



Special Commission of Inquiry into LGBTIQ hate crimes

SUBMISSIONS OF COUNSEL ASSISTING

28 March 2023

IN THE MATTER OF GERALD LESLIE CUTHBERT

Introduction

1. These submissions are filed on behalf of Counsel Assisting the Special Commission of Inquiry into LGBTIQ hate crimes (**Inquiry**).

Summary of matter

Date and location of death

2. Gerald Cuthbert died on 18 October 1981, in an apartment in the suburb of Paddington in Sydney. The time of his death was estimated to be about 12-18 hours prior to autopsy – that is, between 2:15am and 8:15am on 18 October 1981.

Circumstances of death

3. Mr Cuthbert's body was found at 6:15pm on Sunday, 18 October 1981, by [1212] and Simon Cant, the residents of the Paddington apartment in which he died. [1212] had previously been in a relationship with Mr Cuthbert and had shared the Paddington apartment with Mr Cuthbert at that earlier time. They had maintained a friendship despite their separation, and Mr Cuthbert continued to visit, and use the apartment.
4. Mr Cuthbert was found lying naked and prone in a pool of blood on a bed. There were over 60 stab wounds to his body and his throat was cut. The bed covers were pulled back but covering his feet, and there was no evidence that they had been greatly disturbed.¹ The room did not appear to have been ransacked, and Mr Cuthbert's watch was on the bedside table.² There were no signs of forced entry to the flat.³

¹ Statement of Detective Sergeant Roger William Johnson, undated (SCOI.10026.00002).

² Ibid.

³ Statement of Detective Senior Constable Mervyn James Hunter dated 4 July 1984 at [3] (SCOI.10027.00002).

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5. Clothes were found on the floor next to the bed, including a long sleeve white shirt with faint stripes, a pair of khaki-coloured jeans, and a damp blue denim jacket.
6. The identity of the person who killed Mr Cuthbert remains unknown.

Findings of post-mortem examination

7. A post-mortem examination was conducted on 18 October 1981 by Dr William Brighton. Dr Brighton identified a total of 62 stab wounds: 48 wounds in Mr Cuthbert's back, six wounds on the left side of the chest and eight wounds on the left side of the neck and the left shoulder. The stab wounds had penetrated Mr Cuthbert's lungs, heart, diaphragm, liver and spleen. The wounds were apparently inflicted by a knife with one sharp edge, and the maximum width of the wounds at the skin surface was 2cm. Mr Cuthbert's throat had been cut, and there were no defensive wounds.⁴
8. Dr Brighton expressed the direct cause of death as "cut throat and multiple incised penetrating wounds of the chest."
9. Mr Cuthbert's blood was tested. No poisons or alcohol were detected.⁵

Persons of interest

10. There are no individuals that the Inquiry regards as persons of interest. The initial police investigation considered a number of potential suspects, but none could be linked to Mr Cuthbert's death: see below at [88].

Indicators of LGBTIQ status or bias

11. Mr Cuthbert had been in a committed live-in relationship with a male partner, [1212], for some five years until the year before his death. That relationship had ended in about July 1980, it seems because Mr Cuthbert felt that it was incompatible with his Christian faith.
12. Although experiencing some conflict between his sexuality and religion, Mr Cuthbert was involved in sexual relationships with at least two other men in 1981.
13. There are obvious difficulties in assessing the motives or biases of Mr Cuthbert's killer in the absence of knowing that person's identity. However, a number of factors indicate the real possibility that Mr Cuthbert was killed in the context of LGBTIQ bias, including:

⁴ Medical report upon the examination of the dead body of Gerald Leslie Cuthbert, 14 December 1981, p. 2 (SCOI.10027.00004).

⁵ DAL Certificate of Analysis, 6 November 1981 (SCOI.10027.00015).

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- a. the nature and extent of Mr Cuthbert's injuries significantly exceed what is necessary to kill a person, and are consistent with a frenzied or panicked attack;⁶
- b. the evidence, including evidence suggesting receptive anal sexual intercourse with a male partner shortly before his death,⁷ suggests that Mr Cuthbert was likely killed by a person he took back to the apartment for the purpose of sex;
- c. the absence of evidence suggesting another motive for the crime.⁸

Exhibits: availability and testing

14. The police collected a number of exhibits, and submitted them for forensic testing, including:

- a. A handkerchief;
- b. Anal swabs and smears from Mr Cuthbert;
- c. A blood-stained sock;
- d. Two cigarette butts on which saliva was detected, from the ashtray on the coffee table.⁹

15. Semen was present on the anal swabs and smears, and on the handkerchief. The concentration of semen on the anal swabs was insufficient for conclusive grouping results. The seminal stains on the handkerchief were consistent with *not* having originated from Mr Cuthbert.¹⁰

16. Human blood was detected on the handkerchief and the sock. There was insufficient blood present on the handkerchief for grouping results. Grouping tests revealed that the blood on the sock was consistent with having originated from Mr Cuthbert, although the discriminating power of this testing is low – that is, a significant percentage of the population would share the same blood group as Mr Cuthbert.¹¹

17. A substantial amount of saliva was present on the two cigarette butts, but no blood group substances were detected. These results suggest that the cigarette butts were smoked by a non-secretor.

⁶ Expert report of Dr Danny Sullivan, 24 October 2022 at [12] (SCOI.82583).

⁷ Statement re Forensic Analysis by Annette Louise Henry, 23 February 1982, p. 2 (SCOI.10027.00005)

⁸ Expert report of Dr Danny Sullivan (n 6).

⁹ Statement re Forensic Analysis by Annette Louise Henry (n 7), p. 1.

¹⁰ Statement re Forensic Analysis by Annette Louise Henry (n 7), p. 2; Expert Certificate of Michele Anne Franco, 3 March 2023 (SCOI.82542).

¹¹ Statement re Forensic Analysis by Annette Louise Henry (n 7), p. 2; Expert Certificate of Michele Anne Franco (n 10).

