

SPECIAL COMMISSION OF INQUIRY INTO LGBTIQ HATE CRIMES

WRITTEN SUBMISSIONS of COUNSEL ASSISTING

PUBLIC HEARING 2

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INTRODUCTION

1. These submissions are filed on behalf of Counsel Assisting the Inquiry in relation to Public Hearing 2, which was conducted in several stages: 5-13 December 2022 (**December 2022 hearing**), 15 February-2 March 2023 (**February/March 2023 hearing**), and 20 April, 5 and 15 May 2023 (**April-May 2023 hearing**).
2. The hearings were principally directed to various aspects of Strike Force Parrabell (**SF Parrabell**), Strike Force Macnamir (**SF Macnamir**), and Strike Force Neiwand (**SF Neiwand**), and to the ways in which the NSW Police Force (**NSWPF**) has approached suspected “hate” or “bias” crimes, including the identification, investigation and recording of such crimes, over the years from 1970 to the present.
3. Section C of the Inquiry’s terms of reference requires the Commissioner to have regard, *inter alia*, to the report (**Parrabell Report**) and findings of SF Parrabell, the report by the AIDS Council of New South Wales (now known as ACON) entitled ‘In Pursuit of Truth and Justice’ (**ACON Report**), and to the Interim and Final Reports of the NSW Legislative Council Standing Committee on Social Issues (the **Parliamentary Committee**).
4. In the December 2022 hearing, the following witnesses gave oral evidence:
 - a. Assistant Commissioner (**AC**) Anthony Crandell – Commander of SF Parrabell and the former NSWPF Corporate Sponsor for Sexuality, Gender Diversity and Intersex (**SGDI**);
 - b. Shoba Sharma – Manager, Policy and Programs Team, Crime Prevention Command;
 - c. Sergeant Geoffrey Steer – former Bias/Hate Crimes Co-ordinator, Bias Crimes Unit; and
 - d. Sergeant Ismail Kirgiz – current Hate Crimes Co-ordinator, Engagement and Hate Crimes Unit.
5. In the February/March 2023 hearing, the following witnesses gave oral evidence:
 - a. Detective Sergeant (**DS**) Steven Morgan – Investigation Supervisor, SF Neiwand;
 - b. Michael Willing – former Commander of the Homicide Squad (**Homicide Commander**) and Deputy Commissioner of the NSWPF;
 - c. Stephen Page – former Detective Sergeant and Officer in Charge (**OIC**), Operation Taradale;
 - d. Dr Derek Dalton – former Associate Professor at Flinders University and member of the Flinders University academic review team;

- e. Dr Willem de Lint – former Professor at Flinders University and member of the Flinders University academic review team;
 - f. Professor Nicole Asquith – University of Tasmania;
 - g. Associate Professor Austin Lovegrove – University of Melbourne; and
 - h. Ms Martha Coakley – former Attorney General of Massachusetts, USA.
6. In the April-May 2023 hearing, Mr Willing gave additional evidence.
7. Each of those witnesses also provided a written statement or report, all of which were received into evidence. These statements and reports are referred to in these submissions as follows:
- a. Joint Statement of Dr de Lint and Dr Dalton dated 28 October 2022 (**Dalton/de Lint Statement**);
 - b. Statement of Ms Sharma dated 28 October 2022 (**Sharma Statement**);
 - c. Statement of AC Crandell dated 31 October 2022 (**Crandell Statement**);
 - d. Statement of DS Morgan dated 31 October 2022 (**Morgan Statement**);
 - e. Statement of Sergeant Kirgiz dated 28 November 2022 (**Kirgiz Statement**);
 - f. Statement of Sergeant Steer dated 18 November 2022 (**Steer Statement**);
 - g. Supplementary Statement of Sergeant Steer dated 18 November 2022 (**Supplementary Steer Statement**);
 - h. Expert Report of Ms Coakley dated 20 December 2022 (**Coakley Report**);
 - i. Expert Report of Professor Asquith dated 25 January 2023 (**Asquith Report**);
 - j. Expert Report of Associate Professor Lovegrove dated 27 January 2023 (**Lovegrove Report**);
 - k. Response to Expert Reports by Dr Willem de Lint (endorsed by Dr Derek Dalton), undated (emailed 30 January 2023) (**Dalton/de Lint Response**);
 - l. Statement of Mr Willing dated 30 January 2023 (**Willing Statement**);
 - m. Statement of Mr Page dated 16 February 2023 (**Page Statement**); and
 - n. Statement of former DS Jo Kenworthy dated 16 February 2023 (**Kenworthy Statement**).
8. A 16 volume tender bundle of relevant documents, including the witness statements and reports referred to above, was Exhibit 6 before the Inquiry.

PART A: BACKGROUND AND OVERVIEW

Historical overview

9. This Inquiry is concerned with the 40-year period from 1970 to 2010, a period of rapid social, legal, and political change for the LGBTIQ community in NSW.
10. As late as 1958, the then-NSW Commissioner of Police, Colin Delaney, described homosexuality as “*the greatest social menace*” in Australia.¹ A year earlier, in 1957, the Wolfenden Report in the United Kingdom (**UK**) had recommended limited decriminalisation of some homosexual acts between consenting adult males in private.² In 1967, 10 years after the Wolfenden Report, such decriminalisation was implemented by legislation, initially in England and Wales, and later in all of the UK.³
11. In 1969, the Stonewall riots in New York attracted worldwide publicity and attention.⁴ In 1970, the Campaign Against Moral Persecution (**CAMP**) was formed in Australia.⁵ In 1975, homosexual conduct between men was decriminalised in South Australia, the first Australian state to take that step.⁶ In 1978, the first Mardi Gras was held in Sydney. In 1984, homosexual conduct between men was decriminalised in NSW.⁷ Decriminalisation occurred later still in Western Australia (1989), Queensland (1991), and Tasmania (1997).⁸
12. It was not until 2014 that amendments to the *Crimes Act 1990* (NSW) effectively abolished, in this State, a defence known colloquially as the “gay panic defence” or “homosexual advance defence” – whereby an accused might assert that, although he had killed or injured a victim, he had only done so because the victim had made a so-called homosexual advance.⁹

1984: Decriminalisation of sex between gay men

13. Sex between men was a criminal act in NSW until 1984. Following sustained pressure on politicians and increasing community support for law reform, a private member’s Bill to decriminalise homosexual acts between consenting adult males was introduced by the Premier,

¹ Exhibit 1, Tab 3, Legislative Council Standing Committee on Social Issues, *Parliament of NSW, Gay and Transgender hate crimes between 1970 and 2010* (Interim Report, Report 52, February 2019), [1.37] (SCOI.02290).

² Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [96] (SCOI.77300).

³ *Ibid*, [104].

⁴ *Ibid*, [106].

⁵ *Ibid*, [107].

⁶ Exhibit 1, Tab 2, Final Report of Strike Force Parrabell, June 2018, 60 (SCOI.02632).

⁷ Exhibit 1, Tab 3, (n 1), [1.19].

⁸ Exhibit 1, Tab 2, (n 6), 60.

⁹ *Ibid*, 16.

Neville Wran, in early 1984. The Bill was seconded by the Leader of the Opposition, Nick Greiner, and passed on a conscience vote (albeit with an unequal age of consent).¹⁰

14. Historian Garry Wotherspoon observed in his evidence that whereas decriminalisation ought to have marked the beginning of a new period of tolerance for gay men, which might, in better circumstances, have led to gradual acceptance, instead a new tragedy occurred at the same time as the final push for law reform.¹¹ The HIV/AIDS epidemic began to escalate in Australia and around the world.

Early 1980s: Impact of HIV/AIDS

15. The advent of HIV/AIDS from the early 1980s onwards devastated the LGBTIQ community.¹² By the end of 1984, Australia had 47 diagnosed cases and 18 deaths, and by 1985, 4500 men in inner-suburban Sydney and Melbourne had tested HIV positive.¹³ Organisations within the LGBTIQ community shifted their focus from law reform to the HIV/AIDS epidemic, and in 1985, the AIDS Council of NSW was established as a community response in NSW.¹⁴
16. HIV/AIDS is an infection contractable by anyone, irrespective of age, gender, ethnicity or sexuality. However, as Mr Wotherspoon explained, due to it being first diagnosed in the gay community, it caused a severe regression in progress on LGBTIQ acceptance, and dramatically affected the health, wellbeing and dignity of many in the LGBTIQ community.¹⁵

1987: Grim Reaper advertisement campaign

17. In April 1987, the Commonwealth Government released the 'Grim Reaper' television campaign, which:

*... depicted the Grim Reaper at a bowling alley with pins represented by average Australians including mothers and young children. A foreboding voice-over warned that, 'At first, only gays and IV drug users were being killed by AIDS, but now we know every one of us could be devastated by it', while the Reaper bowled, striking down his victims.*¹⁶

18. As Brent Mackie, the Director of Policy, Strategy and Research at ACON, explained:

¹⁰ Exhibit 2, Tab 1, (n 2,) [119]; Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [106] (SCOI.77304). See also: Exhibit 1, Tab 3, (n 1), [1.26]; Exhibit 1, Tab 1, ACON, *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (Report, May 2018), 34 (SCOI.03667).

¹¹ Exhibit 2, Tab 1, (n 2), [120], [121].

¹² Exhibit 2, Tab 5, (n 10), [115]-[116].

¹³ Exhibit 1, Tab 3, (n 1), [1.28].

¹⁴ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [10], [16] (SCOI.77301).

¹⁵ Exhibit 2, Tab 1, (n 2), [123]. See also Exhibit 1, Tab 1, (n 10), 34.

¹⁶ Exhibit 1, Tab 3, (n 1), [1.30].

The Grim Reaper campaign, while important in raising awareness of HIV within the broader Australian community, also greatly contributed to distress and increased discrimination and stigma towards people living with HIV/AIDS and towards gay men.¹⁷

19. The campaign, which was given saturation coverage, exaggerated the threat of infection while providing no actual information on how HIV/AIDS was transmitted.¹⁸ It implied that any family was in danger of becoming infected by HIV/AIDS and contributed to a belief that it was possible to contract HIV from sharing a toothbrush or being spat on,¹⁹ when, in reality, the disease was transferable by blood transfusions and sexual transmission.²⁰

20. In the ACON Report, ACON explained that:

While fear associated with the Grim Reaper Campaign may have been intended to prevent new infections, it inadvertently fuelled stigma, discrimination and possibly homophobic violence.²¹

The spike in violence/deaths in the 1980s and 1990s

21. The 1980s and 1990s represented the peak of violence against the LGBTIQ community in NSW. More than half of the 80-plus deaths examined in the ACON Report and the Parrabell Report occurred in the eight-year period between 1985 and 1993.
22. As early as 1982, a report by the NSW Anti-Discrimination Board had highlighted the issues of discrimination and violence against the gay community.²² However, attacks against the LGBTIQ community persisted, and escalated, throughout the following decade. Both the LGBTIQ press and the mainstream media frequently reported on the rising levels of discrimination and violence against the LGBTIQ community.²³ Many of these attacks, including some of the most brutal, took place at beats.²⁴
23. Mr Wotherspoon noted that some within the NSWPF did attempt to address the surging wave of violence, with the establishment of a Police-Gay Liaison Group in 1985 and the appointment of a Police Gay Liaison Officer in 1988.²⁵ Later, in response to the continued escalation of

¹⁷ Exhibit 2, Tab 2, (n 14), [16].

¹⁸ See Exhibit 2, Tab 1, (n 2), [124]-[126]; Exhibit 2, Tab 2, (n 14), [17]; Exhibit 2, Tab 3, Statement of Leslie Peterkin, 14 November 2022, [50] (SCOI.77302); Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [13]-[14] (SCOI.77303); Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [13] (SCOI.77308). See also Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [52II]-[52IV] (SCOI.77306).

¹⁹ Exhibit 2, Tab 2, (n 14), [17].

²⁰ Exhibit 2, Tab 1, (n 2), [125].

²¹ Exhibit 1, Tab 1, (n 10), 18.

²² Exhibit 2, Tab 25, 'Discrimination and Homosexuality' (Report, New South Wales Anti-Discrimination Board, 1982) (SCOI.76800).

²³ Exhibit 2, Tab 1, (n 2), [128]. See also Exhibit 2, Tab 7, (n 18), [13]-[14].

²⁴ Exhibit 2, Tab 1, (n 2), [128-129].

²⁵ Ibid, [129].

violence and resulting public outcry, the NSWPF set up a special taskforce in the early 1990s to address the violence occurring in the Oxford and Flinders Street areas.²⁶

24. Witnesses in this Inquiry held a range of opinions on the connection between the emergence of HIV/AIDS and the increase in anti-gay violence. On the one hand, several witnesses, including Mr Wotherspoon, Mr Mackie, Leslie Peterkin, Greg Callaghan and Carole Ruthchild, considered that the combined effect of the HIV/AIDS epidemic and the Grim Reaper campaign was to increase hate, abuse and even violence towards those in the LGBTIQ community.²⁷ According to Mr Wotherspoon, even though anti-gay violence had existed long before the advent of HIV/AIDS, the incidence of such hate-driven violence undeniably escalated following the initial diagnoses in 1982.²⁸ Conversely, Barry Charles rejected the suggestion that HIV/AIDS gave rise to more anti-gay violence.²⁹ He considered that the heightened visibility of gay life in the media and popular culture was more likely to have caused distress and confusion for young people, including potential attackers.³⁰

From the late 1980s: community-led safety campaigns

25. Apart from the beginnings of a police response to the escalating violence, various community-led safety initiatives also emerged.
26. In 1988, the Gay and Lesbian Rights Lobby (**GLRL**) was founded. Although today its primary focus is advocating for legal and policy reform for LGBTIQ people,³¹ in its early years one of its central concerns was addressing violence against gay men and lesbians.³²
27. In 1988, the GLRL established the *Streetwatch Project*. Dr Gary Cox, one of the founders, explained that the aim of the project was to enable members of the LGBTIQ community to report instances of violence to a trusted third party.³³ Dr Cox gave evidence that:

*Certainly our intervention initiating Streetwatch was timely, because it was certainly seen to be the case at the time that there was a rising tide of violence in the inner city of Sydney, and this quite comprehensive depiction of recent cases of violence demonstrated that.*³⁴

²⁶ Ibid.

²⁷ Ibid, [125]; Exhibit 2, Tab 2, (n 14), [19].

²⁸ Exhibit 2, Tab 1, (n 2), [122].

²⁹ Exhibit 2, Tab 5, (n 10), [115]-[116].

³⁰ Ibid, [15]-[17].

³¹ Ibid, [11].

³² Exhibit 2, Tab 9, (n 18), [20].

³³ Exhibit 2, Tab 7, (n 18), [30].

³⁴ Transcript, T337.33-37.

28. The GLRL coordinated with community-based counselling services to distribute questionnaires to survivors of violent attacks or abuse. It would then compile the data and present a report to the NSW Government, the NSWPF, and the NSW Anti-Discrimination Board.³⁵
29. In 1990, Dykes on Bikes initiated night patrols to help safeguard the LGBTIQ community in Sydney, particularly around the Oxford Street area.³⁶
30. In June 1991, the Lesbian and Gay Anti-Violence Project (**AVP**) was founded, as a specialised, community-based group dedicated to tracking violence against LGBTIQ people.³⁷ One of its co-founders, Bruce Grant, told the Inquiry that the genesis for the AVP was the urgent need for an accelerated and coordinated response to violence.³⁸
31. Drawing inspiration from similar initiatives in San Francisco and New York City, the project concentrated on four primary objectives: documentation, advocacy, behaviour modification, and research.³⁹ The project ran volunteer street patrols in the inner city to protect the LGBTIQ people who gathered and socialised in the area.⁴⁰
32. Between 1990 and 1994, the GLRL and AVP jointly carried out three studies, collectively known as the *Streetwatch Series*. Together, these studies offered insights into the nature and prevalence of assaults against gay men and lesbians in NSW.⁴¹ The data captured included various aspects of the assaults, including locations, victims, assailants, and potential factors contributing to the apparent rise in the number of incidents.⁴²
33. After its establishment, the AVP assumed the role of the counselling services as the primary point of contact for individuals who had been targeted in violent attacks.⁴³
34. The three studies published during this period were as follows:
 - a. *The Streetwatch Report: A Study into Violence against Lesbians and Gay Men* (1990). This report examined street- and beat-based violence against gay men in inner-city Sydney based on 67 incidents between November 1988-April 1989.⁴⁴

³⁵ Exhibit 2, Tab 7, (n 18), [19]-[21].

³⁶ Exhibit 2, Tab 2, (n 14), [32].

³⁷ Exhibit 2, Tab 1, (n 2), [130]; Exhibit 1, Tab 1, (n 10), 39; Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [3], [15] (SCOI.77305).

³⁸ Ibid, [20].

³⁹ Exhibit 2, Tab 6, (n 37), [20]-[23].

⁴⁰ Exhibit 2, Tab 2, (n 14), [33].

⁴¹ Exhibit 2, Tab 6, (n 37), [15].

⁴² Exhibit 2, Tab 9, (n 18), [20].

⁴³ Transcript, T354.10-13.

⁴⁴ Exhibit 2, Tab 22, Gary Cox, 'The Streetwatch Report: A Study into Violence Against Lesbians and Gay Men' (Streetwatch Series Report No 1, Lesbian and Gay Anti-Violence Project, 1990) (SCOI.76806); Exhibit 1, Tab 1, (n 10), 39; Exhibit 2, Tab 1, (n 2), [130].

- b. *The Off Our Backs Report: A Study into Anti-Lesbian Violence* (1992). This report examined violence against lesbians in inner-city Sydney, based on 42 incidents in both homes and public places, such as on the streets and in workplaces.⁴⁵
- c. The *Count and Counter Report* (1994) is discussed at [44] ff below.

1990 onwards: Sue Thompson

- 35. In 1985, the NSWPF established an informal Gay Liaison Officer position, which was filled by Fred Miller, a former MP.⁴⁶
- 36. In January 1990, Sue Thompson was appointed to the role of Gay and Lesbian Client Consultant within the NSWPF.⁴⁷ The gay hate murder of Richard Johnson in Alexandria Park occurred in the same month.⁴⁸ Ms Thompson held this position until 2002.⁴⁹
- 37. As Dr Cox recalled, Ms Thompson adopted a proactive approach towards monitoring incidents, resolving complaints, and advocating for better policing practices.⁵⁰ From 1990, among other things, Ms Thompson established the Gay and Lesbian Liaison Officer (**GLLO**) program,⁵¹ and embarked on a programme of visiting high schools to assist in tackling homophobic attitudes of students.⁵²
- 38. Also from about 1990 onwards, of particular significance for the purposes of this Inquiry, Ms Thompson began monitoring anti-gay and related homicides, and compiling details of these homicides.⁵³ This compilation is referred to further below.

