BCIF, has been shown to lack both validity and reliability, the typology created by the academic team also fails those tests …	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1330	It may be accepted that those are, to an extent, reasonable points on behalf of the academic team. However, if the academic team accepts (as it does) that its "tool" did	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular

Para	Proposed finding	Reason why outside ToR
	not undergo those "reliability and validity exercises", and that those were actually "necessary in the development of such a device", then it must follow that the conclusions reached by deploying such a "tool" are, at best, subject to doubt. However, no such doubt is reflected in the Flinders Report, which presents its findings as authoritative	matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1332	Having been engaged to conduct an academic review, it was incumbent on the academic team to follow an academically sound process in designing its methodology. They did not do so. Their approach was flawed from the outset. If the academic team were unable to do so because of time and resource constraints, then they ought to have acknowledged clearly that their views were necessarily attended by doubts.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1334	These conclusions flow from the reasoning in the Lovegrove Report. Associate Professor Lovegrove did not depart from them in his oral evidence. It is submitted that they should be accepted.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1336	These views are soundly based and were also not challenged. They are clearly reasoned and should be accepted	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1338	Professor Asquith's evidence in this regard was again not challenged and should be accepted.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1342	The academic team was not engaged to rank the seriousness or lethality of different motivations. The fundamental task which they were engaged to perform was to assess the conclusions of SF Parrabell as to whether each case involved a hate crime. At best, the academic team's focus on such matters distracted them from the issue at the heart of their task. At worst, the academic team's approach obfuscated the true issues	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1346-1347	[1346] The academic team's limited engagement with the existing academic literature, it is submitted, is a serious failure in the academic team's approach. … [1347] No such familiarity is discernible in the Flinders Report, as Professor Asquith demonstrates. The academic team was engaged as academics. A core part of	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR

Para	Proposed finding	Reason why outside ToR
	undertaking new academic work is to engage deeply with existing academic work. They did not do so.	
1349	The existing academic work on hate crimes no doubt has its limitations, as the Asquith Report acknowledges. However, that work flows from years of research and analysis, and the academic team's methodology would surely have been improved by engaging more deeply with it. In particular a. The existing academic work has grappled with the question of partial motivation in a far more compelling fashion than that adopted by the academic team; b. According to Professor Asquith, the existing academic work does not support the concept of anti-paedophile animus, at least as devised and applied by the academic team: see Asquith Report at [194]; and c. The established typologies may or may not have been subjected to validity and reliability testing, but they have been applied across various jurisdictions, data sets and agencies: see Asquith Report at [87]. They are likely to have offered more useful guidance than the ad hoc typology created by the (admittedly non-expert) academic team on the basis of a single, limited data set.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1351	Two points may be made here: a. A reader can only know if relevant literature has been reviewed if it is cited in the Flinders Report; and b. The literature which the academic team omitted to review, or to cite, was fundamentally important to the exercise which they were undertaking, given the history of the bias crime indicators, and their origins in the work of Levin & McDevitt (see the Asquith Report at [178]).	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1355	It is submitted that there is considerable force in these observations. Classifying a crime as a particular type of hate crime does not address the primary question of whether it is a hate crime at all. That primary question must be answered before turning to the secondary question of what type of hate crime it is.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1356	To resort to typological theory, when engaged in a task of assessing whether "findings" about the presence or absence of an LGBTIQ bias in relation to particular deaths (which did not use or consider any such typology) have been soundly made, may be to ask the wrong question. One danger in doing so would be that a typology might be	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR

Para	Proposed finding	Reason why outside ToR
	thought or assumed to include, exhaustively, any and all discrete categories of bias crimes. This is dangerous for at least two reasons: a. A bias crime might defy such easy categorisation. In both the Flinders Report and in oral evidence, the academic team conceded that they struggled to categorise certain cases. A bias crime might fall into multiple categories. b. Equally, a crime (although clearly a bias crime) might fall into none of the categories outlined in a typology.	
1359	However, even if the specific limitations of a given typology could be overcome, it would not address the fundamental point that a typology is used to categorise or classify hate crimes, not to identify them. That was the stated objective of SF Parrabell. It is submitted that the typology created by the academic team was not only flawed in its development and in its substance, but in its very purpose.1	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1362	However, these were not the purposes for which the academic team was engaged. The primary purpose of SF Parrabell was to form a view as to whether certain deaths involved LGBTIQ bias. The typology created by the academic team was not necessary for, or relevant to, the task of assessing the "systemic validity" of the work of the SF Parrabell officers in that regard. It was the wrong answer to the wrong question.	These findings about the academic team say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
PART I: THE PARRABELL REPORT		
1373	It is submitted that that statement does not reflect reality, in two respects. First, as discussed elsewhere, SF Parrabell did not involve any "investigation" of "anti-gay crime". It was limited to reviewing, on the papers, materials related to deaths that had been previously investigated, and forming a view (from those papers alone) as to whether anti-gay bias or the like had been present in relation to those deaths. Secondly, that being so, there was nothing proactive about SF Parrabell: its focus was historical, and non-investigative.	The findings about inaccuracy: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1375	In fact, as AC Crandell acknowledged, neither of those statements is accurate. The true position in relation to the genesis of the "list of 88" is dealt with in Part A above. The list was developed over many years by Ms Sue Thompson and others, and was provided to DCI Lehmann by Ms Thompson in about August 2013. Two "scholarly articles" had	See row in relation to [1373].