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Mr Cuthbert was determined to be a secretor, such that it is unlikely that it was his saliva on the cigarette butts.¹²

18. There have been significant advances in forensic testing technology since 1982 when these exhibits were first tested, the most dramatic of which is the ability to extract and analyse DNA profile from organic material. Accordingly, the Inquiry made substantial efforts to have these exhibits re-tested. As outlined further below, the Inquiry twice wrote to Police asking for efforts to be made to locate the exhibits.
19. However, the Inquiry's efforts were ultimately fruitless, as it appears that the exhibits in Mr Cuthbert's case have been lost.
20. The Inquiry sought and obtained a statement from Michele Franco, of the Forensic and Analytical Science Service (**FASS**), as to the opportunities for forensic testing that would have been available had the exhibits been located. While noting that DNA does degrade over time, Ms Franco stated that semen and blood samples (as found on the sock, handkerchief, and anal swabs and smears) are "high yield DNA sources" that are typically targeted for testing in reviews of historic crimes.¹³ Sperm in particular has relatively strong cellular walls, increasing the likelihood of long-term preservation.¹⁴ The semen recovered on the anal swabs and smears were, in particular, likely to be of high forensic value in Mr Cuthbert's case.
21. Testing for trace DNA (generally from skin cells) on the handkerchief would also be possible, although as a low yield DNA source it would not have been the first targeting option. Further, it is likely that the cigarette butts were "consumed" or destroyed in the original testing, and consequently no further testing opportunities exist in relation to those items.
22. If the exhibits were obtained, the following testing could have been performed:
 - a. Autosomal testing - a DNA typing kit that tests 21 areas of DNA that vary widely between individuals in the population;
 - b. Y-STR testing - DNA testing on the Y-chromosome only;
 - c. Mitochondrial testing – DNA testing on compromised samples where autosomal testing is unsuccessful.¹⁵

¹² Statement re Forensic Analysis by Annette Louise Henry (n 7) p. 2.

¹³ Expert Certificate of Michele Anne Franco (n 10) p. 2.

¹⁴ Ibid, p. 2.

¹⁵ Ibid, p. 2.

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23. If a DNA profile had been recovered using any of these testing options, it could have been directly compared to known reference samples, or uploaded onto a searchable DNA database.¹⁶ In Mr Cuthbert's case, where there is no known person of interest, a match with a profile in the database could have developed important investigative leads.
24. A number of identifiable fingerprints were also obtained from the crime scene, including on the exit door, the vanity mirror in the bathroom, a coffee jar, a hand cream tube and a coffee table. These were compared to both suspect and elimination fingerprint profiles. Re-examination of the full fingerprint file was conducted at the request of the Inquiry. The fingerprints on the hand cream tube, vanity mirror and coffee table were matched to either Mr Cuthbert or [1212]. No matches were found for the fingerprints on the exit door and the coffee jar.¹⁷ See further below at [82].

Findings at inquest, including as to manner and cause of death

25. An inquest was held at Glebe Coroners Court on 26 July 1984 before Coroner Margaret Sleeman. The formal finding made by Coroner Sleeman was that Mr Cuthbert died on 18 October 1981 in Paddington "from the effect of a cut throat and multiple incised penetrating wounds of the chest sustained then and there and inflicted by a person or persons unknown."¹⁸

Criminal proceedings

26. No criminal proceedings were ever instituted against any person in relation to Mr Cuthbert's death.

Features of /concerns with original police investigation

27. The proper retention, preservation and storage of exhibits relevant to an unsolved homicide is critical to facilitating the re-investigation of cold cases. Retention is especially critical in relation to physical exhibits that could be the subject of further forensic examination in accordance with technological advances.
28. In Mr Cuthbert's case, the systems for retaining and storing exhibits failed. Critical exhibits, including a blood and semen-stained handkerchief, and anal swabs and smears on which semen was detected, have been lost. These exhibits may well have held the key to identifying Mr Cuthbert's killer, and their

¹⁶ Expert Certificate of Michele Anne Franco, 3 March 2023, pp. 2-3 (SCOI.82542).

¹⁷ Statement of Detective Senior Constable Mervyn James Hunter dated 4 July 1984 at [3], [17] (SCOI.10027.00002); Bundle of P109 Report of Occurrence extracts, various dates, pp. 6-10 (SCOI.82540); Summary of Fingerprint Evidence from NSWPF, 6 March 2023 (NPL.0100.0001.0003).

¹⁸ Form 2 – Inquest Before Coroner Sitting Alone, 26 July 1984 (SCOI.00019.00003).

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loss could be the cause of Mr Cuthbert's murder going unsolved. Such a loss of critical exhibits is unacceptable, by both contemporary and historic policing standards.

Strike Force Parrabell

Use of the Bias Crimes Indicators Form

29. Of the ten indicators used in the Bias Crimes Indicators Form (**BCIF**), five are answered as 'Insufficient Information', three as 'No Evidence of Bias Crime' and two ("Lack of Motive" and "Level of Violence") as 'Suspected Bias Crime'. Overall, the BCIF categorised Mr Cuthbert's death, in the "Summary of Findings", as 'Insufficient information'.¹⁹

30. Under the first indicator, "Differences", in response to the prompt 'Victim was engaged in activities promoting his/her group', the response set out in the BCIF begins as follows: "There is no evidence to suggest that CUTHBERT was engaged in activities promoting homosexuality at the time of his death".²⁰ The meaning of the expression "promoting homosexuality" is not clear. If this is intended to refer to some notion of activism, it is true that there is no evidence that Mr Cuthbert was involved in activism amongst, or on behalf of, the LGBTIQ community. However, if "promoting" is intended to have some wider meaning such as to include simply living openly as a member of the LGBTIQ community, then, as a man engaging in romantic and sexual relationships with other men, Mr Cuthbert arguably was "promoting" his "group". Both this prompt, and the content of what has been written in response to it, lack clarity.

Results of Strike Force Parrabell

(a) The "General Comment" and "Summary of Findings" boxes at the end of the BCIF

31. As noted above, two of the ten indicators were answered as 'Suspected Bias Crime', namely: 'Lack of Motive' and 'Level of Violence'. The "General Comment" section in respect of those two indicators summarises the applicable material in respect of each respectively – no economic or robbery motive; excessive violence – but does not offer any reasoning as to why that material indicates a "suspected bias crime" (although it is submitted that it undoubtedly does, as outlined in the report of Dr Sullivan referred to below).

¹⁹ Strike Force Parrabell Bias Crimes Indicators Review Form, undated, p. 18 (SCOI.32127).

²⁰ Ibid, p. 4.