1990-1991: Detective Sergeant Stephen McCann

- 39. In 1990, DS Stephen McCann, previously the Officer in Charge at Surry Hills Detectives, was posted to the Homicide Squad. DS McCann was assigned as the lead investigator (or OIC) into the murders of Richard Johnson at Alexandria Park in January 1990 and Kritchikorn

⁴⁵ Exhibit 2, Tab 21, Gay and Lesbian Rights Lobby Inc, 'The Off Our Backs Report: A Study into Anti-Lesbian Violence' (Streetwatch Series Report No 2, Lesbian and Gay Anti-Violence Project, September 1992) (SCOI.76803); Exhibit 2, Tab 6, (n 37), [17]-[18].

⁴⁶ Exhibit 1, Tab 3, (n 1), [3.57].

⁴⁷ Exhibit 2, Tab 1, (n 2), [145].

⁴⁸ Exhibit 6, Tab 49, Strike Force Parrabell – Case Summaries, undated, 20 (SCOI.76961.00014).

⁴⁹ Exhibit 2, Tab 1, (n 2), [145].

⁵⁰ Exhibit 2, Tab 7, (n 18), [37].

⁵¹ Exhibit 1, Tab 3, (n 1), [3.59].

⁵² Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [45] (SCOI.77307).

⁵³ Exhibit 1, Tab 1, (n 10), 10; Exhibit 2, Tab 35, Jenny Mouzos and Sue Thompson, 'Comparison between Gay Hate-Related Homicides of Men and Other Male Homicides in New South Wales 1989-1999' (2001) 12(3) *Current Issues in Criminal Justice* 306-329, 306 (SCOI.02629); Exhibit 6, Tab 56, Email correspondence between Craig Middleton and John Lehman, 16-17 June 2015 (SCOI.74113); Exhibit 6, Tab 56A, Document from Sue Thompson titled 'Brief: Likely NSW Gay Hate Murders from Late 70s to Late 90s', undated (SCOI.77314); Exhibit 6, Tab 56B, Excel spreadsheet titled 'Possible Gay Hate Murders List' provided to Michael Willing by Sue Thompson, undated (SCOI.77315).

Rattanajurathaporn at Bondi in July 1990. Both Mr Johnson and Mr Rattanajurathaporn were gay men.⁵⁴ The perpetrators of both killings were identified, charged and convicted.

40. In April 1991, DS McCann compiled a summary of connections and links he had uncovered, both in relation to the deaths of Mr Johnson and Mr Rattanajurathaporn and also in relation to other attacks on gay men, some of them also resulting in deaths, in various parts of Sydney up to that time.⁵⁵ These incidents included the deaths of William Allen (Alexandria), Ross Warren (Marks Park), John Russell (Marks Park), Wayne Tonks (Artarmon) and Raymond Keam (Randwick).⁵⁶
41. On 15 April 1991, DS McCann sent his summary, in the form of a letter, to Chief Superintendent (CSI) Norm Maroney, who was then the Director of Operations at State Command.⁵⁷ DS McCann had in mind that State Command would sanction and resource a task force to investigate the incidents. However, he received no answer to the letter.⁵⁸
42. On 10 August 1991, DS McCann sent a more detailed version of this summary, again in the form of a letter, to the Commander, Modus Operandi Section.⁵⁹ According to DS McCann:

*The Modus Operandi Section was a section of State Command that had an intelligence role. It received, collated and analysed crime reports, and could provide investigating police with information relevant to their case. I thought that providing the information that I had assembled to this Section would ensure that it would be available to police generally.*⁶⁰

43. DS McCann said that his understanding and expectation at the time was that the Modus Operandi Section would be able to locate and/or generate intelligence concerning the individuals and groups he had identified in his report and provide him with that intelligence. He considered that this may have enabled him to pursue further inquiries in relation to some of the unsolved deaths referred to in the report. Again, however, he received no response.⁶¹

1991: Count and Counter Project

44. In November 1991, following the establishment of the AVP, the *Count and Counter Project* was launched. As noted above, individuals were encouraged to report incidents of hate crime against members of the LGBTQ community directly to the AVP itself.⁶²

⁵⁴ Exhibit 6, Tab 233, Statement of Stephen McCann, 10 November 2022, [5]-[8] (SCOI.77310).

⁵⁵ Ibid, [11].

⁵⁶ Exhibit 6, Tab 233A, Letter from Steve McCann to The Commander, Modus Operandi Section, 10 August 1991 (SCOI.10342.00010).

⁵⁷ Ibid.

⁵⁸ Exhibit 6, Tab 233, (n 54), [13]-[14].

⁵⁹ Exhibit 6, Tab 233B, Letter from Steve McCann to Chief Superintendent Norm Maroney, 15 April 1991 (SCOI.10342.00128).

⁶⁰ Exhibit 6, Tab 233, (n 54), [15]-[16].

⁶¹ Ibid, [17]-[18].

⁶² Exhibit 2, Tab 7, (n 18), [41]-[47].

45. In 1994, the third report in the *Streetwatch Series* was published. It was called: *The Count and Counter Report: A Study into Hate-Related Violence Against Lesbians and Gays*.⁶³ The report documented the work of the *Count and Counter Project* between 1991 and 1994. The report examined incidents that occurred in two specific periods:⁶⁴
- a. *Count and Counter 1992* considered incident reports from November 1991 to June 1992 (90 respondents); and
 - b. *Count and Counter 1993* considered incident reports from July 1992 to June 1993 (94 respondents).
46. In an effort to identify patterns of violence, the report compared these two distinct periods of analysis and also referred to the 1990 *Streetwatch Report*.⁶⁵
47. The *Count and Counter Project* surveys also considered issues in relation to the NSWPF. The majority of participants in the survey described the service provided by the police as either “friendly/supportive” or “routine/neutral.”⁶⁶ Additionally, approximately half of the respondents self-identified as either lesbian or gay to the police (which was twice the percentage reported in the earlier 1990 *Streetwatch Report* (25%)).⁶⁷ Dr Cox also highlighted the many preventive initiatives established since 1988, including community policing, increased foot patrols, the Volunteer Street Patrol, the Streetsmart Project and the AVP itself.⁶⁸

2000-2001: Research studies of Ms Thompson and Jenny Mouzos

48. In 2000, Ms Thompson, with Dr Jenny Mouzos of the Australian Institute of Criminology (AIC), published a research study comparing male gay-hate related homicides to other male homicides in NSW between 1989 and 1999.⁶⁹
49. The study identified some 44 gay hate-related homicides in NSW during that 10 year period, and highlighted various features of prejudice-motivated killings of men who were either gay (or perceived to be gay), by comparison with other types of homicide.⁷⁰ Among other findings, the study revealed that in cases of gay-hate related homicides:

⁶³ Exhibit 2, Tab 18, Gary Cox, ‘The Count and Counter Report: A Study into Hate Related Violence Against Lesbians and Gays’ (Streetwatch Series Report No 3, Lesbian and Gay Anti-Violence Project, January 1994) (SCOI.76804).

⁶⁴ Exhibit 2, Tab 7, (n 18), [41]-[47].

⁶⁵ Ibid, [41]-[47].

⁶⁶ Exhibit 6, Tab 18, (n 63), 62.

⁶⁷ Exhibit 2, Tab 7, (n 18), [48]

⁶⁸ Exhibit 6, Tab 18, (n 63), 67.

⁶⁹ Exhibit 2, Tab 36, Jenny Mouzas and Sue Thompson, ‘Gay-Hate Related Homicides: An Overview of Major Findings in New South Wales’ (2000) 155 *Australian Institute of Criminology Trends & Issues in Crime and Criminal Justice*, 1 (SCOI.02624).

⁷⁰ Ibid, 5-6.

- a. Incidents are more likely to involve multiple offenders and a single victim (54.5% vs 44.2% for other victims of male homicide);
- b. The victim is more likely to be killed at residential premises (62.0% vs 51.4%) and to be older than the offender (90.9% vs 64.9%); and
- c. The victim is more likely to be brutally beaten to death (with hands or feet or some blunt instrument) (51.7% vs 30.1%) or repeatedly stabbed to death with a knife or some other sharp instrument (41.3% vs 37.5%).⁷¹

50. In March 2001, Ms Thompson and Dr Mouzos published an expanded version of the 2000 article in *Current Issues in Criminal Justice*, which was entitled 'Comparison Between Gay Hate Related Homicides and Other Male Homicides'.⁷²

2000-2002: DS Stephen Page and Operation Taradale

- 51. In May 2000, DS Page, then the Investigations Manager at Rose Bay Local Area Command (**LAC**), received a file in relation to the disappearance of Ross Warren. Mr Warren had been last seen 11 years previously, in the early hours of 22 July 1989, on Oxford Street, Sydney. His car and keys were later found by friends at Marks Park, Tamarama. His body was never found and no inquest was held. Mr Warren's file contained a series of letters from his mother, Kay Warren, requesting that inquiries be made so that a death certificate could be issued in relation to her missing son.⁷³
- 52. On becoming aware of Mrs Warren's requests and of the belated and limited response she had received, DS Page began to examine documents associated with the 1989 investigation and requested resources to investigate the matter.⁷⁴
- 53. Operation Taradale was subsequently established, in 2001, to investigate the disappearance and suspected death of Mr Warren and also the death of John Russell in November 1989, and an assault on David McMahon in December 1989, both of which had also occurred at Marks Park.
- 54. In about August 2002, in the wake of publicity concerning Operation Taradale, the former partner of Gilles Mattaini, who had been last seen in the Bondi area in September 1985, reported his disappearance to DS Page. Thereafter, Operation Taradale was expanded to include the disappearance of Mr Mattaini.

⁷¹ Ibid, 4.

⁷² Exhibit 2, Tab 35, (n 53).

⁷³ Exhibit 6, Tabs 314A-F, Letters from Mrs Kay Warren to NSW Police dated 1998-2000 (SCOI.82476).

⁷⁴ Exhibit 6, Tab 160, Statement of Detective Sergeant Stephen Page, 28 August 2022, [3] (SCOI.02744.00024).

55. The work of Operation Taradale extended over some two years. It resulted in the collection and analysis of a vast amount of information about large numbers of violent attacks on gay men in the Bondi/Marks Park/Tamarama area from the mid-1980s to the early 1990s.
56. Operation Taradale culminated in an inquest before Senior Deputy State Coroner Jacqueline Milledge (**Coroner Milledge**) during the course of 2003 and 2004 (**Taradale Inquest**).
57. On 9 March 2005, Coroner Milledge handed down her findings. She found that both Mr Warren and Mr Russell had been victims of homicide, perpetrated by a person or persons unknown. Her Honour also considered that the evidence strongly supported the probability that both men met their deaths at the hands of “*gay hate assailants*”.⁷⁵ In the case of Mr Mattaini, her Honour said that it was not possible to make such a finding, but expressed the opinion that there was a strong possibility that he had died in comparable circumstances to the other two men.⁷⁶
58. Coroner Milledge noted that Marks Park was widely recognised as a beat and “*a known area for brutal attacks on homosexual males*”.⁷⁷ She also noted that during the 1980s and 1990s, “*police were aware of a number of gangs of youths that were systematically engaged in the assault and robbery of gay men in Marks Park and other areas*”.⁷⁸
59. Her Honour described the original 1989 police investigation into Mr Warren’s death as “*grossly inadequate and shameful*”.⁷⁹ She considered that although a more comprehensive investigation had been conducted in relation to Mr Russell’s death, it was also “*far from adequate*”.⁸⁰

2007: Bondi Badlands (Greg Callaghan)

60. Both Operation Taradale, and the Taradale Inquest and findings, were the subject of considerable publicity in the early 2000s. In the years that followed, there was an increasing number of newspaper articles, books and television programmes about violence directed towards LGBTIQ people, including violence causing deaths.
61. In 2007, journalist Greg Callaghan published a book entitled *Bondi Badlands*.⁸¹ The book drew on his prior journalism about gay hate crimes in the Bondi/Tamarama area, and focused on the deaths, assaults and disappearances of gay men in and around Marks Park in the 1980s and early 1990s, including the cases of Mr Warren and Mr Russell.⁸² Mr Callaghan identified several

⁷⁵ Exhibit 6, Tab 161, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini - Findings of Senior Deputy State Coroner Jacqueline Milledge, 9 March 2005, 14 (SCOI.02751.00021).

⁷⁶ Ibid, 14.

⁷⁷ Ibid, 8.

⁷⁸ Ibid, 3-4.

⁷⁹ Ibid, 6.

⁸⁰ Ibid.

⁸¹ Exhibit 4, Greg Callaghan, *Bondi Badlands* (Allen Unwin, 1st edition, 2007).

⁸² Transcript, T222-223, T231-232.

shared characteristics in the reports and accounts of gay-hate violence, including the extended duration of the attacks, the perpetrators' level of contempt for their victims, and the satisfaction they derived from cruelly tormenting them.⁸³

2007-2017: the Hate Crimes Coordinator and the Bias Crimes Unit

62. In 2006, following the Cronulla Riots in December 2005, Sergeant Steer submitted an internal report expressing his concern that NSWPF did not possess the means to recognise or competently address hate crimes in the community. He proposed the creation of a hate crime capability within NSWPF to address this issue.⁸⁴
63. In 2007, in response, the role of Hate Crime Coordinator was established, on a trial basis, within the Community Contact Unit at the Counter Terrorism and Special Tactics Command.⁸⁵ The role was a standalone position and had no resources allocated.⁸⁶
64. From 2007 to 2009, Sergeant Steer was assigned to the position. No additional staff or resources were allocated.⁸⁷ In this role, Sergeant Steer reported first to the Commander, Community Contact Unit (whilst attached to Counter Terrorism), and then to the Manager, Cultural Diversity, Policy and Programs when the position was moved in 2008. There was no formal interaction with the Homicide Squad or the Unsolved Homicide Team (**UHT**) during this period.⁸⁸
65. In 2009, the position was "de-established". That remained the case for three years.⁸⁹
66. In 2012, the position was re-established, called now Bias Crimes Coordinator, this time within the Operational Programs Command, Major Events and Incident Group. The role was again filled by Sergeant Steer.⁹⁰ From 2012 to 2017, Sergeant Steer had the assistance of a Senior Policy Officer, who had dual responsibilities in respect of both "bias crime" and "vulnerable communities".⁹¹
67. In 2015, two other officers were added, thereby constituting the Bias Crimes Unit.⁹²
68. However, in 2017, as a consequence of a restructure, three of the four staff (including Sergeant Steer) were redeployed, and the Bias Crimes Unit (now consisting of one officer only) was moved to a newly-created Fixated Persons Investigation Unit, within the Counter Terrorism and

⁸³ Exhibit 2, Tab 4, (n 18), [35].

⁸⁴ Exhibit 6, Tab 6, Statement of Sergeant Geoffrey Steer, 18 November 2022, [7] (SCOI.82080).

⁸⁵ Ibid, [9], [13].

⁸⁶ Ibid, [9].

⁸⁷ Ibid, [12].

⁸⁸ Exhibit 6, Tab 190, Bias Crimes Unit Handover, 15 June 2018, 2 (SCOI.77469).

⁸⁹ Exhibit 6, Tab 6, (n 84), [7].

⁹⁰ Exhibit 6, Tab 190, (n 88), 2.

⁹¹ Exhibit 6, Tab 6, (n 84), [12].

⁹² Exhibit 6, Tab 190, (n 88), 2.

Special Tactics Command.⁹³ Sergeant Steer himself was assigned to general duties at Hawkesbury.⁹⁴

2012: Second inquest into the death of Scott Johnson

69. One of the deaths which received considerable media attention, following Operation Taradale and the Taradale Inquest, was that of Scott Johnson, whose body had been found at the base of a cliff at North Head, near Manly, in December 1988. The original inquest into Scott Johnson's death, in March 1989, had resulted in a finding of suicide by the State Coroner, Derrick Hand.⁹⁵
70. In June 2012, more than 20 years later, a second inquest was held, before Deputy State Coroner Carmel Forbes (**Coroner Forbes**). The Johnson family put forward evidence, including evidence of the work of Operation Taradale in relation to the attacks on, and deaths of, gay men in the Bondi area.
71. Coroner Forbes departed from the 1989 suicide finding, and instead brought in an open finding. One reason for that was that *"the information about the deaths at Bondi has, however, sown a seed of doubt as to the positive finding of suicide"*. One of the possibilities, said Coroner Forbes, was *"that Mr Johnson was the victim of a 'gay hate' crime similar to those that occurred in Bondi"*. Coroner Forbes referred the case to "Cold Cases" for further investigation.⁹⁶

February 2013: Australian Story

72. On 11 February 2013, an episode of *Australian Story* aired on the ABC profiling Scott Johnson's life and death.⁹⁷ Scott Johnson's brother, Steve Johnson, was critical of the NSWPF for its handling of his brother's case. He and others working with him drew parallels with the Bondi cases and referred to evidence of gay hate violence having also occurred on the northern beaches of Sydney.

⁹³ Ibid.

⁹⁴ Transcript, T1126.31.

⁹⁵ Exhibit 6, Tab 232, Third Inquest into the death of Scott Russell Johnson – Findings of State Coroner Michael Barnes, 30 November 2017, [9] (SCOI.11064.00018).

⁹⁶ Exhibit 6, Tab 317, Second inquest into the death of Scott Russell Johnson – Findings of Deputy State Coroner Forbes, 27 June 2012, 2 (SCOI.11115.00128).

⁹⁷ Exhibit 6, Tab 319, Transcript of 'On the Precipice', *Australian Story* (ABC News, 11 February 2013) (SCOI.82485).

February 2013: Strike Force Macnamir

73. On the same day, 11 February 2013, SF Macnamir was established to review and re-investigate the circumstances of Scott Johnson's death.⁹⁸ This eventually led to a third inquest into the death of Scott Johnson, in 2016 and 2017.
74. Contemporaneous records described the SF Macnamir team as comprising Detective Chief Inspector (**DCI**) Pamela Young as the Investigation Supervisor, and DS Penelope Brown as the OIC.⁹⁹ Other officers allocated to SF Macnamir included: Detective Superintendent (**DSI**) Jason Dickinson (Investigation Supervisor); DCI Stewart Leggat (Team Leader); DS Morgan (Team Leader); Detective Senior Constable (**DSC**) Michael Chebl (Investigator); and DSC Paul Rullo (Investigator).¹⁰⁰
75. By April 2014, as appears below, the view of DCI Young and DCI John Lehmann, endorsed by Mr Willing (then, Homicide Commander), was that SF Macnamir had not discovered "*any evidence at all*" that Scott Johnson was even the victim of a homicide, "*let alone a 'gay-hate' murder*" (emphasis in original).¹⁰¹
76. In July 2014, DCI Young signed a 445-page statement outlining the work done by SF Macnamir (**Young Statement**).¹⁰² DCI Young made reference to three possible hypotheses as to manner of death, namely suicide, homicide and misadventure. However, as Mr Willing conceded in his oral evidence, DCI Young's statement plainly conveyed her view that suicide was "*distinctly likely*", and that homicide was "*distinctly unlikely*."¹⁰³

By 2013: The "list of 88" possible gay hate murders (30 unsolved)

77. The "list of 88" possible gay hate murders has been referred to many times since 2013, often inaccurately.
78. In the years following Ms Thompson's appointment as the NSWPF Gay and Lesbian Client Consultant in early 1990, she had gradually compiled two documents, with the co-operation of others including Professor Stephen Tomsen.