Para	Proposed finding	Reason why outside ToR
	appeared in 2000 and 2001, but they related to a different and smaller subset of possible gay hate-related deaths	
1397	It is submitted that the assertion highlighted underlined above is simply not true.	See row in relation to [1373].
1401	In addition, the first sentence in the passage extracted above is also far from accurate. The true position was not that the academic research team "did not necessarily adopt the same classification interpretation" (emphasis added). The academic research team did not adopt the same classification method at all, and in fact positively disavowed that system.	See row in relation to [1373].
1426	As submitted in Part H, the utility of this complicated taxonomy, as a method by which to "review" the work of the Strike Force, is obscure, particularly in circumstances where: a. the Strike Force had used a completely different methodology; and b. only the Strike Force officers, and not the academics, had seen the historical paper material from which the officers had "arrived at" their "subjective" answers to the indicators and prompts in the BCIF.	These findings say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
1433	Given the deficiencies in the academic team's methodology outlined in Part H, little weight can be placed on these findings.	These findings say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
Supplementary Submissions of Counsel Assisting dated 16 October 2023 (Supplementary Submissions)		
135	It is submitted that Sergeant Steer's evidence as to the reasons for his departure from the BCU should be accepted.	The reasons for Sergeant Steer's departure say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
153	That sequence of events may have some significance when consideration is given to Ms Young's description of the then-Minister as "kowtowing" to the Johnson family at the meeting. …	See row in relation to [333] of Principal Submissions.
158	It is submitted that those answers tend to support the submissions at CAS [354]–[359], as to both Ms Young and Mr Willing wishing to "defeat" the Johnson family by resisting a finding of homicide, particularly one of gay hate homicide	See row in relation to [317] of Principal Submissions.

Para	Proposed finding	Reason why outside ToR
159	… It is submitted that her denial is implausible and should be rejected. The submissions at CAS [354]–[359] are reiterated.	See row in relation to [317] of Principal Submissions.
162	It is submitted that that evidence is not persuasive and should not be accepted. What Ms Young and SF Macnamir sought to "put to the test" was indeed – as Ms Young actually said to Ms Alberici – the "findings" of Operation Taradale; that is, that the deaths of Mr Russell and Mr Warren were homicides, by gay-hate assailants. SF Neiwand, in due course, pursued that same approach.	See row in relation to [317] of Principal Submissions.
186	… However, it is submitted that the contents of Mr Kaldas' text message to Ms Young on 14 April 2015, after the Lateline broadcast, is a strong indication that he did not see any problem with Ms Young having given an on the record studio interview without any further authorisation steps.	Findings concerning the Lateline interview say nothing about the manner or cause of death in any unsolved homicide referred to in Paragraphs A and B of the ToR. The proposed findings have no connection to how the Commissioner should consider any evidence in any unsolved homicide referred to in Paragraphs A and B of the ToR, nor is any such connection expressed. The proposed findings are not connected to any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
193	Notwithstanding that qualification, and notwithstanding that Ms Young evidently provided the statement to Ms Alberici well before April 2015, it is submitted that Mr Willing's evidence as to his regarding the provision of the statement to Ms Alberici as "completely inappropriate and wrong" is unconvincing at best. If the evidence of Ms Young and DS Brown on this point is accepted, Mr Willing's evidence cannot stand.	See row in relation to [186] of Supplementary Submissions.
209	… On the evidence now available, such insinuations are unsustainable.	See row in relation to [186] of Supplementary Submissions.
211	… It is submitted that the weight of the evidence, including near-contemporary evidence, shows plainly that Ms Young did say these things to both Mr Willing and Ms Wells. In doing so she was untruthful, but that is what Mr Willing and Ms Wells were told.	See row in relation to [186] of Supplementary Submissions.
217	Those submissions are maintained. …	See row in relation to [186] of Supplementary Submissions.