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32. The answer “Insufficient information”, in respect of the five indicators to which that answer was given, was perhaps inevitable in a case such as this one where the identity of the perpetrator is unknown. The utility of such indicators in such a case would appear to be negligible.
33. The ‘Summary of Findings’ section is essentially an amalgam of extracts from earlier parts of the document, which themselves frequently repeat the same text. It nominates ‘Insufficient Information’ as the overall outcome. Whether that is because five of the ten indicators were answered in that way, or for some other reason, is not apparent.

(b) Case Summaries

34. The case summary for Mr Cuthbert’s death read as follows:²¹

Identity: Gerard Leslie Cuthbert was 37 years old at the time of his death.

Personal History: Mr Cuthbert was in a gay relationship for approximately 5 years. During that time Mr Cuthbert lived with his partner in a unit at Stephen Street, Paddington. During the year prior to his death Mr Cuthbert ended the relationship and moved into another residence however only months prior to his death Mr Cuthbert returned to live at the same address with his ex-partner in a *‘friend’s [sic] only relationship’*.

Location of Body/Circumstances of Death: Mr Cuthbert was murdered inside his ex-partner’s unit. Prior to being murdered, Mr Cuthbert was last seen leaving the YMCA on the evening before his body was located by his flatmates, some 12 to 18 hours post mortem. Police interviewed all flatmates, each of whom had keys to the residence, as there were no signs of forced entry. Both surviving occupants of the unit were eliminated as suspects early in the investigation. A suggestion that some money had been stolen was not confirmed. Police identified several suspects however each was eliminated for different reasons. No signs of forced entry with all key holders accounted for left a strong presumption that Mr Cuthbert willingly allowed his attacker/s entry to the unit before he was killed.

Sexual Orientation: Mr Cuthbert identified as gay in the five years prior to his death when he was in a gay relationship, although not at the time of his death. He was reportedly conflicted between being same sex attracted and adherence to religious faith.

Coroner/Court Findings: The post mortem cause of death was ‘multiple incised penetrating wounds of the chest’ with ‘a total of 62 stab wounds.’ No persons have been charged and the case remains unsolved. The motive for Mr Cuthbert’s murder has also been unable to be determined.

²¹ Exhibit 6, Tab 49, Strike Force Parrabell Case Summaries – Gerald Leslie Cuthbert (undated), p. 3 (SCOI.76961.00014).

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SF Parrabell concluded there was insufficient information to establish a bias crime

35. The content of this case summary is consistent with the comments made in the BCIF.

(c) Academic review

36. The review by Flinders University academics placed the case in the category of “Insufficient information”.²² The reasoning of the academic reviewers in this particular case is unknown. Generally, as to their category of “Insufficient information”, the academic team said that “it was ultimately impossible for the detectives to make definitive determinations about many of the deaths under review, and based on available information, the academic reviewers concur”.²³

Investigative and other steps undertaken by the Inquiry

37. In the course of assessing Mr Cuthbert’s case, the Inquiry has taken various investigative and other steps, including:

- a. Summoning the coronial file;
- b. Summoning the police investigation file;
- c. Summoning the NSW Registry of Births, Deaths and Marriages (**BDM**) to obtain information about key witnesses and suspects;
- d. Seeking the expert opinion of a forensic psychiatrist, Dr Danny Sullivan, as to the possible motives for the homicide of Mr Cuthbert;
- e. Conducting a review of media articles in relation to Mr Cuthbert’s death and other comparable deaths in Sydney at the relevant time, using the resources of the Victorian Queer Archive and also noting media articles located on the police file;
- f. Requesting and summoning the exhibits from the Police, and, when it became apparent that the exhibits could not be located, obtaining a statement as to what searches had been undertaken;
- g. Requesting and obtaining a statement from the Forensic and Analytical Science Service (**FASS**), as to what testing is available, and what the likely utility of such testing would be, if the exhibits had been able to be located;

²² Exhibit 6, Tab 49, Strike Force Parrabell Case Summaries – Gerald Leslie Cuthbert (No 7), p. 3 (SCOI.76961.00014).

²³ Exhibit 1, Tab 2, Final Report of Strike Force Parrabell (undated) at p. 54 (SCOI.02632).

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h. Enquiring as to the whereabouts of Mr Cuthbert's family.

38. The Inquiry has reviewed and analysed all of this material, and considered whether any further investigative or other avenues are warranted.

Attempts to locate and contact family members

39. The Inquiry liaised with external agencies to seek the location of Trevor Cuthbert and Gavin Cuthbert. On 7 October 2022 Gavin Cuthbert was confirmed to be deceased, and the Inquiry was advised that Trevor Cuthbert could not be located.

40. On 17 March 2023, the Inquiry issued summons BDM17 to the Registry of Births, Deaths and Marriages (**BDM**) seeking a death certificate for Patrick McGeady, Mr Cuthbert's uncle. On 21 March 2023, BDM responded to the summons and advised that no trace could be found of Mr McGeady, but indicated that records may be held by Queensland Registry of Births, Deaths and Marriages in relation to Mr McGeady. On 21 March 2023, the Inquiry issued summons QBDM3 to Queensland BDM. The Inquiry is awaiting the return of that summons.

Request for coronial file

41. On 11 May 2022, the Inquiry issued a written request to the Registrar of the Coroners Court of NSW at Lidcombe to obtain the coronial file in relation to the death of Mr Cuthbert. The Coroners Court answered the request and provided the coronial file on 26 May 2022.²⁴

Summonses and requests issued to NSWPF

42. A summons to the NSW Police Force (NSWPF) was issued on 18 May 2022 for, *inter alia*, the investigative file in relation to the death of Mr Cuthbert (summons NSWPF1). A file in relation to Mr Cuthbert was provided to the Inquiry on 8 June 2022.²⁵

43. On 23 September 2022 a letter of request was sent to NSWPF in relation to the identification and locating of forensic exhibits and fingerprint records, with a deadline of 30 September 2022. On 26 September 2022, NSWPF advised that no digital records had been found, and sought an extension to 7 October 2022 in order to consult with entities external to the Unsolved Homicide Team for the purposes of seeking physical records. On 28 September 2022, the Inquiry advised NSWPF that the request for an extension was granted. On 6 October 2022, the Inquiry was advised that the searches

²⁴ Statement of Francesca Lilly dated 24 March 2023 at [4]-[5] (SCOI.82543).