⁹⁸ Exhibit 6, Tab 9, Email from Patrick Hodgetts to Kate Lockery re: Summons NSWPF12 and Strike Force Macnamir, 16 September 2022, 1 (SCOI.82018); Exhibit 6, Tab 8, Strike Force Macnamir Terms of Reference (Version 2), 2 April 2013, 2 (SCOI.75758).

⁹⁹ Exhibit 6, Tab 8, (n 98).

¹⁰⁰ Exhibit 6, Tab 9, (n 98), 1-2.

¹⁰¹ Exhibit 6, Tab 48, Advice of Detective Superintendent Michael Willing re: *Correspondence received from the DPC relating to 'Alleged Gay-Hate Killings in Sydney 1980's onwards'*, 10 January 2014, 3, (NPL.0113.0001.0156).

¹⁰² Exhibit 6, Tab 252F, Statement of Detective Chief Inspector Pamela Young re: Death of Scott Johnson, 24 July 2014 (SCOI.82484).

¹⁰³ Transcript, T3722-3725.

79. Ms Thompson's two documents listed 88 deaths between 1977 and 1999 which it was considered were, or might have been, gay hate murders.
80. The documents were provided by Ms Thompson to DCI Lehmann in about July-August 2013.¹⁰⁴
81. Of those 88 deaths, Ms Thompson had marked 30 as "unsolved". In due course, ACON, in the ACON Report, treated that figure as appropriate, while in the Parrabell Report, SF Parrabell considered that only 23 were "unsolved".

February-August 2013: press articles about 'gay hate' murders

82. Meanwhile, in early 2013, aspects of the work of Ms Thompson, Dr Mouzos and Professor Tomsen, along with versions or variations or earlier iterations of the "list of 88", had found their way into the media.
83. Between March and August 2013, a series of powerful articles appeared in the Fairfax press, *The Sydney Morning Herald* and *The Sun Herald*, concerning historical gay hate deaths in NSW. Prominent among those articles were the following pieces by Paul Sheehan and Rick Feneley:
 - a. 4 March 2013: Paul Sheehan, '*Gay Hate: The Shameful Crime Wave*'. Mr Sheehan's article described an "*unacknowledged crime wave*", in which "*thousands of men were stalked, savagely assaulted and, in at least 50 cases, murdered*". It referred to the work of Ms Thompson and Professor Tomsen, suggested that the police investigation of the death of Scott Johnson was inadequate, and praised the work of DS McCann in 1991 and DS Page in Operation Taradale.¹⁰⁵
 - b. 7 March 2013: Paul Sheehan, '*Digging Up Past to Reveal Scale of Gay-Hate Deaths*'. Mr Sheehan suggested in this article that the scale of LGBTIQ hate-related violence and deaths was much greater than previously believed, with as many as 70 gay men murdered between 1986 and 2002 in NSW; and that the NSWPF had had "*an overt and institutionalised distaste for gay men*" at that time.¹⁰⁶
 - c. 27-29 July 2013: Rick Feneley, '*Up to 80 Men Murdered, 30 Cases Unsolved*'; '*Murderous Rampage of Gay-Hate Gangs*'; '*Breaking the Silence Over Gay Killings*'; '*Easy Game, Not Only for Vicious Gang*'. Over the weekend of 27-28 July 2013, Mr Feneley published three feature articles on an "*epidemic*" of up to 80 murders of gay men, of which up to 30

¹⁰⁴ Exhibit 6, Tab 56, (n 53); Exhibit 6, Tab 56A, (n 53); Exhibit 6, Tab 56B, (n 53).

¹⁰⁵ Exhibit 6, Tab 208, Paul Sheehan, '*Gay Hate: The Shameful Crime Wave*', *The Sydney Morning Herald* (online), 4 March 2013 (SCOI.82031).

¹⁰⁶ Exhibit 6, Tab 209, Paul Sheehan, '*Digging Up Past to Reveal Scale of Gay-Hate Deaths*', *The Sydney Morning Herald* (online), 7 March 2013 (SCOI.82027).

could be unsolved.¹⁰⁷ A follow-up article on Monday 29 July explored the violence experienced by men at beats, including at Marks Park.¹⁰⁸

- d. 9 August 2013: Rick Feneley, ‘Public help sought with evidence of gay-hate killings’. In this article, Mr Feneley noted that NSW homicide detectives had appealed to the public for assistance in identifying persons of interest (**POIs**) in connection to the deaths of Mr Russell, Mr Warren and Mr Mattaini. He quoted then DSI Willing (Homicide Commander) as saying:

*I know I’ve been quiet until this point and there is a reason for that – and that’s because we’re quietly working away on it.*¹⁰⁹

The accuracy of that statement is discussed later in these submissions.

25 September 2013: Issue Papers of DCI John Lehmann and DCI Pamela Young

84. This 2013 media onslaught prompted an internal police response.
85. In late July 2013, DCI Lehmann contacted Ms Thompson and asked that she provide the UHT with any information she had relating to the alleged gay-hate murders referred to in Mr Feneley’s July articles.¹¹⁰ Ms Thompson provided DCI Lehmann with the two documents referred to above at [78]-[80].¹¹¹
86. DCI Lehmann and DCI Young then “conducted an assessment of the 30 ‘unsolved’ cases listed by Ms Thompson to determine the veracity of her information”.¹¹²
87. Their assessment was set out in an Issue Paper dated 25 September 2013 (**Lehmann/Young Issue Paper**). Although the Issue Paper is over the hand of DCI Lehmann alone, in fact it was prepared by DCI Lehmann jointly with DCI Young.¹¹³ Their conclusion, as stated in the Lehmann/Young Issue Paper, was (emphasis in original):

¹⁰⁷ Exhibit 6, Tab 210, Rick Feneley, ‘Up to 80 Men Murdered, 30 Cases Unsolved’ *The Sydney Morning Herald* (Sydney), 27 July 2013’ (SCOI.77369); Exhibit 6, Tab 211, Rick Feneley, ‘Murderous Rampage of Gay-Hate Gangs’, *The Sydney Morning Herald* (Sydney), 27-28 July 2013 (SCOI.77373); Exhibit 6, Tab 212, Rick Feneley, ‘Breaking the Silence Over Gay Killings’, *The Sun Herald* (Sydney), 28 July 2013 (SCOI.82025).

¹⁰⁸ Exhibit 6, Tab 213, Rick Feneley, ‘Easy Game, Not Only for Vicious Gang’, *The Sydney Morning Herald* (online), 29 July 2013 (SCOI.82029).

¹⁰⁹ Exhibit 6, Tab 214, Rick Feneley, ‘Public Help Sought with Evidence of Gay-Hate Killings’, *The Sydney Morning Herald* (Sydney), 9 August 2013 (SCOI.82026).

¹¹⁰ 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, 1 (SCOI.74906).

¹¹¹ Exhibit 6, Tab 56, (n 53); Exhibit 6, Tab 56A, (n 53); Exhibit 6, Tab 56B, (n 53).

¹¹² Exhibit 6, Tab 47, (n 110), 1.

¹¹³ Exhibit 6, Tab 48, (n 101), 1; Exhibit 6, Tab 252, Statement of former Deputy Commissioner Michael Willing, 30 January 2023, [23] (SCOI.82369.00001); Transcript, T1672-1675.

Only 8 cases from 30 were probable or possible 'gay hate' motivated murders and these are on file at the Unsolved Homicide Team with consideration for future investigation.

There is no doubt that anti gay hostility, particularly in the 1980's and 1990's resulted in a number of murders and serious crime of violence in NSW. In my opinion, the suggestion of 30 'gay hate' related unsolved murders is a gross exaggeration. Certainly there was no consultation with this command prior to the Sydney Morning / Sunday Herald articles which I suggest is poor, irresponsible journalism bordering on sensationalism.¹¹⁴

88. Among the 22 cases thus dismissed by DCI Lehmann and DCI Young as not being "probable", or even "possible", gay hate-motivated murders, was the death of Scott Johnson. Four of the 30 cases were not actually reviewed because no records of those four cases had been located.
89. In his own Issue Paper dated 10 January 2014, then DSI Willing adopted and endorsed the views expressed in the Lehmann/Young Issue Paper of 25 September 2013, including "that the suggestion of 30 unsolved 'gay hate' related murders was and is a gross exaggeration".¹¹⁵

August 2013: Operation Parrabell

90. The impact of the 2013 media articles had also prompted Sergeant Steer to initiate Operation Parrabell, in around August 2013.
91. Sergeant Steer noted in his 'Project Proposal Development Form' for Operation Parrabell that:

Over the last few years there has been significant media coverage of the Scott Johnson case as well as articles on the 'gay hate crime wave' of the 1980s and 1990s in Sydney that according to the media police have apparently ignored or did not investigate adequately.

The Sydney Morning Herald recently ran four articles over three days relating to these cases and lack of police action, with claims of police taking part in gay bashings in the past and police heavy handedness at this year's Mardi Gras parade prove nothing has changed. These articles have significant potential to damage the reputation of NSWPF and damage the relationships between the GLBTI community and police, especially after the negative media coverage after this year's Mardi Gras parade and the claims of police brutality.¹¹⁶

92. Sergeant Steer included those same two paragraphs in his proposed 'Bias Crimes Investigation Agreement' for Operation Parrabell.¹¹⁷
93. Operation Parrabell's Terms of Reference, as proposed by Sergeant Steer, were:

¹¹⁴ Exhibit 6, Tab 47, (n 110), 9.

¹¹⁵ Exhibit 6, Tab 48, (n 101), 1.

¹¹⁶ Exhibit 6, Tab 10, Operation Parrabell Project Proposal Form – *Review of potential gay hate crimes and deaths from 1970s to 1990s to determine if any bias crime indicators exist*, undated (SCOI.75072).

¹¹⁷ Exhibit 6, Tab 12, Operation Parrabell Bias Crime Investigation Agreement, undated (SCOI.75056).

*To review suicides and suspicious deaths that occurred in the Northern Beaches and Central Metropolitan Region areas between 1976-2000, to determine if an anti-gay bias motivation was a factor in any of the deaths.*¹¹⁸

94. Sergeant Steer envisaged that Operation Parrabell could be used as a “*positive media story*” and “*stop further negative media coverage on this issue.*”¹¹⁹
95. Sergeant Steer said that Operation Parrabell reviewed the “list of 88” provided by Ms Thompson (which he said “*identified 91 [not 88] homicides between 1980 and 1999*”). By additional inquiries, Senior Sergeant Kenworthy also identified an additional 51 homicides from the same period.¹²⁰
96. In October 2013, Sergeant Steer and Senior Sergeant Kenworthy prepared a ‘Bias Crime Assessment’ on the North Head beat, specifically by way of assistance to SF Macnamir.¹²¹ In May 2014, a comparative assessment was conducted in relation to the Marks Park beat.¹²²
97. However, Operation Parrabell consisted of only two people, namely Sergeant Steer himself and Senior Sergeant Kenworthy.¹²³ By October 2014, the scale of the proposed undertaking and the lack of sufficient resources had led to Operation Parrabell being placed on permanent hold.¹²⁴
98. It seems, on the evidence available to the Inquiry, that the actual work of Operation Parrabell was limited to the two Bias Crime Assessments in relation to North Head and Marks Park.
99. April 2015: Decision to conduct a third Scott Johnson inquest, and Lateline On 13 April 2015, on the application of the Johnson family, State Coroner Michael Barnes decided to conduct a third inquest into the death of Scott Johnson.¹²⁵
100. Later that same day, DCI Young gave an interview to the ABC programme *Lateline*, in which, among other things, she emphasised the suicide hypothesis in relation to the death of Scott Johnson, accused the Johnson family of using its wealth and influence to prioritise the case over other unsolved deaths, and accused the former Minister of Police Mike Gallacher of having “kowtowed” to Steve Johnson when setting up SF Macnamir in February 2013.¹²⁶

¹¹⁸ Exhibit 6, Tab 11, SCOI.75090, Operation Parrabell Operation Parrabell Terms of Reference, undated (SCOI.75090).

¹¹⁹ Exhibit 6, Tab 10, (n 116).

¹²⁰ Exhibit 6, Tab 6, (n 84), [36].

¹²¹ Exhibit 6, Tab 12, (n 117).

¹²² Exhibit 6, Tab 231, Bias Crime Assessment – Comparison Between Marks Park Beat & North Head Beat, 27 May 2014, (NPL.0116.0001.0001).

¹²³ Exhibit 6, Tab 6, (n 84) [39].

¹²⁴ Exhibit 6, Tab 51, Email from Jacqueline Braw to Geoffrey Steer re: Questions on Notice 6370 – Gay Hate Crimes, 29 October 2014 (SCOI.74080).

¹²⁵ Exhibit 6, Tab 331, Transcript of Coronial Proceedings re application for the granting of a fresh inquest into the death of Scott Johnson, 13 April 2015, 14 (SCOI.82870).

¹²⁶ Exhibit 6, Tab 318, Transcript of interview with Pamela Young and Emma Alberici on ‘A third inquest ordered into cliff fall death of young man’, *Lateline* (ABC News, 13 April 2015) (SCOI.82483).

101. Within days, State Coroner Barnes requested that DCI Young be replaced on the Scott Johnson investigation, and that was done.
102. This sequence of events resulted in another surge of publicity and media attention surrounding Scott Johnson's death and the conduct of the NSWPF officers investigating it.¹²⁷

August 2015-June 2018: SF Parrabell

103. By August 2015, then Superintendent Crandell, Commander of the Surry Hills LAC and the NSWPF Corporate Sponsor for SGDI, had formed the view that a further consideration of the 88 cases identified by Ms Thompson was warranted.¹²⁸ However, he considered that the Bias Crimes Unit "*was not resourced or equipped to conduct investigations of that type*".¹²⁹
104. On 30 August 2015, SF Parrabell was formally established under the direction of AC Crandell.¹³⁰ In the course of its existence, up to 13 officers, of varying rank and experience, participated in the Strike Force.¹³¹
105. SF Parrabell had a number of constituent documents, including an 'Investigation Plan',¹³² an 'Induction Package'¹³³ and 'Coordinating Instructions'.¹³⁴ The objectives and methodology of the Strike Force were described in somewhat different terms in each of those, as discussed in more detail later in these submissions.
106. In the 'Investigation Plan', the objective of SF Parrabell was said to be to:

*conduct a review of current NSWPF holdings of the cases, previously identified by the [sic] Ms Sue Thompson and Bias Crime Unit, to determine if there is any evidence of sexuality or gender bias involvement which may have contributed to the death. This review will relate to police investigations conducted between 1976 and 2000. The purpose of the review is to determine if any sexuality or gender bias was involved in any of the deaths.*¹³⁵

¹²⁷ See Exhibit 6, Tab 216, Emma Alberici, 'Former NSW Police Minister Mike Gallacher Dismisses Claim he 'Kowtowed' to American Millionaire Whose Brother Died in Sydney', *ABC* (online), 15 April 2015 (SCOI.82075); Exhibit 6, Tab 217, Nicolas Parkhill, 'It's Time to Re-investigate All the Potential Gay Hate Crimes From the 1980s and '90s', *The Sydney Morning Herald* (online), 16 April 2015 (SCOI.82078); Exhibit 6, Tab 218, Rick Feneley, 'Gay-Hate Murder Theory: Coroner Wants Inspector off Scott Johnson Investigation', *The Sydney Morning Herald* (online), 21 April 2015 (SCOI.82069); Exhibit 6, Tab 219, Emma Alberici, 'Scott Johnson Inquest: Chief Inspector Pamela Young Removed from Investigation After Candid Lateline Interview', *ABC* (online), 21 April 2015 (SCOI.82074); Exhibit 6, Tab 220, 'Senior Detective Removed From Suspected Gay Hate Killing Case of Scott Johnson', *Star Observer* (online), 22 April 2015 (SCOI.82073).

¹²⁸ Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [33] (SCOI.76961).

¹²⁹ *Ibid*, [30].

¹³⁰ Exhibit 1, Tab 2, (n 6), 19.

¹³¹ *Ibid*, [64]-[68].

¹³² Exhibit 6, Tab 14, Strike Force Parrabell Investigation Plan, 3 August 2015 (SCOI.74385).

¹³³ Exhibit 6, Tab 59, Strike Force Parrabell Induction Package, April 2016 (SCOI.77317).

¹³⁴ Exhibit 6, Tab 15, Strike Force Parrabell Coordinating Instructions, undated, 3 (SCOI.75071).

¹³⁵ Exhibit 6, Tab 14, (n 132).

107. The 'Coordinating Instructions' made it clear that the Strike Force was to review matters that had "*already been investigated by the NSWPF*".¹³⁶ The Strike Force was to be a purely paper review.
108. There was to be no re-investigation of any of the 88 cases. Rather, the objective of the Strike Force was different: it was simply to look at whatever material was available from previous investigations, and in that way to form an opinion, as at 2015-16, as to whether a "sexuality or gender bias", or "anti-gay bias", or "gay hate", had been involved in any of the deaths when they had occurred, many years earlier. (All three of those expressions are used in various parts of the Coordinating Instructions.)
109. The method adopted by SF Parrabell was for the officers to review the historical material available in each particular case, and then to fill out a 'Bias Crimes Indicators Review Form' (**BCIF**, also referred to as a **BCIRF**) in respect of that case, by:
- a. providing responses to various "prompts", in respect of ten "indicators", as set out in the Form; and
 - b. answering 'Yes' or 'No' to four possible options in respect of each "indicator", namely (at least in the final version of the BCIF – see Part E):
 - i. "Evidence of bias crime"; or
 - ii. "Suspected bias crime"; or
 - iii. "No evidence of bias crime"; or
 - iv. "Insufficient information to establish a bias crime".¹³⁷
110. The formulation in the preceding paragraph is derived from the Parrabell Report, as published in June 2018. However, the evidence indicates that:
- a. the several constituent documents of the Strike Force described its methodology in different ways; and
 - b. the form and language of the BCIF itself underwent several changes during the course of the existence of the Strike Force.
111. As part of SF Parrabell, a team of academics from Flinders University in South Australia (**the academic team**) reviewed the results of the SF Parrabell officers. The academics were provided

¹³⁶ Exhibit 6, Tab 15, (n 134), 3.

¹³⁷ Exhibit 1, Tab 2, (n 6), 121 ff.

with the filled-in BCIFs, but not with any of the historical files or material on which those completed forms were based.