Para	Proposed finding	Reason why outside ToR
228	That evidence should be rejected. Moreover, if Ms Young had indeed said both things, then what (on Mr Willing's third version) was Ms Young referring to when she said, "I'm about to go and speak to Emma Alberici"? What else could it be but a Lateline interview – even if, on this eleventh hour suggestion by Mr Willing, her other remark (that she had recorded an interview) was a reference to the doorstop (a doorstop which Ms Young had told Mr Willing had not occurred)?	See row in relation to [186] of Supplementary Submissions.
229	The submissions at CAS [449] are maintained. Further: a. The evidence of Ms Young and DS Brown as to the 5:00pm telephone call should be accepted. DS Brown's contemporaneous note is clear, and her evidence overall was frank and straightforward. b. The text message Mr Willing sent State Coroner Barnes at 8:11pm on 13 April 2015 also points strongly to the probability that Mr Willing was aware of the real nature of the Lateline interview. It is implausible that Mr Willing would have sent the State Coroner a text message at that hour merely to inform him that a routine "doorstop" interview (or part of such an interview) were likely to be broadcast on Lateline. c. Similarly, if (as Mr Willing conceded was possible) Ms Young told him she might use the word "kowtowing" about the former Minister, it is extremely unlikely that she would have felt the slightest need to do so if all she was about to do was something "off the record". d. Mr Willing's evidence in May 2023 about the 5:00pm telephone call was inaccurate at best, as were his April 2015 dot points. e. The evidence would now permit the inference to be drawn – as was squarely put to Mr Willing (and which he denied) – that Mr Willing gave the account that he did, in both the dot points and in his evidence on 15 May 2023, so as to give himself the opportunity of suggesting that he thought that in the 5:00pm conversation Ms Young was referring only to a "doorstop" outside the Court earlier in the day.	See row in relation to [186] of Supplementary Submissions.
231	… Her evidence to the effect that, in some arcane way, the substance of those criticisms could be discerned or distilled from the actual contents of her statement should be rejected.	See row in relation to [186] of Supplementary Submissions.

Para	Proposed finding	Reason why outside ToR
242	The submissions at CAS [503], including the reference to "others in State Crime Command", are maintained.	See row in relation to [420] of Principal Submissions.
248	However, having regard to the matters outlined above and in CAS, the following submissions are made: a. While it may be that prior to 13 April 2015 the NSWPF media personnel did not know, or did not realise, that a studio interview with Lateline was envisaged, the evidence of DS Brown, Ms Alberici and Ms Young points to the overwhelming likelihood that Mr Willing did know that. b. It is highly likely that officers senior to Mr Willing, including Mr Kaldas, also knew. c. As to the state of Mr Willing's knowledge about the proposed studio interview, both he and Ms Young have adopted entrenched opposing public positions for years. The evidence of both of them, it is submitted, is in many respects unreliable. However, those factors do not apply to the evidence of DS Brown. Her evidence, which it is submitted was, in general, frank and straightforward, is damning of Mr Willing's position. d. Ms Alberici's evidence should for the most part be accepted. Regard needs to be had to her candidly favourable, indeed laudatory, views of Ms Young and DS Brown. And in some respects (especially as to dates and times) her evidence may be unreliable. However, she also gave her evidence directly and non-evasively, and she impressed overall as a witness of truth. e. Ms Young and DS Brown did not, as alleged on behalf of Mr Willing, deliberately deceive Mr Willing or the NSWPF, or conceal Ms Young's intention to give a Lateline interview, for broadcast, if the Young coronial statement was released.	See row in relation to [420] of Principal Submissions.
275	Given Mr Leggat's stated concern about the resource constraints of the UHT, the decision to deploy limited UHT resources in such a way was remarkable to say the least. But further, the "lines of inquiry" that were actually conducted by SF Neiwand, as outlined in CAS [648] – [661], were almost entirely unrelated to homicide at all, in all three cases. They were substantially directed to criticising Operation Taradale and DS Page, and rejecting the findings of Coroner Milledge. The use of limited UHT resources in that way is even more extraordinary.	See row in relation to [597] of Principal Submissions.

Para	Proposed finding	Reason why outside ToR
286	The submissions made at CAS [671]–[679] and [782] are maintained. DS Morgan's attempts to minimise his involvement in and responsibility for SF Neiwand, which are in effect embraced in the CPS, should be rejected.	See row in relation to [597] of Principal Submissions.
295	… As is now apparent, it was actually D A/S Bignell, alone, who single-handedly filled out every one of the BCIFs. None of the other investigators played any part in that exercise whatsoever; and the review panel", which comprised Superintendent Middleton and DI Grace as well as D A/S Bignell) and met each month to conduct a final review and assessment of the completed BCIFs, made very few changes to any of those BCIFs as drafted by D A/S Bignell.	These findings about the BCIFs: 1. Say nothing about the manner and cause of death in any unsolved homicide. 2. Say nothing about how to consider evidence relevant to the manner and cause of death in any unsolved homicide. 3. Say nothing about any particular undisclosed death and are not proposed as findings going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR
299	The true position regarding SF Parrabell's methodology, as now revealed by the evidence of these three officers, would appear not to have been communicated, or not communicated accurately, to the academic reviewers: CAS [1197] – [1199].	This finding about what was communicated to the academic reviewers says nothing about any particular undisclosed death and is not proposed as a finding going to whether a particular matter has been or will be sufficiently and appropriately dealt with by another inquiry, investigation or proceeding within Paragraph F of the ToR