²⁵ *Ibid* at [6].

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undertaken by NSWPF had failed to locate the requested exhibits. A microfiche FASS file was located but was unfortunately unreadable.²⁶

44. On 25 November 2022, the Inquiry sent a further letter of request, seeking that NSWPF redouble their efforts to locate the specified exhibits. On 1 December 2022, NSWPF advised the Inquiry that further searches had been conducted but had again been unsuccessful.²⁷

45. On 18 January 2023, a statement was provided by Detective Sergeant Neil Sheldon detailing the searches undertaken by NSWPF. This statement, and the letters of request from the Inquiry, are included in the tender bundle for this matter.²⁸

46. On 28 February 2023, the Inquiry wrote to NSWPF, noting that Detective Sergeant Sheldon had advised in his statement that the fingerprint file had been located, and requesting that further examinations be undertaken. The Inquiry pointed out that the Unsolved Homicide Team (**UHT**) Review Case Screening Form in relation to Mr Cuthbert's death, dated 11 October 2005, had noted that a review of the fingerprint file would be undertaken as part of the UHT's review. The Inquiry sought clarification as to whether this foreshadowed review had occurred.²⁹

47. In response to that request, and following correspondence between the Inquiry and the NSWPF, the following documents have been provided by the NSWPF in relation to fingerprint examinations in relation to Mr Cuthbert's death:

- a. A document entitled "Summary of Fingerprint Evidence" dated 6 March 2023, prepared by Detective Leading Senior Constable Di Donato;³⁰
- b. An Expert Certificate dated 21 March 2023 prepared by Kate Reid, Senior Crime Scene Officer – Fingerprint Expert;³¹
- c. A major crimes report from 2005 indicating that there were no results arising from the 2005 review;³²

²⁶ Ibid at [9]-[11].

²⁷ Ibid at [13].

²⁸ Ibid at [15]; Statement of Detective Sergeant Neil Sheldon dated 18 January 2023 (SCOI.82580).

²⁹ Statement of Francesca Lilly (n 24) at [17]; Statement of Detective Sergeant Neil Sheldon dated 18 January 2023 (SCOI.82580); Letter from the Inquiry to P Hodgetts re fingerprint examinations (without enclosures), 28 February 2023 (SCOI.45168).

³⁰ Summary of Fingerprint Evidence from NSWPF, 28 February 2023 (NPL.0100.0001.0003).

³¹ Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 21 March 2023 (NPL.0100.0001.0040).

³² Major Crimes Running Sheet, 2005 (NPL.0100.0001.0036).

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- d. A bundle of documents from 2007 in relation to a request to the Federal Bureau of Investigation (FBI) via Interpol for comparison of the fingerprints in the United States.³³

Request to FASS

48. On 1 November 2022, the Inquiry met with staff of FASS and made enquiries as to whether further testing could be done on certain exhibits, specifically the sock and handkerchief, if they could be located. FASS confirmed that further testing could be conducted.
49. Given the inability of NSWPF to locate the exhibits in this matter, the Inquiry requested that FASS prepare a formal statement setting out the opportunities for forensic testing which might have been available if the exhibits were able to be located, and the nature of any information that may have been obtained from such testing to assist in the investigation into Mr Cuthbert's death.
50. On 3 March 2023, Ms Franco of FASS provided such a statement in the form of an Expert Certificate pursuant to s 177 of the *Evidence Act 1995*.³⁴ This statement is discussed above at [20]-[23].

Summons to Registry of Births, Deaths and Marriages

51. On 23 August 2022, the Inquiry issued summons BDM2 to the Registry of Births, Deaths and Marriages (**BDM**) for death certificates for the following persons:

- a. [REDACTED] I212
- b. Simon Richard Cant;
- c. [REDACTED] I213
- d. [REDACTED] I215
- e. [REDACTED] I214
- f. Patrick McGeady;
- g. Gavin David Cuthbert;
- h. Trevor George Cuthbert;
- i. Bevan James Tynan;
- j. Gerard Petre;

³³ Interpol FBI Request, 20 March 2007 (NPL.0100.0001.0038).

³⁴ Expert Certificate of Michele Anne Franco (n 10).

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k. Peter Bennett; and

l. Warwick David Whitford.

52. On 25 August 2022, BDM returned the summons and provided a death certificate for [redacted 1214], and advised there was no trace in relation to death certificate searches for the remaining persons.

Expert opinion obtained

53. As to the possible motive of Mr Cuthbert's killer, the Inquiry sought the expert opinion of forensic psychiatrist Dr Danny Sullivan. A letter of instruction was issued to Dr Sullivan on 30 September 2022, and Dr Sullivan provided his report on 24 October 2022.³⁵

Other steps taken

54. On 14 September 2022, the Inquiry conducted a review of the Victorian Queer Archives via the State Library of NSW, with a view to ascertaining whether further information might be available from media sources in relation to Mr Cuthbert's death. Unfortunately, this search yielded no results of assistance to the Inquiry.

Steps which could / should have been taken, but which were not

55. Police should have ensured the careful retention and archiving of critical exhibits that had been collected at the scene.

56. As noted above at [18]–[23], the failure to do so has meant that testing of those exhibits has been, and remains, impossible to be carried out, notwithstanding the progressive and continuing developments in forensic testing techniques since the time of Mr Cuthbert's death.

57. As a consequence, the possibility of linking a DNA profile obtained from those exhibits to an identifiable person has been lost.

Results of investigative and other steps undertaken by the Inquiry

58. This part of the submission sets out key matters arising from the Inquiry's consideration of the evidence and the conclusion that it is suggested can be drawn from the evidence.

Mr Cuthbert's personal circumstances

59. Mr Cuthbert was 25 years old at the time of his death. He was a member of an extended Fijian family. He had family members in both New Zealand and Australia with whom he kept in regular contact.

³⁵ Letter of Instruction to Dr Danny Sullivan, 30 September 2022 (SCOI.82581); Expert report of Dr Danny Sullivan (n 6).