112. The academic team adopted a completely different methodology from that of the NSWPF. They did not use or rely upon the ten Bias Crimes Indicators at all, or the BCIF used by the NSWPF. They expressly declined to endorse the BCIF. Instead, they devised a set of concepts and definitions of their own.
113. Nevertheless, notwithstanding their entirely different methodology, the academic team arrived at similar numerical conclusions to the SF Parrabell officers.

October 2015-January 2018: Strike Force Neiwand

114. In October 2015, while SF Macnamir was still under way and only about two months after SF Parrabell had commenced, another strike force was established, namely SF Neiwand.¹³⁸
115. SF Neiwand was established (within the UHT, as was SF Macnamir) to reinvestigate the deaths of Mr Warren, Mr Russell and Mr Mattaini, the three men whose deaths near Bondi in the 1980s had been the subject of Operation Taradale between 2000 and 2002, and of the subsequent Taradale Inquest between 2003 and 2005.
116. There was a notable overlap of personnel, as between SF Macnamir and SF Neiwand. Both of these Strike Forces, and SF Parrabell, reached their conclusion in late 2017 or early 2018.
117. In Coroner Milledge's widely publicised Taradale findings, her Honour had found that the deaths of Mr Warren and Mr Russell were homicides, probably gay hate-related, and had said that there was also a strong possibility that the death of Mr Mattaini was as well.¹³⁹
118. In December 2017 and January 2018, SF Neiwand produced 'Summaries of Investigation' in relation to each of the three Bondi cases.¹⁴⁰ In each case, SF Neiwand essentially concluded: first, that the 2005 findings by Coroner Milledge with respect to the three Bondi deaths should be disregarded; and second, that, while homicide could not be ruled out, other causes of death were as likely, or more likely, in all three of those cases.
119. These conclusions by SF Neiwand were never made public, or provided either to the Coroner or to the families of the deceased.

¹³⁸ Exhibit 6, Tab 16, Strike Force Neiwand Previous Terms of Reference, 26 October 2015 (SCOI.76962.00001).

¹³⁹ Exhibit 6, Tab 161, (n 75), 13-14.

¹⁴⁰ Exhibit 6, Tab 172, Summary of Investigation – Gilles Mattaini, 27 December 2017 (SCOI.74881); Exhibit 6, Tab 173, Summary of Investigation – John Russell, 8 January 2018 (SCOI.74882); Exhibit 6, Tab 174, Summary of Investigation – Ross Warren, 8 January 2018 (SCOI.74883).

2016: Deep Water

120. In October 2016, SBS broadcast a documentary and a dramatised series about gay hate murders in Sydney, both called *Deep Water* and drawing attention in particular to the three Bondi deaths the subject of Operation Taradale. Accompanying those broadcasts was an interactive SBS website entitled *The Gay Hate Decades: 30 unsolved deaths*.¹⁴¹

2017: Getting Away with Murder

121. On 30 January 2017, author and former NSWPF detective Duncan McNab published his book, *Getting Away with Murder*.¹⁴²
122. In his book, Mr McNab adopted the view that from the late 1970s to the early 1990s, around 80 men had died or disappeared in NSW due to an epidemic of gay hate crime, and that around 30 of those deaths remained unsolved. He also raised concerns regarding the quality and thoroughness of police investigations into crimes against gay men, and related instances where violent deaths against gay men were initially dismissed by NSWPF as misadventure or suicide.

November 2017: The findings in the third Scott Johnson inquest

123. On 30 November 2017, State Coroner Barnes delivered his findings in the third inquest into the death of Scott Johnson. His Honour concluded that Scott Johnson had fallen from the cliff top at Blue Fish Point, North Head “as a result of actual or threatened violence by unidentified persons who attacked him because they perceived him to be homosexual”.¹⁴³ He considered it was unlikely that either misadventure or suicide was the cause of death.¹⁴⁴
124. The State Coroner further found that the evidence established that the area where Scott Johnson’s clothes were found was a beat and that, at the relevant time, there were gangs of men who habitually attended various locations around Sydney for the purpose of identifying gay men and assaulting them.¹⁴⁵

28 May 2018: ACON Report

125. In May 2018, the ACON Report was published,¹⁴⁶ one month before the Parrabell Report was published.

¹⁴¹ See Exhibit 6, Tab 223, ‘The Gay-Hate Decades: 30 Unsolved Deaths’, SBS (online, 3 October 2016 (SCOI.82033); Exhibit 1, Tab 2, (n 3), 55, 64. See also Exhibit 6, Tab 205, Willem de Lint and Derek Dalton, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (2021) (29)4 *Critical Criminology* 723, 16 (SCOI.82022).

¹⁴² Exhibit 5, Duncan McNab, *Getting Away With Murder* (Vintage Books, 1st edition, 2017).

¹⁴³ Exhibit 6, Tab 232, (n 95).

¹⁴⁴ Exhibit 6, Tab 232, (n 95), [247], [258].

¹⁴⁵ Exhibit 6, Tab 232, (n 95), [241], [260]-[270].

¹⁴⁶ Exhibit 1, Tab 1, (n 10).

126. The background and methodology of the ACON Report were outlined in the ACON board minutes of 15 March 2017.¹⁴⁷
- a. ACON had been aware that SF Parrabell was set up in 2015, and that it was limited to a paper review of existing police files;
 - b. There had been a strong community response to NSWPF findings and public remarks around the Scott Johnson case, including DCI Young's comments on *Lateline* in April 2015 that there was no evidence of related homophobia;
 - c. ACON and other community organisations, including GLRL, and historian Mr Wotherspoon, therefore determined that ACON records, along with other data, should be examined and compiled into a standalone report;
 - d. Mr Wotherspoon drafted a template for each review;
 - e. information was sourced from court judgments, coronial documents, journal articles, media archives and library databases; and
 - f. ACON staff prepared finalised dossiers for 45 cases, and partial dossiers for the other 43 cases.
127. The ACON Report (unlike the Parrabell Report) treated all or most of the 88 cases as having had, or as being likely to have had, a "gay hate" feature.
128. Among the conclusions in the ACON Report were the following:
- a. Killings occurred in three main spaces: the majority in private homes, typically the home of the victim, followed by deaths at beats and, thirdly, deaths at other social locations such as near bars and clubs frequented by gay men, for example, in Oxford Street and Kings Cross.¹⁴⁸
 - b. "Beat" is a term used in Australia to describe a place where men go to have consensual, non-commercial, casual sex with other men.¹⁴⁹
 - c. Known beats included North Head, Marks Park near Bondi, Rushcutters Bay and Alexandria Park.¹⁵⁰

¹⁴⁷ Exhibit 6, Tab 145, ACON Board Meeting Minutes, 15 March 2017, 2-3 (SCOI.77799).

¹⁴⁸ Exhibit 1, Tab 1, (n 10), 16-19.

¹⁴⁹ *Ibid*, 18.

¹⁵⁰ *Ibid*, 18-19.

- d. Where a killing occurred in the victim's home the victim was more likely to be known to the assailant, there was likely to have been a single assailant, and the attacks were often frenzied and vicious.¹⁵¹
 - e. Where the killing took place at a beat, the assailant or assailants typically had no relationship to or knowledge of the victim.¹⁵²
 - f. Several cases involved men being found at the base of cliffs located at known beats such as North Head and Marks Park. These victims either slipped while trying to escape or were pushed.¹⁵³
 - g. There was evidence of serial killings by gangs of young men, as well as by lone assailants.¹⁵⁴
 - h. The 88 deaths investigated as part of the ACON Report were only a small sample of the violence experienced by the LGBTIQ community between 1970 and 2000.¹⁵⁵
 - i. Approximately 30 of the 88 cases remained unsolved.¹⁵⁶
129. Although the ACON Report itself did not contain the names of most of the victims, various media articles and books had by that time, May 2018, listed the names of some or all of the 30 unsolved cases.

June 2018: The Parrabell Report

130. In late June 2018, the Parrabell Report was published.¹⁵⁷ It was in two parts, the first by the SF Parrabell officers (**Police Report**) and the second by the academic team (**Flinders Report**).
131. The names of all 88 victims were listed in the Parrabell Report.¹⁵⁸
132. The Police Report contained some very candid statements, including the following:
- a. At page 14: *"The NSW Police Force is acutely aware of and acknowledges without qualification both its and society's acceptance of gay bashings and shocking violence directed at gay men, and the LGBTIQ community between 1976 and 2000. ... It is clear and beyond question that levels of violence inflicted upon gay men in particular were elevated, extreme and often brutal."*
 - b. At page 15: *"The Gay and Lesbian Rights Lobby and later, the AIDS Council of NSW (now ACON) kept records, usually comprising self-reported incidents of gay-hate violence, that*

¹⁵¹ Ibid, 17.

¹⁵² Ibid, 18.

¹⁵³ Ibid, 19.

¹⁵⁴ Ibid, 16, 20.

¹⁵⁵ Ibid, 23.

¹⁵⁶ Ibid, 6.

¹⁵⁷ Exhibit 1, Tab 2, (n 6).

¹⁵⁸ Ibid, 7-9.

on several occasions amounted to more than 20 entries per day. Unfortunately, fear associated with anti-gay attitudes of officers within the NSW Police Force at the time prevented these reports being formally recorded, which in turn meant that crimes were not investigated. This inherent lack of consequences or accountability meant that perpetrators were given a kind of ‘social licence’ to continue inflicting violence upon members of the gay community.”

- c. At page 16: *“The NSW Police Force must acknowledge and has, to some extent, acknowledged its part in marginalisation of the LGBTIQ community during the 70s, 80s and 90s especially.”*

133. Of the 86 cases reviewed, the SF Parrabell officers categorised them as follows: ¹⁵⁹

- a. Evidence of bias crime: eight cases
- b. Suspected bias crime: 19 cases
- c. No evidence of bias crime: 34 cases
- d. Insufficient information to establish a bias crime: 25 cases

134. The Parrabell Report treated only 23 of the 88 cases as “unsolved”. ¹⁶⁰

135. Of those 23 unsolved cases, the Strike Force categorised them as follows:

- a. Evidence of bias crime: zero cases
- b. Suspected bias crime: five cases
- c. No evidence of bias crime: four cases
- d. Insufficient information to establish a bias crime: 14 cases

136. Of the three Bondi cases, SF Parrabell assigned the cases of Mr Warren and Mr Russell to its second category, “Suspected bias crime”, rather than to the first category (“Evidence of bias crime”), notwithstanding the clear findings by Coroner Milledge in 2005. The case of Mr Mattaini was assigned to the fourth category, “Insufficient information”. ¹⁶¹

137. The academic team adopted an entirely different methodology. They advanced theoretical distinctions as between bias crimes which were “proactive” and those which were “reactive”; and between those which were “associative” and those which were “non-associative”. That led to a matrix of possibilities combined in various ways drawn from those distinctions. ¹⁶²

¹⁵⁹ Ibid, 24.

¹⁶⁰ Ibid, 23.

¹⁶¹ Exhibit 6, Tab 49, (n 48), 9, 17-18.

¹⁶² Exhibit 1, Tab 2, (n 6), 88-90, 93-96.

138. They then categorised the cases under four headings of their own devising, namely:¹⁶³
- a. Anti-gay bias: 17 cases (two unsolved, 15 solved)
 - b. Anti-paedophile bias: 12 cases (zero unsolved, 12 solved)
 - c. Insufficient Information: 33 cases (19 unsolved, 14 solved)
 - d. No Evidence of Bias Crime: 23 cases (two unsolved, 21 solved)
139. Like the SF Parrabell officers, the academic team treated a total of 23 cases as “unsolved”. They categorised those 23 as follows:
- a. Anti-gay bias: two cases
 - b. Anti-paedophile bias: zero cases
 - c. Insufficient Information: 19 cases
 - d. No Evidence of Bias Crime: two cases
140. Their four possibilities, as is apparent, did not include any equivalent of the SF Parrabell officers’ third option – “Suspected bias crime” (emphasis added).
141. In the Police Report, it is asserted that “*each team understood and endorsed the systemic approach of the other*”. As will be seen, that assertion was not correct.

September 2018-May 2021: NSW Legislative Council Standing Committee on Social Issues

142. In September 2018, following the publication of the ACON Report in May and the Parrabell Report in June, the Parliamentary Committee was established to inquire into and report on the response to “Gay and Transgender hate crimes between 1970 and 2010 and current developments in policy and practice in relation to such crimes”.¹⁶⁴
143. Over the course of the next two and a half years, the Parliamentary Committee looked closely at both the ACON Report and the Parrabell Report, and also received written submissions and oral evidence from those who had been responsible for, and involved in, the work which had led to their compilation and to their conclusions. The Parliamentary Committee also received submissions and evidence from numerous other organisations and individuals.¹⁶⁵

¹⁶³ Ibid, 92.

¹⁶⁴ Exhibit 1, Tab 3, (n 1), v.

¹⁶⁵ Exhibit 1, Tab 3, (n 1), xi; Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, Gay and Transgender hate crimes between 1970 and 2010 (Final Report, Report 58, May 2021), xi (SCOI.02291).

144. In February 2019, the Parliamentary Committee published an Interim Report, and in May 2021 it published its Final Report.¹⁶⁶

145. In its Final Report, one of the express public findings made by the Parliamentary Committee was:

*That historically the NSW Police Force failed in its responsibilities to properly investigate cases of historical gay and transgender hate crime and this has undermined the confidence of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) communities in the NSW Police Force and the criminal justice system more broadly.*¹⁶⁷

146. One of the recommendations of the Final Report was:

*That the NSW Government establish a judicial inquiry or other form of expert review to inquire into unsolved cases of suspected gay and transgender hate crime deaths.*¹⁶⁸

April 2022: Establishment of the Inquiry

147. On 13 April 2022, this Inquiry was established, by Letters Patent issued pursuant to the *Special Commissions of Inquiry Act 1983* (NSW). The Letters Patent contain within them the Inquiry's Terms of Reference.

148. The Terms of Reference authorise the Commissioner to "inquire into, and report and make recommendations" on:

- A. The manner and cause of death in all cases that remain unsolved from the 88 deaths or suspected deaths of men potentially motivated by gay hate bias that were considered by Strike Force Parrabell.
- B. The manner and cause of death in all unsolved suspected hate crime deaths in New South Wales that occurred between 1970 and 2010 where:
 - i. the victim was a member of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community; and
 - ii. the death was the subject of a previous investigation by the NSW Police Force.

149. The Inquiry has referred to cases falling within A and B above as **Category A cases** and **Category B cases** respectively.

150. In conducting the Inquiry, the Commissioner is also directed by the Terms of Reference to have regard to:

- C. The findings of previous inquiries and reports, including:
 - i. the interim and final report and findings of the inquiries conducted by the Standing Committee on Social Issues into Gay and Transgender hate crimes between 1970 and 2010;

¹⁶⁶ Exhibit 1, Tab 3, (n 1), ix-x; Exhibit 1, Tab 4, (n 165), ix-x.

¹⁶⁷ Exhibit 1, Tab 4, (n 165), ix.

¹⁶⁸ Ibid, x.

- ii. the report and findings of Strike Force Parrabell; and
- iii. the AIDS Council of New South Wales report, *In Pursuit of Truth and Justice* (2018).

151. The Commissioner is further directed, in conducting the Inquiry:

- D. to establish such arrangements as the Commissioner considers appropriate for evidence and information, including the testimony of witnesses in current and previous inquiries, to be shared with the inquiry in a manner that avoids unnecessary duplication and minimises trauma to witnesses;
- E. to operate in a way that avoids prejudice to criminal investigations, any current or future criminal prosecutions, and any other contemporaneous inquiries; and
- F. that the Commissioner is not required to inquire, or to continue to inquire, into a particular matter to the extent that the Commissioner is satisfied that the matter has been or will be sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

Expert evidence

152. The Inquiry has been assisted in Public Hearing 2 by the evidence of three expert witnesses who were retained to assist the Inquiry, namely:

- a. Professor Asquith;
- b. Associate Professor Lovegrove; and
- c. Ms Coakley.

153. Broadly stated, Professor Asquith's expertise is in the area of policing and hate crimes, in particular LGBTIQ hate crimes. Professor Asquith provided an expert report dated 25 January 2023,¹⁶⁹ and also gave oral evidence on 3 March 2023.

154. Associate Professor Lovegrove's expertise is in criminology and in the design of behavioural and social science research. Associate Professor Lovegrove provided an expert report dated 27 January 2023,¹⁷⁰ and also gave oral evidence to the Inquiry on 6 March 2023.

155. Ms Coakley is an experienced lawyer in Massachusetts, US. She has served as an Assistant District Attorney, District Attorney and Attorney General of that state. Her expertise is in the criminal law of Massachusetts, including the policing and prosecution of hate crimes in that context.

156. The BCIF, created and used by the SF Parrabell officers, included ten "bias crimes indicators", nine of which had originated in Massachusetts.

¹⁶⁹ Exhibit 6, Tab 255, Expert Report of Professor Nicole Asquith, 25 January 2023 (SCOI.82368.00001).

¹⁷⁰ Exhibit 6, Tab 256, Expert Report of Associate Professor Austin Lovegrove, 27 January 2023 (SCOI.82366.00001).

157. Ms Coakley provided an expert report dated 20 December 2022,¹⁷¹ and also gave oral evidence to the Inquiry on 3 March 2023.

1970 to today: The changing nature of the relationship between NSWPF and the LGBTIQ community

158. The Inquiry has received a substantial body of evidence bearing upon the changing nature of the relationship between the NSWPF and the LGBTIQ community over the period from 1970 to 2010 and beyond. That evidence provides valuable context when regard is had to why and how Strike Forces Macnamir, Parrabell and Neiwand were established and conducted.

159. Some of that evidence is outlined below.

1970s-1980s: a relationship of “distrust” and “fear”

160. The LGBTIQ community’s relationship with the NSWPF in the 1970s and 1980s was one characterised by a deep and established “distrust”, “suspicion” and “fear”.¹⁷²

161. Ulo Klemmer, a Beat Outreach Officer between 1989 and 1994 and volunteer in various projects relating to the LGBTIQ community, told the Inquiry that during this period, there were three main concerns for gay men, namely: HIV/AIDS, bashings, and a fear of police harassment and interactions with them.¹⁷³

162. Some of the causes of this relationship of this mistrust and fear, on the evidence available to the Inquiry, included:

- a. The attitude indicated by the assertion by then Commissioner of Police Colin Delaney, in 1958, that homosexuality was the greatest menace facing Australia.¹⁷⁴
- b. NSWPF presence and behaviour at beats, including both conducting raids and harassing men at or near beats,¹⁷⁵ and acting as “agents provocateurs” and deliberately entrapping gay men.¹⁷⁶ There were reports of some police officers being “poofteer-bashers” themselves.¹⁷⁷ The police approach was also said to disrupt the work of beat outreach

¹⁷¹ Exhibit 6, Tab 257, Expert Report of Martha Coakley, 20 December 2022 (SCOI.82367.00001).

¹⁷² In their evidence before the Inquiry, witnesses spoke of “a deep historical distrust of the police” (Exhibit 2, Tab 4, (n 18), [22]); “a very established distrust ... of the police” (Transcript, T233.29-30); “a long-standing suspicion of law enforcement agencies” (Exhibit 2, Tab 7, (n 18), [32]); police as “our enemy” (Transcript, T305.13-14); and “a lot of mistrust of the police by members of the community” (Exhibit 2, Tab 8, (n 52), [44]).

¹⁷³ Transcript, T392.11-24; Exhibit 2, Tab 8, (n 52), [30].

¹⁷⁴ Transcript, T198.10-13.

¹⁷⁵ In this regard, see the evidence of Mr Charles (Exhibit 2, Tab 5, (n 10), [21]-[24]; Transcript, T283.33-46), Mr Klemmer (Transcript, T394.8-18) and Mr Mackie (Transcript, T270.16-37, T271.25-43).

¹⁷⁶ See the evidence of Mr Wotherspoon (Exhibit 2, Tab 1, (n 2), [57]; Transcript, T196.3-21); Mr Charles (Exhibit 2, Tab 5, (n 10), [21]-[24]); Mr Peterkin (Exhibit 2, Tab 3, (n 18), [36]-[42]; Transcript, T313.24-314.17).

¹⁷⁷ Exhibit 2, Tab 1, (n 2), [56], [58]-[59]. See also Exhibit 2, Tab 4, (n 18), [22]; Transcript, T233.31-40.

workers, and affected the willingness of men at beats to engage with those workers due to fears that they were undercover police.¹⁷⁸

- c. Clashes between NSWPF and demonstrators, including at the first Mardi Gras parade on 27 June 1978 which resulted in 53 arrests and later criticism of police “heavy-handedness”.¹⁷⁹
 - d. Concerns about police failing to adequately handle and investigate gay hate crimes,¹⁸⁰ including the inadequacy of policing in and around Oxford Street,¹⁸¹ and the failure to properly investigate possible homicides such as Mr Warren and Mr Russell.¹⁸²
163. The Parrabell Report very frankly accepted that the NSWPF “*must acknowledge and has, to some extent, acknowledged its part in marginalisation of the LGBTIQ community during the 1970s, 80s and 90s especially.*”¹⁸³
164. In his evidence to the Inquiry, AC Crandell confirmed that he stood by this statement.¹⁸⁴
165. One consequence of the distrust of police was an underreporting of violence against the LGBTIQ community to the NSWPF.¹⁸⁵ Several witnesses recounted instances where they chose not to report violence or harassment to police, or did report it but received an unsatisfactory response.¹⁸⁶
166. For example, Mr Wotherspoon gave evidence that, “*It was often said in a bar, ‘If you ever get bashed, don’t go to the police. They won’t do anything for you.’*”¹⁸⁷ He also noted that “*our general experience was that the police weren’t particularly interested in gay bashings*”.¹⁸⁸ Ms Ruthchild similarly gave evidence of police not necessarily coming to the aid of lesbians in a timely way. She thought that perhaps these incidents were seen as “*low priority*”.¹⁸⁹
167. This reality was also frankly recognised by police. For example, in his August 1991 summary referred to above, DS McCann noted that “*the volume of crime committed on the homosexual*

¹⁷⁸ Transcript, T271.11-15, T400.3-6, 10-12.

¹⁷⁹ Exhibit 2, Tab 1, (n 2), [116]-[117]; Exhibit 1, Tab 1, (n 10), 12. See also descriptions of other demonstrations in the 1970s by Mr Wotherspoon (Exhibit 2, Tab 1, (n 2), [115]) and Mr Charles (Exhibit 2, Tab 5, (n 10), [44]-[52]; Transcript, T303.32-36).

¹⁸⁰ Exhibit 2, Tab 1, (n 2), [130]-[131]; Exhibit 2, Tab 7, (n 18), [56].

¹⁸¹ Exhibit 2, Tab 6, (n 37), [34].

¹⁸² Transcript, T234.25-28.

¹⁸³ Exhibit 1, Tab 2, (n 6), 16.

¹⁸⁴ Transcript, T599.46.

¹⁸⁵ We also recognise that the criminalisation of homosexuality up until 1984 was another key factor in the low reports of crimes against members of the LGBTIQ community.

¹⁸⁶ See, e.g., Exhibit 2, Tab 1, (n 2), [133]-[135]; Exhibit 2, Tab 4, (n 18), [21]; Transcript, T193.36-46, T289.38-45, T290.2-38.

¹⁸⁷ Transcript, T194.39-41.

¹⁸⁸ Transcript, T195.1-5.

¹⁸⁹ Transcript, T441.36-39.

community as indicated is enormous and largely unreported", which impacted the ability of investigators to pursue and solve such crimes.¹⁹⁰

168. Statistics from the AVP and the *Streetwatch Report* series indicated that people were not contacting the NSWPF because they believed the police would not be able to do anything or would not take the issue seriously.¹⁹¹ According to Mr Grant, of those who did report to the police, around half complained of poor service.¹⁹²
169. In the Taradale Inquest in 2003-2004, the Commissioner of Police was represented by counsel and solicitors throughout. The closing submissions by counsel for the Commissioner of Police, on 23 December 2004, included the following statements:
- a. *"The climate which then existed [referring to the 1980s] ... was a climate I think that no-one in society could really be proud of, and that is the culture of gay hate, a gay hate crime. The Police Service, whatever defects it may have suffered from during that period, was no more than a reflection of it was exhibiting the broader values and principles of the then society."*¹⁹³
 - b. And a little later: *"Prior to 1990 ... there was much hostility between the gay and lesbian community and the police, particularly taking into account that homosexuality was only decriminalised in 1984. This led to a situation for a number of years when police were viewed as the enemy of gay people."*¹⁹⁴
170. AC Crandell accepted, without equivocation, that in the 1970s-1990s, NSWPF culture itself was an inhibitor to the LGBTIQ community reporting incidents of violence to police.¹⁹⁵ He was satisfied from his research that there was a significantly higher number of unreported crimes in the LGBTIQ community. When he asked ACON for an explanation as to the reason for the reluctance to report, he was told that it was because of fear of the police.¹⁹⁶

¹⁹⁰ Exhibit 6, Tab 233A, (n 56), [39]-[40].

¹⁹¹ Exhibit 2, Tab 6, (n 37), [27]; Exhibit 2, Tab 7, (n 18), [32]; Transcript, T349.8-19.

¹⁹² Exhibit 2, Tab 6, (n 37), [27].

¹⁹³ Exhibit 6, Tab 323, Transcript of Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and the death of John Russell, 23 December 2004, T16 (SCOI.02751.00159).

¹⁹⁴ *Ibid*, T17.

¹⁹⁵ Transcript, T597.33, 37.

¹⁹⁶ Transcript, T1016.7-29.

Early 1990s: a positive shift

171. The beginnings of a positive shift in the relationship between NSWPF and the LGBTIQ community were emerging in the early 1990s.¹⁹⁷ Some of the reasons for this shift, on the evidence, included:

- a. The decriminalisation of homosexual conduct between consenting adult males in 1984.¹⁹⁸
- b. The high-profile murders in 1990 of Mr Johnson and Mr Rattanajurathaporn,¹⁹⁹ and the NSWPF investigations which led to convictions in both cases.²⁰⁰
- c. Several new policing initiatives to combat violence against the LGBTIQ community, many of which were the implementation of recommendations from the *Streetwatch Report* series and the Beats Report.²⁰¹ These initiatives included:²⁰²
 - i. A special taskforce to address violence occurring in Oxford Street.
 - ii. More ‘on the ground’ community policing measures.
 - iii. The instituting of foot patrols on Oxford Street and other locations during evenings and night-time hours.
 - iv. A sticker campaign at beats to encourage men to report crime, especially homophobic violence.
 - v. NSWPF guidelines for policing beats to ensure less adversarial contact, implemented in 1995-1996.
 - vi. The stationing of a large police operations van at Taylor Square in December 1990 to provide assistance to members of the LGBTIQ community and to speed up police response times to incidents.²⁰³
- d. A “cultural change” that started to occur within NSWPF in the 1990s.²⁰⁴ In particular, Mr Mackie and Mr Charles noted that engagement with, and support from, the upper

¹⁹⁷ Transcript, T233.42-45.

¹⁹⁸ See for example the evidence of Mr Peterkin, T320.1-3.

¹⁹⁹ Transcript, T234.30-34, T235.3.

²⁰⁰ See Exhibit 6, Tab 233A, (n 56), [1]-[4].

²⁰¹ Exhibit 2, Tab 7, (n 18), [37].

²⁰² Exhibit 2, Tab 1, (n 2), [129]; Exhibit 2, Tab 7, (n 18), [37]; T272.8-18; Transcript, T272.20-23.

²⁰³ Exhibit 2, Tab 7, (n 18), [37].

²⁰⁴ Exhibit 2, Tab 6, (n 37), [27].

echelons of police led to improvements in the relationship between sections of the LGBTIQ community.²⁰⁵

172. Perhaps the most important reasons for the improvement in the relationship were the introduction of a Police Gay Liaison Officer in 1988, the subsequent appointment of Ms Thompson as Gay and Lesbian Client Consultant in 1990, and the eventual development of the GLLO program.²⁰⁶
173. Many witnesses praised the work of Mr Miller (the first Gay Liaison Officer), of Ms Thompson (who among other achievements developed and coordinated the GLLO network), and of the officers in the GLLO program.²⁰⁷ They felt that these initiatives helped to foster and improve police relationships with the community,²⁰⁸ with Ms Thompson, in particular, being seen to take a proactive role in monitoring incidents, resolving complaints, and promoting improved policing practices.²⁰⁹
174. Ms Kenworthy, a former Senior Sergeant in the NSWPF for 21 years, gave evidence regarding the GLLO program, which was the first of its kind in Australia. In its early stages, the majority of GLLOs were based in LACs in metropolitan Sydney, but over time they emerged in every LAC.²¹⁰
175. Ms Kenworthy served as a GLLO from 1999 until August 2019, initially at the Leichhardt LAC and thereafter at the NSWPF headquarters.²¹¹ In that role, she acted as a support person for LGBTIQ police officers and for victims attending the police station to report homophobic or transphobic incidents; attended domestic violence incidents where one or more parties identified as LGBTIQ; and ran training sessions on LGBTIQ-related subjects for new NSWPF recruits, schools and youth and community centres. She also attended LGBTIQ community events such as Fair Day and the Mardi Gras parade on behalf of the NSWPF.²¹²
176. Ms Kenworthy regarded the GLLO program as having made a valuable contribution in bridging the divide between police and the LGBTIQ community.²¹³ She considered that the presence of GLLOs made it easier for members of the LGBTIQ community to come forward to police and report hate crimes and domestic violence, and helped to develop a safer and more accommodating atmosphere within areas of the NSWPF. However, the greatest obstacle faced

²⁰⁵ Transcript, T271.3-6; T272.3-6; T306.22-28.

²⁰⁶ Exhibit 2, Tab 1, (n 2), [129].

²⁰⁷ Exhibit 2, Tab 6, (n 37), [39]; Transcript, T401.12-16; Exhibit 2, Tab 8, (n 52), [45].

²⁰⁸ Transcript, T320.3-5, T329.18-28, T446.34-42, T447.3.

²⁰⁹ Exhibit 2, Tab 7, (n 18), [37]; Transcript, T401.36-42; Exhibit 2, Tab 9, (n 18), [26].

²¹⁰ Exhibit 6, Tab 254, Statement of former Detective Sergeant Jo Kenworthy, 16 February 2023, [7] (SCOI.82497).

²¹¹ *Ibid*, [3].

²¹² *Ibid*, [10].

²¹³ *Ibid*, [12].

by the program was resourcing, in circumstances where GLOs performed their duties part-time and on a volunteer basis. In Ms Kenworthy's experience, commanders were generally supportive of the program but concerned about losing officers to GLO training or duties.²¹⁴

177. The NSWPF has also established the concept of a Corporate Sponsorship. In August 2013, AC Crandell was appointed as the NSWPF Corporate Sponsor for SGDI. The purpose of this role, as described by AC Crandell, is to "promote positive engagement by and on behalf of NSWPF with sexuality, gender diversity & intersex issues and promote and develop a fair, reasonable and positive relationship between the NSWPF and the LGBTIQ community".²¹⁵

178. AC Crandell explained that the Corporate Sponsor for SGDI is:

*responsible for maintaining community relations with different communities in the LGBTIQ space; also for educating police officers throughout the organisation about bias, gender, sexuality issues and the importance of maintaining impartiality, in a nutshell. It's very challenging.*²¹⁶

179. According to AC Crandell, this sponsorship area has a key community engagement aspect or "community arm side", where NSWPF have several significant events each year to show support to the community.²¹⁷

2013: Complications re-emerge

180. In the aftermath of the 2013 Mardi Gras in Sydney, allegations of police brutality and poor treatment were made against the NSWPF by members of the LGBTIQ community.²¹⁸ On 8 March 2013, a protest march was held by "LGBTIQ community members and groups ... against police brutality and ill treatment of LGBTIQ members." AC Crandell stated that it was "clear and apparent that there was significant dissatisfaction amongst the LGTBIQ community" with the NSWPF.²¹⁹

181. On 19 March 2013, in the wake of these events, AC Crandell attended a "community meeting" between the NSWPF and "approximately 450 prominent LGBTIQ community members and groups",²²⁰ and he was subsequently involved in developing and implementing policing strategies to deal with the concerns expressed.²²¹

²¹⁴ Ibid, [15].

²¹⁵ Exhibit 6, Tab 4, (n 128), [23], [25].

²¹⁶ Transcript, T612.34-613.4.

²¹⁷ Ibid, T614.32-37.

²¹⁸ Exhibit 6, Tab 4, (n 128), [16].

²¹⁹ Ibid, [17].

²²⁰ Ibid, [18].

²²¹ Ibid, [19]-[21].

182. However, as outlined above, in February 2013 came the *Australian Story* programme about the death of Scott Johnson, and then March-August 2013 saw the succession of prominent articles focusing on the many deaths said to have a gay-hate motivation and an allegedly inadequate police response.
183. A primary reason for the establishment of Operation Parrabell by Sergeant Steer in August 2013, as also noted above, was that those articles had significant potential to damage the reputation of NSWPF and damage the relationships between the LGBTIQ community and police.²²²
184. As noted above:
- a. in September 2013, DCI Lehmann and DCI Young wrote their Issue Paper in which they asserted *inter alia* that claims of 30 unsolved gay hate murders were “a gross exaggeration”, and that the death of Scott Johnson was not a “probable” or even “possible” gay hate murder;²²³
 - b. in April 2014, Mr Willing, then Homicide Commander, endorsed those views;²²⁴
 - c. in July 2014, DCI Young finalised her 445-page statement for the third Scott Johnson inquest,²²⁵ in which she made clear her view (as leader of SF Macnamir) that in the case of Scott Johnson, suicide was distinctly likely and homicide was distinctly unlikely,²²⁶ and
 - d. in about August 2015, SF Parrabell was instituted, and in October 2015, SF Neiwand was instituted.
185. The outcomes of both those Strike Forces, Parrabell and Neiwand, by 2017-2018, were essentially that many of the deaths which had been publicly described as actual or possible gay hate homicides (including the three the subject of the Taradale Inquest findings) should not be so described or understood.
186. The results of SF Parrabell (in numerical and statistical terms, although not by reference to the names of individual cases) were made public in the Parrabell Report, and provoked a dismayed reaction in the LGBTIQ community.²²⁷ The results of SF Neiwand were never made public.

²²² Exhibit 6, Tab 10, (n 116), 1-2.

²²³ Exhibit 6, Tab 47, (n 110), 8.

²²⁴ Exhibit 6, Tab 48, (n 101), 3.

²²⁵ Exhibit 6, Tab 252F, (n 102).

²²⁶ Transcript, T3722-3725.

²²⁷ See, e.g., Exhibit 1, Tab 3, (n 1), [3.101]-[3108]. See also the evidence of Mr Willing at Transcript, T1745.24-43.

The relationship today

187. AC Crandell gave evidence of his belief that relationships between the LGBTIQ community and police have improved since the Parrabell Report was published.²²⁸ He felt that there is “*still a strong community spirit*” but recognised that there is still a long way to go. He said:

*To generate trust between an organisation that has historically been mistrusted is extremely difficult and it takes time.*²²⁹

and

*So to bring that community with a more trusting relationship to the police is never, ever going to happen overnight. It will be a longer-term, lengthy strategic process of trust building.*²³⁰

188. AC Crandell also believed that there had been some improvement in the reporting of crimes against LGBTIQ people since the Parrabell Report, although could not say if this was as a result of the publication of the Parrabell Report or more a result of the evolution of time.²³¹
189. Non-police witnesses also spoke of an improved relationship between NSWPF and the LGBTIQ community today.²³² Ms Ruthchild described the situation today as:

*almost unrecognisable of where we were then. I mean, it's certainly not perfect all the time, but it's just been a quantum leap in the change to the way gay and lesbian people, lesbians especially, perhaps, are now viewed by society in general, including the police, as part – as members of the community.*²³³

190. Community organisations also see the importance of engaging with NSWPF to build a strong relationship. In her evidence, Dr Eloise Brook from the Gender Centre spoke of the trans and gender diverse community having a generally “*fraught relationship*” with NSWPF, but of the importance of the Gender Centre engaging the NSWPF to be able to have a good rapport with the community.²³⁴ Similarly, in the ACON Report, ACON stated that one of the purposes of their review was relationship building with Police, namely to facilitate more collaboration between the LGBTIQ community and the NSWPF.²³⁵
191. Nevertheless, the historical scars remain. As Mr Klemmer noted:

I still have friends who are reluctant to engage with police, even in unofficial contexts, due to the negative emotions associated with police officers. So many gay men have had

²²⁸ Transcript, T1068.38.

²²⁹ Transcript, T1068.41-46.

²³⁰ Transcript, T1069.5-8.

²³¹ Transcript, T1069.24-28.

²³² Transcript, T320.37-41.

²³³ Transcript, T444.24-31.

²³⁴ Transcript, T405.47-406.4

²³⁵ Exhibit 1, Tab 1, (n 10), 10.

*bad experiences with police at some point in their lives, so there is still a lot of negative feelings.*²³⁶

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

²³⁶ Exhibit 2, Tab 8, (n 52), [44].