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60. Mr Cuthbert had previously been in a committed, live-in relationship with [I212] for approximately 5 years. However, in June 1980 Mr Cuthbert started to question his relationship with [I212] and “wanted to know what the bible said about having homosexual relationships.”³⁶ He ultimately decided that he wanted to make a “complete break from homosexuality”, and on 4 July 1980, he moved out of [I212] apartment and went to reside in a share house with five other Christian males in Pennant Hills.³⁷ Mr Cuthbert stayed in contact with [I212] but they were not close over this period.
61. In about January or February of 1981, Mr Cuthbert disclosed to [I212] that he was having “problems” with his homosexuality again, and ultimately left his residence in Pennant Hills and moved into the YMCA. [I212] invited Mr Cuthbert to stay with him, and informed Mr Cuthbert that he had become a Christian himself and “knew that those things [i.e. homosexuality] were wrong”.³⁸
62. The two men restored a “friendship relationship”, and Mr Cuthbert would come to [I212] apartment for meals and showers, occasionally staying overnight. For the three or four months prior to his death, Mr Cuthbert was coming over to the apartment every night, and was given a key to the apartment.³⁹
63. In about October 1981, Mr Simon Cant became a flatmate of [I212]. The two men had met through Christian activities. He denied being gay, or in a relationship with [I212], or knowing Mr Cuthbert well.⁴⁰

Mr Cuthbert's relationships prior to his death

64. Despite his ongoing involvement in religious groups and adherence to the Christian faith, it is apparent that Mr Cuthbert had developed a sexual relationship with at least two men since separating from [I212]:
- a. Firstly, a man who Mr Cuthbert met at the Exchange Hotel in late September 1981 and had sex with twice before his death.⁴¹
 - b. Secondly, a man who Mr Cuthbert met in the men's toilet at Town Hall Station on 14 July 1981 and had sex with twice before his death (as well as “playing around” on other

³⁶ Record of Interview of [I212] 18 October 1981, Q18 (SCOI.10024.00006).

³⁷ Ibid, Q18.

³⁸ Ibid, Q20.

³⁹ Ibid, Q20.

⁴⁰ Record of Interview of Simon Richard Cant, 18 October 1981, Q5-Q9, Q15 (SCOI.10027.00009).

⁴¹ Record of Interview of [I213], 19 October 1981, Q6-Q8 (SCOI.10026.00004).

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occasions). On 7 August 1981, this man picked Mr Cuthbert up from [redacted] s flat and was invited in by Mr Cuthbert (who was alone) for a coffee before they left, but they apparently did not have sex there.⁴²

65. Mr Cuthbert was also seen in the company of another unknown man when he visited a friend two weeks prior to his death, although whether that was a third person is difficult to determine from the description given.⁴³

66. Mr Cuthbert confided to a Deacon of his church that he had recently met two American men, perhaps sailors, with whom he had an excellent relationship and whom he had taken around Sydney.⁴⁴ The possibility of some relationship with an American soldier is supported by evidence from a doorman of the Midnight Shift bar, a Mr Peter Bennett, who claimed that Mr Cuthbert enquired as to whether there were American sailors in the bar and left when he was advised that there were not: see below at [74.d].⁴⁵

67. There was also evidence from a Minister with the Assemblies of God Church in Hornsby, who was counselling Mr Cuthbert to assist him “to overcome his homosexual problem”, that about a month before his death, Mr Cuthbert had disclosed that he had recently renewed and then terminated a relationship, with the suggestion an argument had occurred over the breakup. There is no further information as to the identity of the person in question, and police recorded that the Minister could not assist further.⁴⁶

Events leading up to Mr Cuthbert’s death

68. [redacted] last saw Mr Cuthbert alive on the Thursday evening prior to his death (i.e. 15 October 1981).⁴⁷ On that occasion, Mr Cuthbert disclosed that he was struggling to avoid returning to the “gay scene”.

69. On the weekend of Mr Cuthbert’s death, [redacted] and Mr Cant had travelled with the “Bondi Fellowship” to see a Christian concert in Nowra, leaving Saturday morning, staying in a caravan park in Bomaderry and returning Sunday evening.

⁴² Bundle of P109 Report of Occurrence extracts (n 17) p. 20.

⁴³ Bundle of P109 Report of Occurrence extracts (n 17) p. 5.

⁴⁴ Bundle of P109 Report of Occurrence extracts (n 17) p. 19.

⁴⁵ Statement of Peter Bennett dated 23 October 1981, [2]-[3] (SCOI.10026.00008).

⁴⁶ Bundle of P109 Report of Occurrence extracts (n 17) p. 4.

⁴⁷ Record of Interview of [redacted] (n 36) Q21-23 (SCOI.10024.00006).

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70. At around lunchtime on Saturday 17 October 1981, Mr Cuthbert went to the house of his uncle, Patrick McGeady. Also present at the address were his brother, Trevor Cuthbert, and friend Anthony Farrell.⁴⁸ Later that same afternoon, Mr Cuthbert apparently went to the house of his brother, Gavin David Cuthbert, and argued with him over money that was owed to [redacted].⁴⁹
71. He was next seen that day (Saturday, 17 October) by the supervisor at the YMCA, Mr Petre, at approximately 5:30pm. Mr Cuthbert came down to reception and told Mr Petre that he was going with his brother and uncle to see a movie. However, at about 7:00pm or 7:15pm, he came back in, “obviously annoyed” because his brother and uncle did not arrive.⁵⁰ This is consistent with information from his uncle Mr McGeady, and one of his brothers, Mr Trevor Cuthbert.⁵¹ Mr Petre thought that he had been waiting outside the YMCA during this period. Mr Cuthbert then said he was “going for a drink” and left.
72. He returned to the YMCA soon afterwards, at around 7:45-8:00pm. He returned to his room to change, before returning to the reception area and again leaving the YMCA.⁵² As he left, he told Mr Petre that if anyone asked for him to tell them that he was going to “his flat”. This is presumed to be the flat of [redacted] as there is no evidence that Mr Cuthbert had another residence.
73. Mr Cuthbert was said by Mr Petre to be wearing denim jeans and a jacket, colour unspecified, when he left the YMCA. This is the last confirmed sighting of Mr Cuthbert.⁵³
74. Other witnesses, who did not know Mr Cuthbert but said they recognised him from photographs, claimed to have seen him at various venues up to 1:30am the next morning, either alone or in the company of a group, although their varying descriptions of his dress, and incompatibilities of timing, suggest some or all may be cases of mistaken identity.⁵⁴ These possible sightings include:
- a. Warrick Whitford, a barman at the “Spanners” Bar at the Exchange Hotel in Oxford Street Darlinghurst, served a man he later identified as Mr Cuthbert from a photograph shown to him on 21 October 1981. Mr Whitford said that Mr Cuthbert was at the bar for at least two

⁴⁸ Record of interview with Patrick McGeady, 19 October 1981 (SCOI.10027.00010); Statement of Trevor Cuthbert, 19 October 1981 (SCOI.10027.00011); Bundle of P109 Report of Occurrence extracts (n 17) p. 16.