PART B: HATE CRIME / BIAS CRIME: RESPONSES BY THE NSWPF

1995-2000: Hate Crimes Data Collection Project

193. In October 1995, the NSW Minister for Police, Paul Whelan, announced the establishment of the Hate Crimes Data Collection Project, which was to research methods of collecting data in relation to hate crimes. A committee, including representatives of the NSWPF, the Ethnic Affairs Commission, the Privacy Commission, and the Anti-Discrimination Board, was formed to consider strategies and to formulate an action plan.²³⁷
194. In 1996, alterations were made to the NSWPF Computerised Operational Policing System (**COPS**), to permit (although not require the recording of “prejudice-related” crimes).²³⁸
195. The Hate Crimes Data Collection Project, which by this stage was known as the “Prejudice Related Crime Data Collection Project” (the **Project**), aimed to introduce a system under which officers would be able to record specific data on the COPS system in relation to prejudice-related incidents.²³⁹
196. In 1998, the changes to the COPS system were modified and formalised following a pilot conducted at Newtown LAC.²⁴⁰ In July of the same year, an evaluation report was prepared by Newtown LAC and submitted to the Commissioner of Police, the Minister for Police, and the Premier of NSW. That report recommended that the changes to COPS be implemented state-wide via a public launch of the project.²⁴¹
197. In October 1999, the Commissioner of Police, Peter Ryan, and the Chair of the Ethnic Affairs Commission/Community Relations Commission, Stepan Kerkyasharian, jointly launched the new computer “screens” that had been designed to collect data on prejudice-related crimes. At this time, the Commissioner of Police made a commitment to report on prejudice-related data every six months.²⁴²
198. The new screens permitted officers to select “Possible Prejudice Related” as an “Associated Factor” when entering the details of a specific incident into the COPS system. If an officer did

²³⁷ Exhibit 6, Tab 229, Attachment B to Issue Paper by Chitrita Mukerjee re: *Six monthly report on the prejudice related crime data collection system on COPS*, 22 December 2000, 4 (SCOI.76960.00002).

²³⁸ *Ibid.*

²³⁹ Exhibit 6, Tab 2, Statement of Shobha Sharma, 28 October 2022, [18]-[19] (SCOI. 76960).

²⁴⁰ *Ibid.*, [17]; Exhibit 6, Tab 229, (n 237), 1, 4.

²⁴¹ Exhibit 6, Tab 229, (n 237), 4.

²⁴² Exhibit 6, Tab 2, (n 239), [28].

so, a second screen would appear which asked: *“Do you consider the Offender’s actions were prejudice related?”*.²⁴³

199. Under the first question on the second screen, there was one space for the victim’s response and a second space for the officer’s response.²⁴⁴ Presumably, the officer completing this screen would have been able to enter either “Y” or “N” in each of these spaces. It is not clear from the printed version of the screens produced to the Inquiry whether merely “Y” or “N” was able to be typed into these spaces, or whether it was possible for an officer to enter a more comprehensive response.
 200. The second question on the second screen asked, *“What type of prejudice was involved?”*. The officer was able to select from the following five categories: “Racial/Ethnicity”, “Religious”, “Sexual Preference”, “Political”, “Other”. On the screen, there is additional space for “Victim Comments” and “Officer Comments”.²⁴⁵
 201. On 22 December 2000, a briefing report on the Project indicated that the first report on the Project, originally due in July 2000, had been delayed.²⁴⁶ It also indicated that in 1995, NSWPF had contracted the services of an expert to develop a training package, but that by 2000, the draft training package had not been finalised and the allocated funding had been spent.²⁴⁷
- 2001: Proposal for the establishment of a Hate Crimes Unit
202. In October 2001, Dr Eric Heller-Wagner, who lectured at the NSW Police Academy, prepared a memorandum articulating a rationale for the establishment of a Hate Crimes Unit within NSWPF, which he sent to the Organisational Policy and Development Command (**OP&D**) for comment.²⁴⁸
 203. The proposal was not adopted.²⁴⁹
 204. As Acting Team Leader of the Cultural Diversity Team within OP&D at that time, Ms Sharma authored an issue paper later in 2001 in response to Dr Heller-Wagner’s proposal.²⁵⁰ Ms Sharma’s view was that there was insufficient evidence to determine if a dedicated hate

²⁴³ Exhibit 6, Tab 229, Attachment A (n 237), 3.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ Exhibit 6, Tab 229, (n 237).

²⁴⁷ Exhibit 6, Tab 229, Attachment A (n 237).

²⁴⁸ Exhibit 6, Tab 2, (n 239) [30].

²⁴⁹ Transcript, T1178.16.

²⁵⁰ Exhibit 6, Tab 187, Issue Report by Shobha Sharma re: ‘Establishment of a Hate Crime unit within the NSWPS’, October 2001 (SCOI.76960.00001).

crimes unit would be beneficial to the NSWPF or to the community.²⁵¹ In that regard, she noted that:

- a. the data retrieval from COPS for prejudice-related “Associated Factors” under the new system was “still very clunky”;
- b. police were still incorrectly flagging bias crime factors;
- c. the training on “Dealing with Racist Violence” had not been finalised; and
- d. a rhythm of six-monthly reports on the prejudice-related crime data had not been established.²⁵²

205. In short, Ms Sharma considered that NSWPF needed to prioritise improvement in data recording and analysis, in conjunction with a comprehensive training program for NSWPF officers, and that a dedicated hate crimes unit was an option more appropriately considered in the future.²⁵³

2006: Another proposal for a Hate Crimes capability

206. In 2006, in the aftermath of the Cronulla riots in Sydney, Sergeant Steer submitted a report through the chain of command in which he expressed his concern that NSWPF had limited capability to identify and effectively respond to hate crimes, and proposed the creation of such a capability, including the creation of the role of Hate Crimes Coordinator.²⁵⁴

207. Sergeant Steer recommended a two-tier model (based on the UK model which he regarded as international best practice). The model involved having bias crime / hate crime expertise within an organisation, which could then be used to provide oversight in relation to hate crimes reported by officers with less knowledge and experience.²⁵⁵

208. Sergeant Steer’s experience in bias crime includes the following:

- a. In 2001, he completed the Hate & Bias Crimes Training Program run by the Federal Law Enforcement Training Centre (USA) in conjunction with Auburn University Montgomery (USA) and the Southern Poverty Law Centre (USA).²⁵⁶

²⁵¹ Exhibit 6, Tab 2, (n 239), [32].

²⁵² Ibid.

²⁵³ Ibid, [33]; Exhibit 6, Tab 187, (n 250), 2.

²⁵⁴ Exhibit 6, Tab 6, (n 84), [7]; Transcript, T616.45, T617.7, T617.13, T1072.16.

²⁵⁵ Exhibit 6, Tab 6, (n 84), [9]; Transcript, T1074.17-18.

²⁵⁶ Exhibit 6, Tab 6, (n 84), [3].

- b. In 2005, he completed the Advanced Hate Crimes course run by the Federal Law Enforcement Training Centre in conjunction with the Centre for Hate and Extremism, California State University San Bernardino, and the Southern Poverty Law Centre.²⁵⁷
- c. In 2012, he joined the Skinhead Intelligence Network, which is a global law enforcement network that tracks and monitors white supremacist groups.²⁵⁸
- d. In 2015, he spent a week with the New York Police Department Hate Crimes Task Force, the Suffolk County Police Department (New York) Hate Crimes Unit and the Nassau County Police Department (New York) Community Affairs Unit (Hate Crimes).²⁵⁹
- e. He has presented papers at a number of conferences in respect to the policing of bias motivated crimes.²⁶⁰
- f. Overall, Sergeant Steer described himself as having *“established a strong network of subject matter experts with regards to hate crimes and right-wing extremism in the USA, Canada, New Zealand, and the UK.”*²⁶¹ Through this network, he said he was able to develop a robust approach to hate crime investigations and a plan for the development of an effective hate crime capability for the NSWPF.²⁶²

2007: Position of Hate Crimes Coordinator established

- 209. In 2007, in response to Sergeant Steer’s report, the role of Hate Crimes Coordinator was established, on a trial basis, and Sergeant Steer was assigned to the position.²⁶³
- 210. Initially, the position was attached to the Community Contact Unit within the Counter Terrorism and Special Tactics Command of the NSWPF.²⁶⁴
- 211. The position started as a stand-alone, trial position with no resources allocated to it. AC Crandell gave evidence that when it was established, the position was only a temporary position (as indicated by the description of it as an *“overstrength position”*).²⁶⁵

²⁵⁷ Ibid.

²⁵⁸ Exhibit 6, Tab 190, (n 88), 4.

²⁵⁹ Exhibit 6, Tab 6, (n 84), [5].

²⁶⁰ Ibid, [4]; Exhibit 6, Tab 190, (n 88), 4.

²⁶¹ Exhibit 6, Tab 6, (n 84), [6].

²⁶² Ibid.

²⁶³ Ibid, [7].

²⁶⁴ Ibid.

²⁶⁵ Exhibit 6, Tab 190, (n 88), 2; Transcript, T617.21-24.

212. Sergeant Steer gave evidence that his first 12 months in the role were spent assessing the existing capabilities of NSWPF, and establishing processes that would be used in the Hate Crimes Unit (which at this point, was comprised of himself alone).²⁶⁶
213. Sergeant Steer said that another aspect of the Hate Crimes Coordinator role was tracking and monitoring hate crimes, a task which had previously been undertaken by Ms Thompson. Ms Thompson had left the NSWPF by 2002, and for the five years between 2002 and 2007, Sergeant Steer thought it was unlikely that prejudice-related data had been systematically tracked and reviewed in the way that Ms Thompson had done.²⁶⁷
214. In 2008, the position of Hate Crimes Coordinator was moved to the Operational Programs Command (**Operational Programs**). It had been decided that the position was not a good fit within the Counter Terrorism and Special Tactics Command, because that Command focused on issues related to race, religion and counter terrorism.²⁶⁸
215. Operational Programs was described by Sergeant Steer as the “*diversity team*”, which included “*cultural diversity, vulnerable communities, [and] the LGBTI community*”.²⁶⁹ Sergeant Steer considered that Operational Programs was “*a better fit - not the best fit but it was a better fit than being at Counter Terrorism*”.²⁷⁰
216. Within Operational Programs, Sergeant Steer reported to the Manager, Cultural Diversity, Policy and Programs.²⁷¹
217. Sergeant Steer gave evidence that there was no interaction with the Homicide Squad or UHT during the 2007-2009 period.²⁷²

2009: De-establishment of the role

218. In 2009, the “*overstrength*” position of Hate Crimes Coordinator was “*de-established*”.²⁷³ The position simply ceased to exist for the next three years.²⁷⁴
219. Over those three years, from 2009 to 2012, Sergeant Steer was attached to Blacktown LAC as a general duties supervisor.²⁷⁵

²⁶⁶ Transcript, T1073.13-19.

²⁶⁷ Transcript, T1075.4-7.

²⁶⁸ Transcript, T1073.21-26.

²⁶⁹ Transcript, T1077.3-7.

²⁷⁰ Transcript, T1073.29-30.

²⁷¹ Exhibit 6, Tab 6, (n 84), [13].

²⁷² Ibid.

²⁷³ Exhibit 6, Tab 190, (n 88), 2.

²⁷⁴ Transcript, T617.21-24, T1075.11-25.

²⁷⁵ Transcript, T1075.34-35.

2012-2017: Re-establishment of the role

220. In 2012, Ms Sharma returned to the NSWPF (after having left in 2006), in the role of Manager, Policy and Programs Team within Operational Programs.²⁷⁶
221. In the same year, then-Deputy Commissioner Naguib (Nick) Kaldas contacted Sergeant Steer and asked him if he was willing to recommence in the position of Hate Crimes Coordinator.²⁷⁷ Sergeant Steer was then recruited by Ms Sharma for the position, which was to be located within her team at Operational Programs.²⁷⁸
222. From 2012, the position became known as “Bias Crimes Coordinator”,²⁷⁹ or “Team Leader, Bias Motivated Crimes”,²⁸⁰ rather than “Hate Crimes Coordinator”.
223. Sergeant Steer’s understanding was that the terms “hate crime” and “bias crime” were interchangeable, but that by 2012,

*there were concerns that the term hate crime was potentially confusing as hatred is an extreme emotion and people were confused why they were hate crimes when they didn’t reach that level of emotion ie I don’t hate that group of people. The term bias was determined to be easier to understand as it was a) not an emotion like hatred and b) was more accurate with respect to cognitive processing (bias is a cognitive process not an emotion).*²⁸¹

224. Sergeant Steer gave evidence that he was aware that more recently the terminology had changed back again to “hate crime”, but he did not know why that was the case.²⁸²
225. Sergeant Kirgiz, who is the current Hate Crimes Coordinator, gave evidence that the use by the NSWPF of the term “hate crime” rather than “bias crime” was proposed on 18 November 2019 and approved on 16 January 2020.²⁸³ He said that this was because it was considered that the term “hate crime” would provide greater clarity to frontline officers when considering possible hate/bias motivations, and enhance their ability to correctly flag the COPS report as involving hate crime.²⁸⁴
226. Sergeant Steer said that upon his resuming the role in 2012, its functions and responsibilities were similar to what they had been in 2007-2009, although there was an increased emphasis on education and training, development of resources and the creation of Standing Operational

²⁷⁶ Exhibit 6, Tab 2, (n 239), [34]-[35].

²⁷⁷ Transcript, T1075.43-1076.7; see also Ibid, [37].

²⁷⁸ Exhibit 6, Tab 2, (n 239), [38].

²⁷⁹ Ibid, [37].

²⁸⁰ Exhibit 6, Tab 190, (n 88), 2.

²⁸¹ Exhibit 6, Tab 6, (n 84), [21]; see also Transcript, T1076.20-27.

²⁸² Transcript, T1076.29-34.

²⁸³ Exhibit 6, Tab 3, Statement of Sergeant Ismail Kirgiz, 28 November 2022, [12] (SCOI.82035).

²⁸⁴ Ibid.

Procedures (also known as Standard Operating Procedures) (SOPs) for bias crime investigations.²⁸⁵

227. From 2012, Sergeant Steer was supported by a Senior Policy Officer, Yasmin Hunter, who had dual responsibilities in respect of both “bias crime” and “vulnerable communities”.²⁸⁶ Together, the pair drafted a Bias Crimes Strategic Plan.²⁸⁷
228. In 2013, a NSWPF Corporate Sponsor for Bias Motivated Crimes was appointed (Superintendent Danny Sullivan).²⁸⁸
229. From this time, the Bias Crimes Coordinator position reported to the Manager, Cultural Diversity Team, Operational Programs (Ms Sharma), the Corporate Sponsor for Bias Crimes (Superintendent Sullivan), and the Corporate Sponsor for Cultural Diversity (Deputy Commissioner Kaldas).²⁸⁹

Training

230. From 2012-2017, hate crime training was offered within both rural and metropolitan commands, through direct presentations within training courses such as those for Youth Liaison Officers, GLLOs, Crime Prevention Officers and Multicultural Liaison Officers.²⁹⁰

Data Collection

231. Ms Sharma considered that the reestablishment of the Bias Crimes Coordinator position generated a renewed focus on the importance of ensuring officers entered bias-related data on COPS. Officers were instructed to “flag” incidents when they suspected that an offence was motivated by bias, and then the final determination – as to whether an incident was deemed to be “bias motivated” or “suspected bias motivated” – would be made by the Bias Crimes Coordinator (who was required to review all incidents flagged on COPS and prepare summaries in relation to those incidents).²⁹¹

Development of SOPs

232. In 2013, Sergeant Steer and Ms Hunter set out to create SOPs for the investigation of bias crimes. The SOPs were trialled for three months across several regional and metropolitan

²⁸⁵ Exhibit 6, Tab 6, (n 84), [11].

²⁸⁶ Ibid, [12]; Exhibit 6, Tab 2, (n 239), [38]; Transcript, T1077.14-17.

²⁸⁷ Exhibit 6, Tab 2, (n 239), [38].

²⁸⁸ Ibid, [43].

²⁸⁹ Exhibit 6, Tab 6, (n 84), [14].

²⁹⁰ Ibid, [26].

²⁹¹ Exhibit 6, Tab 2, (n 239), [41].

commands.²⁹² In 2014, the SOPs were forwarded to the Commissioner of Police's Executive Team for final approval,²⁹³ and in 2015, the Bias Crimes SOPs were endorsed.²⁹⁴

Operation Parrabell

233. In about August 2013, following the series of media articles about actual or suspected gay hate homicides referred to in Part A, Sergeant Steer initiated Operation Parrabell. Its intended scope, and its actual scope, are summarised in Part A of these submissions.

234. By October 2014, the scale of the proposed undertaking and the lack of sufficient resources had led to Operation Parrabell being placed on permanent hold.²⁹⁵

Resourcing

235. Sergeant Steer gave evidence that as the scope of the role expanded, "*it became impossible for one person to undertake the amount of work that was required*". He said that he had made numerous requests to establish a stand-alone unit with sufficient resources and staff, but this was not forthcoming.²⁹⁶

236. In 2014, Sergeant Steer made a formal request through Human Resources Command requesting a phased build-up of a Hate Crimes Unit and a capability of a maximum of 12 staff. Sergeant Steer said that this request progressed through the chain of command, but he never received a response.²⁹⁷

237. In October 2015, the Bias Crimes Unit came into existence when two other persons were added to the Bias Crimes Unit: a civilian Intelligence Analyst, Elizabeth Blake,²⁹⁸ and a project officer, SC Nathan Corbett.²⁹⁹ The addition of those two staff members, together with Sergeant Steer (and the half-time assistance of the Senior Policy Officer, Ms Hunter), thereby constituted the four-person strong (really 3.5) Bias Crimes Unit.³⁰⁰

238. At the time, there were more than 16,000 police officers in the NSWPF (as there are still).³⁰¹

²⁹² Ibid, [38], [45]

²⁹³ Exhibit 6, Tab 6, (n 84), [20].

²⁹⁴ Exhibit 6, Tab 188, NSW Police Force Bias Crimes Unit, 'Standard Operating Procedures: Bias Crime Response and Investigation', September 2015 (SCOI.75057); Exhibit 6, Tab 2, (n 239), [45].

²⁹⁵ Exhibit 6, Tab 51, (n 124).

²⁹⁶ Exhibit 6, Tab 6, (n 84), [16].

²⁹⁷ Transcript, T1077.33-41.

²⁹⁸ Exhibit 6, Tab 2, (n 239), [47].

²⁹⁹ Ibid, [44]; Exhibit 6, Tab 6, (n 84), [11]; Exhibit 6, Tab 190, (n 88), 2.

³⁰⁰ Exhibit 6, Tab 190, (n 88) 2. See also Exhibit 6, Tab 6, (n 84), [16].

³⁰¹ Exhibit 6, Tab 387, NSW Police Force Annual Report 2014-2015, published 23 November 2015, 6; Exhibit 6, Tab 388, NSW Police Force Annual Report 2021-2022, published 5 December 2022, 6.

239. While Sergeant Steer was the Bias Crimes Coordinator, the Bias Crimes Unit was always a sub-unit of another larger unit, never “stand-alone”. Nor was it ever separately resourced.³⁰²

2015-2017: The Bias Crimes Unit and Strike Force Parrabell

240. The Bias Crimes Unit, in the person of Sergeant Steer, had limited involvement in the work of SF Parrabell. The extent of that involvement is considered in Parts E and F of these submissions.

2017: The Bias Crimes Unit is radically reduced and relocated

241. In July 2017, as part of a restructure, the Bias Crimes Unit was moved, “overnight”, to a newly created Fixated Persons Unit.³⁰³ Among the effects were:

- a. three of the four members of the Bias Crimes Unit left and were redeployed, namely the Team Leader (Sergeant Steer), the Intelligence Analyst (Ms Blake) and the Senior Policy Officer (Ms Hunter);
- b. the Unit was left with one member (Senior Constable Corbett); and
- c. the Unit, now aligned with the Fixated Persons Unit, was back under the Counter Terrorism and Special Tactics Command.³⁰⁴

242. Some months later in 2017, the Bias Crimes Unit (consisting now of one officer) was realigned again. Still within the Counter Terrorism and Special Tactics Command, it was now moved to the Engagement and Intervention Unit (**EIU**).³⁰⁵

243. As at November-December 2017, the NSWPF effectively had no Bias Crimes Unit, as the three vacated positions had not been filled and the one remaining officer was on extended leave due to injury.³⁰⁶

244. As at June 2018, there was still effectively only one staff member doing the Bias Crimes Unit’s core duties.³⁰⁷

245. AC Crandell said that he was not aware of the reasons behind Sergeant Steer’s departure or why the Bias Crimes Unit was reduced to one person in 2017.³⁰⁸

³⁰² Exhibit 6, Tab 6, (n 84), [16].

³⁰³ Exhibit 6, Tab 190, (n 88), 2.

³⁰⁴ Ibid.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ Transcript, T610.31, T610.43.

246. Sergeant Steer's view was that this depletion of the Bias Crimes Unit was due to "internal politics".³⁰⁹ He expressed his views in unambiguous terms. He said he was notified of the change in the following way:

I walked in to work one day, was told by my commander to come and see him and he told me that we had just been transferred to counter terrorism. There was no consultation with us. Effective immediately we were attached to the Fixated Persons Investigation Unit.

From memory, a couple of days later we had a meeting with the then Acting Commander ... where he basically told us that we were attached to Fixated Persons, we weren't doing hate crimes anymore, we were to do what we were told and shut up, at which point I politely pointed out to him that I would be transferring out of the unit.³¹⁰

247. Sergeant Steer moved to general duties at Hawkesbury LAC. He said that his was his choice:

I'd been given certain information from a number of reliable sources both within the NSW Police and the New South Wales Government that I was not popular anymore doing hate crimes and that the intent was to get rid of me. So I didn't see the point in remaining in a unit where my work would be undervalued.³¹¹

248. The likely impact of anticipated changes on NSWPF's ability to address bias crimes had been foreshadowed by Sergeant Steer, in an email to Dr Dalton on 29 May 2017, as follows:

As a result of the restructure the Bias Crimes Unit will effectively cease to exist. It has been merged with the newly created Fixated Person Investigations Unit and will no longer be doing bias crimes. From what we have been told is that the new role will not focus on bias crimes or the protected categories including sexual orientation and gender identity. Bias crimes will be left to the relevant corporate sponsors and the unit will focus on right wing, left wing and anti-government groups. The capability around bias crimes will no longer exist. There will be no training and education capability, no monitoring and quality review capability and no expertise around identification, investigation and response to bias motivated crimes. Additionally there will be no compliance with the current Bias Crimes SOPS as the roles and functions outlined in the SOPS will no longer exist. Whilst some progress was made within the NSWPF around bias motivated crimes, the work was in it's (sic) infancy. There would be a greater awareness of bias motivated crimes but that is about it. The ability of the NSWPF to identify, investigate and respond effectively to bias crimes in my opinion is not there.³¹²

249. A year later, in an email to AC Crandell of 9 June 2018, Sergeant Steer put it this way:

My experience with hate crimes in the NSWPF fully supports the concept of organisational cognitive dissonance. If the information supplied differs from the core belief then all information, no matter how relevant or accurate will be disregarded to avoid conflict with

³⁰⁹ Transcript, T1126.14.

³¹⁰ Transcript, T1126.13-19.

³¹¹ Transcript, T1126.34-41.

³¹² Exhibit 6, Tab 249, Email chain between Geoffrey Steer and Derek Dalton re: Parrabell, 29 May 2017 (SCOI.79872).

*core belief systems. As the NSWPF clearly has fought every attempt to integrate a hate crimes response into every day policing, I am not surprised by the way it has ended.*³¹³

250. In his oral evidence, asked what he meant by his reference to “organisational cognitive dissonance”, Sergeant Steer said:

Basically, what we were doing did not gel with what the NSW Police wanted. ... So from the outset, the unit was not popular because there is a belief that we're a multicultural society and everything works well. The fact that we have a unit that says that people don't get on, that there are issues, was always at odds with that belief system. So there was always tension between what we did, because we were identifying issues that people would prefer not get raised.

Through seven years, I probably spent half that time defending everything I did. I sought guidance on multiple occasion from senior officers as to what direction the NSW Police wanted to take. I was told consistently, "You're the expert, you do what you want to do", but in the same breath I would get attacked. ...

*It was seven years of trying to convince an organisation that wasn't interested in hate crimes to take it seriously, that there are positive outcomes when you do take hate crime seriously, but - yeah. So that's what I mean, it was basically what we were promoting wasn't what the NSW Police wanted to hear.*³¹⁴

251. AC Crandell said that while he was sure it was Sergeant Steer's “perception” that the NSWPF suffered from “organisational cognitive dissonance”, he did not agree that the organisation had “turned its back” on bias crimes.³¹⁵

From 2018 to the present

252. In January 2018, the vacant Team Leader position was laterally filled by Sergeant Ragheb (Ray) Hussein. He was the only staff member until Senior Constable Corbett returned in February 2018.³¹⁶ However, in April 2018, Sergeant Hussein, was required to relieve as Team Leader in the EIU and left the Bias Crimes Unit, which thus reverted again to having only one officer.³¹⁷ By mid-2018, Senior Constable Corbett also left the Bias Crimes Unit, which again left the unit without any staff until Sergeant Hussein returned in November 2018.³¹⁸

³¹³ Exhibit 6, Tab 126, Email from Geoffrey Steer to Anthony Crandell re: departure from Bias Crimes Unit, 9 June 2018, 3 (SCOI.74679).

³¹⁴ Transcript, T1128.11-1129.10.

³¹⁵ Transcript, T630.20-631.31.

³¹⁶ Exhibit 6, Tab 190, (n 88), 2.

³¹⁷ Ibid.

³¹⁸ Ibid.

253. Between November 2018 and July 2020, according to Sergeant Kirgiz, three different officers held the position of Hate Crimes Coordinator “*at various times*”,³¹⁹ i.e. for intermittent rather than continuous periods:³²⁰
- a. from November 2018 to December 2019, Sergeant Hussein;
 - b. from 2019 to 2020, Sergeant Mark Dance; and
 - c. from January 2020 until July 2020, Sergeant Simon Henry.
254. In December 2019, the Bias Crimes Unit was amalgamated with the EIU, resulting in the establishment of the Engagement and Hate Crime Unit (**EHC**U).³²¹
255. The EHC
- U is one unit of four within the Anti-Terrorism and Security Group (**ATIG**).³²² The other three units are the Terrorism and Security Intelligence Unit, the Security Investigations Unit and the High Risk Terrorism Offenders Unit.³²³
256. In July 2020, Sergeant Kirgiz took up the position of Hate Crimes Coordinator.³²⁴
257. For the previous 22 years, since 1998, Sergeant Kirgiz had performed duties in dignitary protection.³²⁵ Apart from a three-week induction, he had had no training related to hate crime, although he considered that the two and a half years that he has been in the Hate Crimes Coordinator position to be relevant “training” for the job.³²⁶ He also did not have “*direct*” experience in hate crime, but considered his previous experience in intelligence analysis and risk management to be relevant to his current position.³²⁷
258. The primary purpose of Sergeant Kirgiz’s role, as described in the Role Description, is to
- supervise, lead and contribute to the effective building/maintaining of partnerships with communities who are at risk of radicalisation, or are likely to be impacted by NSW Police Force use of terrorism powers, and communities who may be the victims of terrorism or politically motivated violence and hate crimes.*³²⁸
259. Sergeant Kirgiz was asked whether this description (in combination with the seven key accountabilities listed under the description) indicated that the role was predominantly focused

³¹⁹ Exhibit 6, Tab 3, (n 283), [9].

³²⁰ Transcript, T1253.12.

³²¹ Exhibit 6, Tab 3, (n 283), [5]; see also Exhibit 6, Tab 192, Issue Report by Chief Inspector AF Long re: Request to rename the ‘Engagement & Intervention Unit/Bias Crimes Unit’ to ‘Engagement & Hate Crime Unit’, 13 December 2019 (SCOI.82046).

³²² Exhibit 6, Tab 3, (n 283), [10].

³²³ Transcript, T1257.1-11.

³²⁴ Exhibit 6, Tab 3, (n 283), [6]; Transcript, T1254.38.

³²⁵ Exhibit 6, Tab 3, (n 283), [2]; Transcript, T1254.12, T1254.20.

³²⁶ Transcript, T1253.31, T1272.35-45.

³²⁷ Transcript, T1253.46-1254.7.

³²⁸ Exhibit 6, Tab 193, Role Description – Team Leader EHC

U SRD 101, 11 November 2020 (SCOI.82038).

on politically-motivated or terrorist activities.³²⁹ He said that even though the description may read that way, it was “*not how the position works in reality.*”³³⁰ He suggested that the description could have been “*worded more accurately*”.³³¹ He added:

I think there's this perception that by bringing hate crime under the umbrella of counter terrorism, that somehow, the focus of hate crime was moulded to fit the counter terrorism focus. In my experience, it's actually the other way around. The hate crime focus and portfolio was brought into counter terrorism and the procedures of counter terrorism were changed to accommodate and fully support the hate crime focus.

*So it's actually very advantageous to have at our disposal the full resources and capabilities of the CT command. ... And it's not a question of "We look at hate crimes but with a counter terrorism focus"; it is quite the contrary. The CT command looks at hate crime with a holistic hate crime focus. ... [F]or example, if a member of the LGBTIQ community is targeted by a particular hate group or we have incidences of where certain nationalist, racist, violent extremist groups are active, well, the full capability of the TSIU [Terrorism Security Intelligence Unit] comes into play to paint a picture and gather the information we need.*³³²

Current Structure

260. Sergeant Kirgiz outlined the current structure of the EHCU.³³³ Reporting to him as Hate Crimes Coordinator is one police officer, namely a Project Officer (Constable/Senior Constable), and two civilians, being an Intelligence Coordinator and a Project Coordinator (both of those positions being externally funded by the Department of Communities and Justice).³³⁴
261. Sergeant Kirgiz said that another position (nominally attached to the EHCU), that of an Intelligence Analyst, had in fact been utilised by the Terrorism Security Intelligence Unit since at least July 2020.³³⁵
262. The two externally funded civilian positions have a particular focus on the requirements of hate speech legislation introduced in 2018 and 2022, in the form of ss. 93Z and 93ZA of the *Crimes Act 1900* (NSW).³³⁶
263. Sergeant Kirgiz gave evidence that, in 2021, the Hate Incident Review Committee (**HIRC**) had been established. Its members are the ATIG Commander, the EHCU Manager and “the entire Hate Crime Team”, which Sergeant Kirgiz said comprised three people namely himself, the

³²⁹ Transcript, T1258.3-T1259.8.

³³⁰ Transcript, T1258.21-22.

³³¹ Transcript, T1260.8.

³³² Transcript, T1271.27-T1272.9.

³³³ Exhibit 6, Tab 3, (n 283), [10].

³³⁴ Ibid, [10], [11]; Transcript, T1256.11-16.

³³⁵ Exhibit 6, Tab 3, (n 283), [10]; Transcript, T1256.1-16.

³³⁶ Exhibit 6, Tab 3, (n 283), [11], [15].

Intelligence Coordinator, and the Project Coordinator.³³⁷ He said that the HIRC convenes fortnightly and monitors all hate crimes and hate incidents that have been assessed by the Hate Crimes Team to require attention or follow up.³³⁸

Development of a Bias Crimes Tool

264. In June 2018, one of the recommendations of the Parrabell Report was the development of “*a revised system applicable to the early identification of bias crimes*”, given that “the current system with ten bias crime indicators requires greater rigour and is not user friendly for operational police”.³³⁹
265. In October 2018,³⁴⁰ AC Crandell commissioned Professor Phil Birch of Charles Sturt University (CSU) to carry out a research study for the purpose of developing “*better, more streamlined*” bias crimes classification criteria for the NSWPF, consistent with that recommendation.³⁴¹
266. In March 2019, Dr Birch provided a preliminary report, entitled ‘Hate Crime: The development of an assessment tool for criminal justice practitioners’. Despite its title, this report did not put forward such a proposed tool. Rather, it “*involved a literature review of hate crime studies conducted in the USA, UK and Sweden*”.³⁴²
267. In 2020, the EHCU “*took carriage of the next phases of the research*” and “*were supporting and collaborating with the CSU*”.³⁴³
268. When asked whether a tool had ever subsequently been developed, either with CSU’s contribution or by the EHCU itself, Sergeant Kirgiz responded that to the best of his knowledge, there is “*no such tool in existence, and when we say ‘tool’, my understanding is a tool that can be provided to frontline officers when they go to attend to take reports and the like.*”³⁴⁴
269. In February 2022, Dr Birch provided a ‘Report of Final Findings’.³⁴⁵ That report developed and extended the research referred to in the preliminary report, but did not attempt to propose an

³³⁷ Ibid, [16].

³³⁸ Ibid.

³³⁹ Exhibit 1, Tab 2, (n 6), 39, recommendation 3.

³⁴⁰ Exhibit 6, Tab 194, Issue Report by Leanne Martin re ‘Counter Terrorism & Special Tactics Command response to request for further progress updates for Strike Force Parrabell Recommendations 3-5’, 12 August 2021, 2 (SCOI.82045); Exhibit 6, Tab 3, (n 283), [25]-[26].

³⁴¹ Exhibit 6, Tab 4, (n 128), [11].

³⁴² Exhibit 6, Tab 194, (n 340), 2.

³⁴³ Ibid.

³⁴⁴ Transcript of the Inquiry, T1263.29-32.

³⁴⁵ Exhibit 6, Tab 140, Phillip Birch, et al, ‘Developing consensus amongst New South Wales (NSW) Police Officers (Sworn) for addressing Hate Crime – Report of Final Findings’ (University of Technology Sydney, February 2022) (SCOI.82042); Exhibit 6, Tab 3, (n 283), [26]; Transcript, T1264.17-26, T1265.5-12.

assessment tool as an alternative to the ten bias crimes indicators found in the BCIF used by SF Parrabell, or “*more streamlined bias crime classification criteria for the NSWPF*”.³⁴⁶

270. Sergeant Kirgiz said that no tool, “*per se*”, had been developed. He said:

*Insofar as a tool, to speak of, in the sense of a tool per se, no, because in the research that was conducted and whilst also collaborating and communicating with Professor Birch, I guess that the tool would have been satisfied through education to actually bring that to the attention of frontline officers and to educate them into awareness. And so we focused our attention on putting as many educational tools in play and make that - in play and making those available to frontline policing and actively marketing them to frontline police.*³⁴⁷

271. When asked if he could identify “*the suitable system of bias crime identification that has now been determined*” (the language of recommendation 4 in the Parrabell Report), Sergeant Kirgiz said:

*Well, it is the, I guess, the collection of training packages and educating frontline police officers. So there isn't a tool per se or a system per se, because what emerged when looking at the literature and speaking with some of the academics, Professor Birch in particular, is that there isn't a measure or a tool that you can run over any particular incident, the sure-fire way is to get it into the front of minds of frontline officers.*³⁴⁸

272. Sergeant Kirgiz gave evidence that the BCIF “*is not currently in use by frontline police officers nor the EHCU*”.³⁴⁹ He said that he was “*not aware if any other units of the NSWPF have used or are still using the BCIF*”.³⁵⁰

273. The position thus appeared to be, on this evidence of Sergeant Kirgiz, that the BCIF had not been used since SF Parrabell, but that no tool has come into existence to replace it (or the ten indicators found within it).

274. However, that position needs to be considered in the light of evidence concerning the 2022 Hate Crime Guidelines.³⁵¹

275. The Bias Crimes SOPs, approved in 2015,³⁵² contained, almost verbatim, the same ten indicators which formed part of the BCIF created and used by SF Parrabell.

³⁴⁶ Exhibit 6, Tab 4, (n 128), [11].

³⁴⁷ Transcript, T1264.17-26.

³⁴⁸ Transcript, T1265.5-12.

³⁴⁹ Exhibit 6, Tab 3, (n 283), [13].

³⁵⁰ Ibid.

³⁵¹ Exhibit 6, Tab 195, ‘Hate Crime Guidelines’, dated 13 April 2022 (SCOI.77445).

³⁵² Exhibit 6, Tab 188, (n 294).

276. The SOPs appear to have effectively been replaced, for practical purposes, by the Hate Crime Guidelines of April 2022.³⁵³
277. The 2022 Hate Crime Guidelines contain nine indicators, not ten. Those nine indicators are in substantially identical terms to the second to tenth indicators found in both the SOPs and the BCIF. The one missing from the Hate Crime Guidelines is the first indicator from the SOPs/BCIF, namely “Differences”.
278. Sergeant Kirgiz agreed that the procedures under the Hate Crime Guidelines are “*substantially similar*” to the procedures set out in the former SOPs. He added that the HIRC was now an additional procedural feature. He also agreed that with respect to the indicators, the nine in the Hate Crime Guidelines were “*basically the same*” as nine of the ten in the former SOPs.³⁵⁴
279. At the conclusion of his oral evidence, in answer to questions from senior counsel for the Commissioner of Police, Sergeant Kirgiz gave evidence that the “indicators”, as now found in the Hate Crime Guidelines, were “*approved*” by “*five different academics in three different countries*”.³⁵⁵ None of the documents produced to the Inquiry by the NSWPF in this regard would appear to amount to such “*approval*”.
280. Under the Hate Crime Guidelines, incidents brought to the attention of the EHCUC are now assigned to one of five categories, namely “Hate Crime”, “Hate Incident”, “Suspected Hate Crime”, “Not a Hate Crime” and “Insufficient Information”.³⁵⁶
281. The first four of those five categories (substituting the word “bias” for “hate”) are also to be found in the 2015 SOPs.³⁵⁷
282. Sergeant Kirgiz noted that it is a vulnerability within the system that if an officer does not correctly flag a hate incident with “Hate Crime Related”, that incident will not be captured in the search. To mitigate this vulnerability, the Intelligence Coordinator performs a ‘dip sample’ exercise every few months.³⁵⁸
283. Sergeant Kirgiz gave evidence that the determination, as to which of these five categories is applicable, is made by him.³⁵⁹ In answer to a question by the Commissioner, he agreed that the process required him to “*take a holistic view of all the factors*” and “*then come to a conclusion*”

³⁵³ Exhibit 6, Tab 3, (n 283), [14], [28]; Transcript, T1266.47-1267.14.