⁴⁹ Record of Interview of Gavin David Cuthbert, 19 October 1981 (SCOI.10027.00012).

⁵⁰ Bundle of P109 Report of Occurrence extracts (n 17) pp. 14-15.

⁵¹ Record of interview with Patrick Henry Wentworth McGeady, 19 October 1981 (SCOI.10027.00010); Statement of Trevor George Cuthbert, 19 October 1989 (SCOI.10027.00011).

⁵² Bundle of P109 Report of Occurrence extracts (n 17) pp. 14-15. (NB. There are slight differences in the times given by Mr Petre each time police spoke to him.)

⁵³ Bundle of P109 Report of Occurrence extracts (n 17) p. 14.

⁵⁴ Statement of Warwick David Whitford dated 21 October 1981 (SCOI.10026.00009); Statement of Peter Bennett dated 23 October 1981, [2]-[3] (SCOI.10026.00008); Bundle of P109 Report of Occurrence extracts (n 17).

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hours, and left about 11:30pm. He was with three other men, who between them consumed at least seven to eight schooners of beer. They appeared to be in good spirits. At some point during the evening a fifth man spoke with Mr Cuthbert and asked Mr Whitford for pen and a paper, with which (Mr Whitford assumed) they exchanged numbers. Mr Whitford recalls they left by “going up to the ‘Ragtime Follies’ Bar” (also in the Exchange Hotel), and that Mr Cuthbert had at one point asked Mr Whitford if he was going to ‘Patches’ that night.⁵⁵

Mr Whitford describes Mr Cuthbert (as seen, and as depicted in the photograph) as being “Lebanese” in appearance and having a Lebanese accent. He also reports him to be wearing a red shirt with a wide collar, unbuttoned halfway down his torso, and possibly tight blue jeans. This description does not match the clothing found next to Mr Cuthbert’s body (see below at [77]).

- b. Lance Broome, a security guard at the Hilton Hotel in George Street in the city, recalls seeing Mr Cuthbert alone at Julianna’s Bar at various points in the night, from 9:00pm to 12:30am. He remembered the person was wearing a light coloured suit and overcoat with gold chains around his neck.⁵⁶ However, no other staff at the Hilton (at which Mr Cuthbert was a regular) recall seeing him that night, and the description of his clothing is different both from Mr Petre’s description of what he was wearing when he left the YMCA (above at [73]) and from the clothing found next to the body of Mr Cuthbert (see below at [77]).
- c. Bevan Tynan, on leaving the Albury Hotel in Oxford Street Darlinghurst at around 10:00pm, claimed to have seen Mr Cuthbert, walking down towards Paddington in the direction of the apartment, in the spitting rain, in the company of an unknown man.⁵⁷ Mr Tynan did not know Mr Cuthbert personally but had previously seen Mr Cuthbert at venues.

Mr Tynan described the man with Mr Cuthbert as approximately 5’11”, of medium build, with black curly hair and wearing a white shirt and jeans. This is consistent with some of the clothing found next to Mr Cuthbert when his body was found (see below at [77]). Mr Tynan could not recall what Mr Cuthbert was wearing.

⁵⁵ Statement of Warwick David Whitford dated 21 October 1981 (SCOI.10026.00009).

⁵⁶ Bundle of P109 Report of Occurrence extracts (n 17) pp. 17-18.

⁵⁷ Bundle of P109 Report of Occurrence extracts (n 17) p. 21.

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- d. Peter Bennett, a doorman of the Midnight Shift hotel at 85 Oxford Street Darlinghurst, said that at about 1:30am, he was asked by a man, with short dark hair and a distinct accent, whether there were any “American sailors” at the bar that night. Mr Bennett believed the man to be Islander, but not of dark complexion – a description possibly applicable to Mr Cuthbert. He was wearing a dark coloured jacket that could have been denim, and that was “thoroughly saturated.” His hair was also noted to be wet. Mr Bennett told him that there were not any American sailors at the bar, and suggested going to the Cross, after which the man left. He later recognised the man as Mr Cuthbert from pictures in the newspaper after his murder.⁵⁸

Mr Bennett’s description of the man’s wearing a “dark” jacket, possibly denim, which was wet, may be consistent with the “damp” blue denim jacket which was among the clothing found next to Mr Cuthbert’s body (see below at [77]). Mr Petre’s description of what he was wearing when he left the YMCA also included a denim jacket (see above at [73]).

75. The variety of possible sightings that night, some of them seemingly irreconcilable as to clothing or timing or both, makes it difficult to determine Mr Cuthbert’s actual movements that night. The post-mortem analysis suggests he had not been drinking.⁵⁹

The discovery of Mr Cuthbert’s body

76. On the Sunday evening, 18 October, [I212] Mr Cant, and three other members of the Bondi Fellowship returned to the apartment at about 6:15pm. They discovered Mr Cuthbert’s body shortly after arriving there.⁶⁰ Police attended; their observations are recorded above at [4] and [5].
77. The police made a note describing the clothes found on the floor next to the bed on which the body was found. It included one long sleeve white shirt with faint stripes, one pair of khaki-coloured jeans, and one damp blue denim jacket.⁶¹
78. No murder weapon was located in Mr Cuthbert’s flat, or in the apartment block or in the immediately surrounding area.⁶² Further, no knives were noted to be missing from the flat, indicating that the killer may have carried the knife to the scene of the crime. From this it may be inferred either that the killer

⁵⁸ Statement of Peter Bennett dated 23 October 1981, [2]-[3] (SCOI.10026.00008).

⁵⁹ DAL Certificate of Analysis, 6 November 1981 (SCOI.10027.00015).

⁶⁰ Record of interview with [I212] (n 36) Q24 (SCOI.10024.00006); Record of interview with Simon Richard Cant (n 40) Q15; Bundle of P109 Report of Occurrence extracts (n 17) pp. 1-3.

⁶¹ Bundle of P109 Report of Occurrence extracts (n 17) p. 12.

⁶² Bundle of P109 Report of Occurrence extracts (n 17) p. 11.

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carried a knife as a matter of course, or that there was some element of premeditation in killing Mr Cuthbert.

79. Only [I212], Mr Cant and Mr Cuthbert had keys to the flat.⁶³ Mr Cant reported being surprised that Mr Cuthbert was found in the flat, noting that he occasionally attended, but normally only to meet or wait for [I212]. Mr Cant thought that the towels in the loungeroom and the blood in the bathroom indicated he had made himself sufficiently at home to have a shower, and that that was unusual.⁶⁴

80. This does not accord with [I212] evidence that Mr Cuthbert was a frequent visitor, with a key and permission to make use of the apartment for showering and cooking.⁶⁵ However, Mr Cant had only very recently become [I212] flatmate, and it may be that he had not yet seen or become familiar with Mr Cuthbert and [I212] relationship, or the habits of Mr Cuthbert. Mr Cant recalled observing two towels, while police recorded finding only one. It is unclear which of those is accurate.

81. Five days after Mr Cuthbert's death, on 23 October 1981, [I212] reported that he had discovered \$48 missing from a blue government departmental envelope which related to his work. The envelope had been in [I212] black case which was found on the bed with Mr Cuthbert's body. Whether this money was stolen by Mr Cuthbert's killer is unknown.⁶⁶ Even if the offender did steal the money, robbery does not appear to have been a motive for the offence, since the apartment was not looted or ransacked, and valuables such as Mr Cuthbert's watch remained on the bedside table.

Fingerprint analysis

82. Fingerprints were found in various parts of the crime scene, including on the exit door, the vanity mirror in the bathroom, a coffee jar, a hand cream tube and a coffee table.⁶⁷

83. The original fingerprint examination in 1981 involved the manual comparison of the fingerprints in the unit to suspect or elimination fingerprint records obtained by police. The fingerprints on the hand cream tube were matched to Mr Cuthbert.⁶⁸ The remaining fingerprints were compared against the

⁶³ Record of interview with Simon Richard Cant (n 40) Q19.

⁶⁴ Ibid, Q34-Q35.

⁶⁵ Record of interview with [I212] (n 36) Q20; Bundle of P109 Report of Occurrence extracts (n 17).

⁶⁶ Basic Overview – Gerald Cuthbert, undated (SCOI.33072); Strike Force Parrabell Bias Crimes Indicators Review Form, undated, pp. 15-16 (SCOI.32127).

⁶⁷ Bundle of P109 Report of Occurrence extracts (n 17) p. 6.

⁶⁸ Bundle of P109 Report of Occurrence extracts (n 17) p. 9.

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fingerprints of people known to have been in the flat (including [redacted], Mr Cant, and their friends from the Bondi Fellowship), with a negative result.⁶⁹

84. In 1990, 2005 and 2022, Police conducted an automated comparison of the unidentified fingerprints with fingerprint records on the National Automated Fingerprint Identification System (NAFIS) database. The 2022 review utilised improved digital photographs and comparison software. Each of these reviews failed to identify any of the unknown fingerprints.⁷⁰

85. In 2023, at the request of the Inquiry, a further comparative examination of the unidentified fingerprints was undertaken, both manually and against the NAFIS database. The following results were obtained:

- a. The fingerprint on the coffee table and bathroom vanity mirror were matched to [redacted];
- b. The fingerprint on the coffee jar was considered to be unsuitable for any comparison due to lack of comparable detail;
- c. The fingerprint on the exit door was not identified, either when manually compared to elimination or suspect fingerprint records, nor when searched on NAFIS.⁷¹

86. The identification of [redacted] fingerprints on locations within his own unit is unsurprising and of no forensic value to the investigation of Mr Cuthbert's death.

Opinion of investigating police

87. The scenario advanced by police was that Mr Cuthbert met someone after leaving the YMCA and took that person back to his apartment, where he was murdered after engaging in sexual intercourse.⁷² Media articles at the time indicated that police suspected Mr Cuthbert of returning to the apartment with the killer between 1:00-2:00am, seemingly from the sighting of Mr Cuthbert by Mr Bennett.⁷³

Persons of interest

88. The original police investigation into possible persons of interest was thorough. It involved, among other things: forensic testing of exhibits, to the extent available in 1981; attempting to locate and

⁶⁹ Bundle of P109 Report of Occurrence extracts (n 17) pp. 6-7.

⁷⁰ Summary of Fingerprint Evidence from NSWPF, 28 February 2023 (NPL.0100.0001.0003); Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert (n 31).

⁷¹ Summary of Fingerprint Evidence from NSWPF (n 70); Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert (n 31).

⁷² Incident report, 5 November 1981 (SCOI.10031.00004)

⁷³ 'Blood-stained socks vital murder clue', *The Sun* (Sydney, 25 November 1981) (SCOI.10031.00007).

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interview all persons associated with Mr Cuthbert or named in paperwork at Mr Cuthbert's residence; canvassing clubs and pubs in the vicinity of the apartment or that he was known to frequent; canvassing residents of neighbouring rooms to Mr Cuthbert's accommodation at the YMCA; contacting gay media outlets to seek information from the broader gay community; interviewing persons who attended St Vincent's Hospital presenting with lacerations; obtaining a record of all vehicles in the area at the time; and investigating the maker of the socks found in the apartment.⁷⁴

89. In the course of their enquiries, the police considered numerous persons of interest in relation to Mr Cuthbert's death, but ultimately were unable to obtain any evidence which connected any person with the death of Mr Cuthbert.

90. Police considered the possibility that Mr Cuthbert was killed by a person with whom he had previously been sexually involved, including [I213] and [I214].⁷⁵ However, both men had alibis for the evening, albeit not ironclad, and there is no evidence linking them to Mr Cuthbert's death. [I213] voluntarily provided his fingerprints, which did not match any found at the crime scene.

91. Police also considered the possibility that Mr Cuthbert was killed by an American sailor with whom he may have formed a relationship. One media article⁷⁶ reported that a movie called "Cruising", depicting the murders of gay men by a psychotic killer, was shown aboard a naval ship on the night of Mr Cuthbert's murder; however, that information is not confirmed in the police files. Police made inquiries with the Naval Police. They were advised that four American naval vessels, carrying thousands of American sailors, had departed Sydney on 21 October, but that no record was kept of sailors taking shore leave.⁷⁷ Police made no enquiries as to the type of combat knife that was regularly used by sailors, nor whether they were permitted to carry knives on onshore leave. No further investigation was undertaken in relation to the American naval personnel.

92. There exists a remote possibility that Mr Cuthbert was killed by one of the persons close to him, among those interviewed by police. While it was technically possible for [I212] or Mr Cant to have returned on the night of 17-18 October, they would have had to make a three-hour train trip each way, and to have left and returned without detection. It is not submitted that either man should be regarded as a person of interest.

⁷⁴ Bundle of P109 Report of Occurrence extracts (n 17).

⁷⁵ Record of Interview with [I213] on 19 October 1981, Q6-Q8 (SCOI.10026.00004); Bundle of P109 Report of Occurrence extracts (n 17) pp. 13, 23-24.

⁷⁶ 'Brutal Knife Attacks Shock Community' (1981) *Campaign Australia* 71(5), 8. (Sydney, Australia) (SCOI.02178).

⁷⁷ Statement of Detective Senior Constable Mervyn James Hunter dated 4 July 1984, [14] (SCOI.10027.00002); Bundle of P109 Report of Occurrence extracts (n 17) p. 25.

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93. Various other possible persons of interest were considered and investigated by Police. These people were largely targeted on the basis of their involvement in similar crimes, or their reputation for robbing and assaulting gay men (sometimes under the guise of attending their residence as a sex worker). Ultimately, however, there was nothing linking any person to Mr Cuthbert's murder.⁷⁸
94. Mr Cuthbert's case was widely reported, as was the killing of Mr Peter Parkes, another gay man stabbed in his home in the eastern suburbs (only two – three days after Mr Cuthbert, on 20 October 1981).⁷⁹ Some three weeks later, a third gay man, Mr Giannaris, was also killed in his Eastern Suburbs residence, on approximately 14 November 1981.
95. Two young male sex workers, Michael Caldwell (aged 19) and a 16 year old minor, were convicted of the murders of Messrs Giannaris and Parkes and received life sentences.⁸⁰ However, there are notable differences between the killing of Mr Cuthbert and those of Mr Parkes and Mr Giannaris, including:
- a. Mr Parkes and Mr Giannaris were bound before they were killed, whereas Mr Cuthbert was not;
 - b. a significant motive in the murders of Mr Parkes and Mr Giannaris was robbery, with money, jewellery and cars being stolen and then used or pawned by Mr Caldwell and the minor. By contrast, little or no property appears to have been stolen at the time of Mr Cuthbert's death, which does not appear to have been motivated by robbery (see above at [81]).
96. There is no available evidence to link Mr Caldwell and the minor to the killing of Mr Cuthbert.
97. The identity of the person who killed Mr Cuthbert remains unknown, and at this time there are no suspects or clear persons of interest.

Report of Dr Sullivan

98. Dr Sullivan, whose report is dated 24 October 2022, considered whether any aspects of the manner of death and/or crime scene may indicate that the homicide occurred in the context of LGBTIQ hate or bias. He considered that the "nature and extent of the injuries significantly exceed what is

⁷⁸ Bundle of P109 Report of Occurrence extracts (n 17).

⁷⁹ See e.g., 'Brutal Knife Attacks Shock Community' (1981) *Campaign Australia* 71(5), 8. (Sydney, Australia) (SCOI.02178); Doug Button, 'Smoking Clue in 'Gay Blade' Killing', *The Sun* (Sydney, 12 November 1989) (SCOI.10031.00013).

⁸⁰ Exhibit 6, Tab 49 – Case Summaries, pp. 3-4.

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necessary to kill a person, and are consistent with an attack occurring in a frenzy, panic, or overkill. There is evidence to suggest recent receptive and sexual intercourse with a male partner.”⁸¹

99. Based on those factors, Dr Sullivan noted that a “possible” motivation was anger or distress if the unknown perpetrator was conflicted about their sexual orientation. However, he acknowledged that such a motivation is “speculative”.⁸² He further considered that Mr Cuthbert’s conflict between his sexuality and his Christian faith may have been relevant to the offence, if his ambivalence was manifest and led to conflict with his partner. Again, however, this was noted to be “speculative”.⁸³

100. Dr Sullivan’s opinion highlights the inherent limitations of attempting to ascertain motive in circumstances where the offender is unknown.

101. Dr Sullivan considered no other motive is apparent on the material, particularly as robbery was of limited apparent relevance to the offence.⁸⁴

Conclusions as to bias

102. As noted earlier, there are obvious difficulties in assessing possible motives or biases of Mr Cuthbert’s killer in the absence of knowing that person’s identity.

103. The following factors indicate the possibility, if not likelihood, that Mr Cuthbert was killed in the context of LGBTIQ bias:

- a. The nature and extent of Mr Cuthbert’s injuries significantly exceed what is necessary to kill a person, and are consistent with a frenzied or panicked attack;
- b. The evidence, including evidence suggesting receptive anal sexual intercourse with a male partner shortly before his death, suggests that Mr Cuthbert was likely killed by a person he took back to the apartment for the purpose of sex;
- c. The absence of evidence suggesting another motive for the crime.

104. However, it is not submitted that the evidence is sufficient to ground a positive finding that Mr Cuthbert’s death was one in which LGBTIQ bias was a factor.

⁸¹ Expert report of Dr Danny Sullivan (n 6) at [12].

⁸² *Ibid* at [13].

⁸³ *Ibid* at [15].

⁸⁴ *Ibid* at [14].

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Submissions as to manner and cause of death

105. Consistent with the original finding at the coronial inquest, it is submitted that the finding by the Inquiry in the following terms should be made:

Mr Cuthbert died on 18 October 1981 in Paddington “from the effect of a cut throat and multiple incised penetrating wounds of the chest sustained then and there and inflicted by a person or persons unknown.

Submissions as to recommendations

106. The Inquiry may, in due course, consider global recommendations in relation to the retention, preservation and storage of exhibits. However, there is no submission with respect to specific recommendations in Mr Cuthbert’s case.

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