³⁵⁴ Transcript, T1267.16-47.

³⁵⁵ Transcript, T1279.17-1280.14.

³⁵⁶ Exhibit 6, Tab 195, (n 351), 19; Exhibit 6, Tab 3, (n 283), [21(vi)]; Transcript, T1269.5-20.

³⁵⁷ Exhibit 6, Tab 188, (n 294), 42.

³⁵⁸ Exhibit 6, Tab 3, (n 283), [21(ii)].

³⁵⁹ Transcript, T1270.31-38.

about it".³⁶⁰ Put another way, he agreed that the process essentially is his "*own attempt as the person in the role of Hate Crime Coordinator to use the information that you get and to simply make a call.*"³⁶¹

284. Sergeant Kirgiz said that approximately 15-20% of the hate crime reports reaching the Hate Crimes Team related to people in the LGBTIQ community.³⁶²

General submissions in relation to NSWPF responses to hate/bias crime

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.
286. Early initiatives to record instances of bias crime progressed slowly and unsatisfactorily in the 1990s, as the evidence of Ms Sharma revealed. Initial proposals for the establishment of a Hate Crimes Unit were not adopted, and it was not until 2007 that the initiative of Sergeant Steer, in the wake of the Cronulla riots, led to the creation of the position of Hate Crimes Coordinator.
287. In 2009, after some two years as a stand-alone position (one officer, with no resources), the role was "de-established" for three years from 2009 to 2012.
288. In the years from 2012 to 2017, the Unit was repeatedly moved from one Command to another, more than once (as again now) finding itself located in the anti-terrorism sphere. Then in 2017 (after the Bias Crimes Unit had finally been established in 2015 by the addition of two more personnel), the Unit was virtually abolished again.
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.
290. After 2017, the Unit does not seem to have been re-established, in any substantive or realistic sense, until 2020 when Sergeant Kirgiz (with no previous training or experience in bias crimes) took up his present position.
291. Even now (placed as it is within the ECHU), it has only three staff, two of those being externally-funded civilian positions which focus on hate speech legislation. Sergeant Kirgiz's role description would indicate on its face that the focus of the Hate Crimes Coordinator is

³⁶⁰ Transcript, T1270.46-1271.3

³⁶¹ Transcript, T1272.28-32.

³⁶² Transcript, T1273.8-13.

increasingly on “radicalisation”, “terrorism” and “politically motivated” hate crimes (although Sergeant Kirgiz gave evidence that this is not how the position works *“in reality”*).

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.
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 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

1988-2012: The first and second inquests into the death of Scott Johnson

294. Scott Johnson was a 27-year-old American student completing a PhD in mathematics in Australia. He was posthumously awarded his doctorate by the Australian National University in 1995.³⁶³
295. On the morning of 10 December 1988, his body was found at the bottom of a cliff at Blue Fish Point near North Head, Sydney. He had suffered “*unsurvivable traumatic injuries.*”³⁶⁴ He was naked, and a folded pile of his clothes and personal effects was recovered at the top of the cliff.³⁶⁵
296. On 16 March 1989, an inquest was conducted by Deputy State Coroner Derek Hand. His Honour made a finding of suicide, namely that between 8 and 10 December 1988, at North Head, Manly, Scott Johnson “died of the effect of multiple injury [sic] sustained then and there when he jumped from the top to the rocks below with the intention of taking his own life.”³⁶⁶
297. That finding was based primarily on the following circumstances, as summarised many years later in 2017 by State Coroner Barnes, in the third inquest into Scott Johnson’s death:³⁶⁷
- a. Scott Johnson’s reserved and introverted personality was consistent with the type of person who would commit suicide;
 - b. The evidence of Scott Johnson’s partner at the time of his death that Scott Johnson had mentioned having attempted suicide at some earlier time when he thought he might have contracted HIV/AIDS; and
 - c. The absence of evidence of a struggle at the top of the cliff or damage to Scott Johnson’s clothing, or of anyone else having been present at the time.
298. At the 1989 inquest, the OIC of the original investigation, DS Doreen Cruickshank, gave evidence that the area on the clifftop where Scott Johnson’s clothes were found was not then known to police as being a meeting place or beat used by gay men. That evidence was based solely on the

³⁶³ Exhibit 6, Tab 232, (n 95), [40].

³⁶⁴ Ibid, [1].

³⁶⁵ Ibid, [193].

³⁶⁶ Ibid, [4], [9].

³⁶⁷ Ibid, [10].

- fact that police had not received any reports of violence directed towards gay men in that area.³⁶⁸
299. As has been noted in submissions about individual cases, there is evidence before the Inquiry which would indicate that from at least the 1970s it had in fact been well-known, to police and more generally, that there was a beat at North Head.³⁶⁹
300. On 9 March 2005, Coroner Milledge delivered her findings in the Taradale Inquest concerning the deaths of three men near Bondi, in 1985 and 1989. The police officer who had conducted Operation Taradale was then-DS Page. Subsequently a journalist contacted Mr Page and put him in contact with Scott Johnson's brother, Steve Johnson.³⁷⁰
301. In early 2006, Steve Johnson drew Mr Page's attention to similarities between the circumstances of Scott Johnson's death and those which had been the subject of the Taradale Inquest, in each case involving a gay man found at the foot of a cliff, or disappearing, in an area known as a beat. Mr Page considered that Scott Johnson's case warranted re-investigation on that basis.³⁷¹
302. On 16 March 2006, Mr Page and Steve Johnson attended Manly Police Station and requested a review of Scott Johnson's death.³⁷² However, it appears that, at this time, the NSWPF declined to carry out a re-investigation. Mr Page continued to assist the Johnson family and Dan Glick, an investigative journalist retained by Steve Johnson, with information gathering.³⁷³
303. On 27 June 2012, a second inquest into Scott Johnson's death was held. At that inquest, SC Timothy Wilson gave evidence of a review conducted by the NSWPF which had identified similarities between the circumstances of Scott Johnson's death and those the subject of the Taradale inquest. The review was also said to have identified potential avenues for further investigation, including persons of interest.³⁷⁴
304. On 27 June 2012, at the conclusion of the second inquest, Coroner Forbes made an open finding. Her Honour found that Scott Johnson *"died between 8 and 10 December 1988 at North Head,*

³⁶⁸ Ibid, [8].

³⁶⁹ See, e.g., Exhibit 12, Tab 27, '90 arrested by new police beach unit', The Manly Daily, 27 April 1977, 1 (SC01.82350), which refers to a "'Starsky and Hutch' beach patrol" policing crime in the beach areas of Manly and states that the patrol featured plain clothes officers who had, among other things, "busted homosexual activities at North Head".

³⁷⁰ Exhibit 6, Tab 253, Statement of Stephen John Page, 16 February 2023, [20]-[21] (SC01.82472).

³⁷¹ Ibid, [22].

³⁷² Ibid, [23].

³⁷³ Ibid, [23].

³⁷⁴ Exhibit 6, Tab 232, (n 95), [17]-[18].

*Manly, north of Blue Fish Point, from the effects of multiple injuries he sustained as a result of falling from a cliff.*³⁷⁵

305. One reason for departing from the 1989 suicide finding, and instead making the open finding, was that *“the information about the deaths at Bondi has, however, sown a seed of doubt as to the positive finding of suicide”*.³⁷⁶ One of the possibilities, said Coroner Forbes, was *“that Mr Johnson was the victim of a ‘gay hate’ crime similar to those that occurred in Bondi”*.³⁷⁷
306. Her Honour recommended that the death be referred to “Cold Cases” for further investigation.³⁷⁸ In his oral evidence, Mr Willing explained that “Cold Cases” in this context referred to what later became the UHT.³⁷⁹

The Homicide Squad, and the Unsolved Homicide Team

307. In November 2011, Mr Willing was appointed Homicide Commander. He remained in that position until November 2017.³⁸⁰
308. At the time of his appointment, the Homicide Squad consisted of around 100 staff members, divided into six investigation response teams (each led by an Investigation Coordinator of Detective Chief Inspector/Inspector rank), an intelligence team (led by an Inspector), and the UHT (led by two Investigation Coordinators of Detective Chief Inspector/Inspector rank).³⁸¹
309. As at 2011, DCIs Lehmann and Young were the two Investigation Coordinators for the UHT.³⁸²
310. Mr Willing’s evidence was that, at any given time during his tenure as Commander, these teams had *“carriage of between 60-80 active investigations”*. There were *“over 700 unsolved cases on [the] UHT database”*.³⁸³ He described his role as Commander as being *“to lead, manage and oversee the activities of the squad and its members”*.³⁸⁴ In relation to particular strike force investigations, his involvement was *“to ensure they were adequately resourced, that investigators were adequately supported, and generally reviewing progress of investigations...”*.³⁸⁵

³⁷⁵ Exhibit 6, Tab 317, (n 96), 2.

³⁷⁶ Ibid, 1.

³⁷⁷ Ibid.

³⁷⁸ Ibid, 2.

³⁷⁹ Transcript, T1646.3-6.

³⁸⁰ Transcript, T1623.32-34.

³⁸¹ Transcript, T1638.21-43; Exhibit 6, Tab 252, (n 113), [42].

³⁸² Transcript, T1638.24-33.

³⁸³ Exhibit 6, Tab 252, (n 113), [45].

³⁸⁴ Ibid, [41].

³⁸⁵ Ibid, [46].

The 2012 UHT case screening review

311. In late 2012, after the second inquest, the UHT conducted a prioritised case screening review of Scott Johnson’s death in which it rated the case “solvability” as zero.³⁸⁶
312. Mr Willing said that he was not involved in the review, and that as Commander of the Homicide Squad he would “*not necessarily be informed of the outcome of case screening reviews*”, as they were conducted regularly as a matter of the UHT’s “*normal business practices*”.³⁸⁷
313. Mr Willing accepted that “*on the face of it*”, the assessment of zero solvability appears to have been incorrect in light of events since late 2012.³⁸⁸ However, he immediately qualified that view, by reference to the need for such assessments to be made on the basis of “what was available at the time”.³⁸⁹
314. He gave further evidence to similar effect in answer to questions from senior counsel for the Commissioner of Police.³⁹⁰ He agreed with Mr Tedeschi KC’s suggestion that fresh evidence had subsequently come to light in 2019 in the Johnson case, which was “*very dynamic and cogent*”, and not available to police “*in any way*” in 2012.³⁹¹
315. However, even if it were to be assumed that the fresh evidence in Scott Johnson’s case which was obtained in 2019 was “*very dynamic and cogent*”, that evidence does not seem to have been unavailable to police “*at the time*” (in 2012). In fact, Mr Willing accepted that, other than “*future developments in technology*”, “*most or all*” of the factors referred to by Mr Willing could have been investigated in 2012.³⁹²
316. The partial qualification Mr Willing made, in that regard, was that the non-availability of “*fresh forensic evidence*” in 2012 was a factor which would have weighed heavily on the outcome of the 2012 review. However, there is no suggestion in the materials before the Inquiry that any of the evidence acquired in 2019 was in the nature of “*forensic evidence*”, much less that it was forensic evidence which was unavailable to police in 2012 and only recoverable in 2019 due to the advent of some new investigative method or technology.
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

³⁸⁶ Ibid, [31].

³⁸⁷ Ibid, [31].

³⁸⁸ Transcript, T1647.26.

³⁸⁹ Transcript, T1647.26-37, T1648.7-10.

³⁹⁰ Transcript, T3439.9-14.

³⁹¹ Transcript, T3439.20-27.

³⁹² Transcript, T1647.42.

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.

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.

February 2013: Australian Story

319. In any event, Mr Willing accepted that the 2012 designation of Scott Johnson’s case as having zero solvability meant in effect that, as at late 2012, the UHT was declining to investigate the matter further.³⁹³
320. On around 9 January 2013, Steve Johnson wrote to DCI Lehmann, the UHT Investigation Coordinator, to express concern at the “zero solvability” rating which had been given to Scott Johnson’s case.³⁹⁴ At that time, Mr Willing was on annual leave, temporarily relieved as Commander of the Homicide Squad by Detective Acting Superintendent (DAS) Christopher Olen.³⁹⁵ Mr Willing said he did not become aware of this email until some time later.³⁹⁶
321. On 7 February 2013, DAS Olen sent an email to Peter Cotter, copied to Mr Willing and DCI Young, in which he proposed a response to Steve Johnson’s letter. He described the Johnson family’s stated aim in sending it as being “*to give publicity to the case*” and “*to motivate police to do something*”.³⁹⁷
322. DAS Olen also noted, in that email, that DCI Lehmann “*had participated in an ABC Australian Story to air this Monday night 11 February 2013 in respect of the case*”, which he expected would be “*highly critical of the original investigation*”, including by demonstrating that the location of Scott Johnson’s death was a known beat, contrary to the NSWPF’s view advanced in both the first and second inquests.³⁹⁸
323. DAS Olen said in his email that whilst the Johnson family’s claims contained a “*lot of theory and very little if any factual material or evidence produced to police*”, he felt that the family “*may have the UHT in a corner*”. His proposal, said to have been devised “*in consultation with Mick*

³⁹³ Transcript, T1648.24-28.

³⁹⁴ Exhibit 6, Tab 312, Email correspondence between Christopher Olen, Peter Cotter, Pamela Young and Michael Willing re: Death of Scott Johnson, 7 February 2013 (NPL.3000.0016.0014).

³⁹⁵ Exhibit 6, Tab 252, (n 113), [33].

³⁹⁶ Ibid, [32].

³⁹⁷ Exhibit 6, Tab 312, (n 394), 2.

³⁹⁸ Ibid.

Willing", was to allocate two officers at UHT to investigate the matters raised by the Johnson family.³⁹⁹

324. The sending of that email appears to have followed a telephone discussion between Mr Willing and DAS Olen whilst Mr Willing was on leave. Mr Willing said that during that conversation, DAS Olen told him that the Johnson family had directly contacted the Minister for Police and Emergency Services, Mr Gallacher, that an upcoming episode of *Australian Story* would focus on Scott Johnson's death,⁴⁰⁰ and that DAS Olen also had concern about the way the Homicide Squad may be depicted in that upcoming episode, and suggested the appointment of two officers as referred to in his email of 7 February 2013.⁴⁰¹
325. DCI Young replied to DAS Olen's email, saying that she wanted to "put on the record" that "the decision not to proceed with further active investigation was based on two reviews conducted by the likes of Mick Ashwood, Gary Jubelin and Glen Richardson in addition to John Lehmann".⁴⁰² (emphasis added)
326. DAS Olen's response included the following:

*What you are going to say to the Minister and the family next week after John Lehmann in his soon to be broadcast National and (International USA) interview in which he has indicated 'the case is open and a team is working on it'.*⁴⁰³

327. Mr Willing was asked about the apparent inconsistency between the message which DCI Lehmann was about to communicate publicly about Scott Johnson's case being "open", and the fact that an internal decision had actually been made not to investigate the death further. 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.⁴⁰⁴
328. That evidence was subsequently qualified, when the precise words used by DCI Lehmann on *Australian Story* were shown to Mr Willing.⁴⁰⁵ He then expressed the position this way: that what DCI Lehmann had said on *Australian Story* (namely, "Certainly we haven't closed the books on this case, it's an open case") was literally not untrue, but that to the extent that his words

³⁹⁹ Ibid.

⁴⁰⁰ Exhibit 6, Tab 252, (n 113), [34].

⁴⁰¹ Ibid, [35].

⁴⁰² Exhibit 6, Tab 312, (n 394), 2.

⁴⁰³ Ibid, 1.

⁴⁰⁴ Transcript, T1561.3-1653.27.

⁴⁰⁵ Transcript, T1751.22-1754.5.

conveyed the impression that the UHT was actively working on the Johnson case, that was “*not right*”.⁴⁰⁶

329. On 11 February 2013, the *Australian Story* programme concerning Scott Johnson’s death went to air. Following that programme, the Minister for Police’s Chief of Staff called Mr Willing to advise that the Minister intended to hold a meeting with the Johnson family and wished Mr Willing to attend.⁴⁰⁷ Mr Willing advised that he was on leave and that DAS Olen would attend in his place.⁴⁰⁸
330. On 12 February 2013, the meeting between the Minister, Steve Johnson, DCI Young and DAS Olen occurred.⁴⁰⁹

February 2013: The establishment of SF Macnamir

331. Mr Willing accepted that within a day or two of the *Australian Story* episode and that meeting, SF Macnamir was established as a full re-investigation into Scott Johnson’s death.⁴¹⁰
332. The Terms of Reference of SF Macnamir were “[t]o review and reinvestigate the circumstances of the death of Scott Johnson”.⁴¹¹ DCI Young was named as Investigation Supervisor, and DS Penelope Brown as OIC.⁴¹²
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 2012.⁴¹³ It is submitted that that is plainly correct.
334. Mr Willing gave evidence that he “*did not have any direct involvement*” in the establishment of SF Macnamir, and was formally notified of its establishment when he returned from annual leave.⁴¹⁴ He said that DCI Young, in her then capacity as UHT Investigation Coordinator, would have had direct involvement in establishing SF Macnamir, as would DAS Olen and Detective Chief Superintendent (**DCSI**) John Kerlatec, then Director of the Serious Crime Directorate.⁴¹⁵ He accepted that a Strike Force could be established without his knowledge or consent while he was away on leave.⁴¹⁶

⁴⁰⁶ Transcript, T1753.26-1754.5.

⁴⁰⁷ Transcript, T1719.19-31.

⁴⁰⁸ Ibid; Exhibit 6, Tab 252, (n 113), [37].

⁴⁰⁹ Exhibit 6, Tab 252, (n 113), [38].

⁴¹⁰ Transcript, T1655.12-14, 1719.39-44.

⁴¹¹ Exhibit 6, Tab 8, (n 98).

⁴¹² Ibid.

⁴¹³ Transcript, T1683.32-34.

⁴¹⁴ Exhibit 6, Tab 252, (n 113), [40].

⁴¹⁵ Transcript, T1655.31-41.

⁴¹⁶ Transcript, T1656.5-20.

335. According to an email from the Office of the General Counsel (**OGC**) of the NSWPF to the Inquiry on 16 September 2022, there were some 20 officers involved in SF Macnamir, including:
- a. DSI Dickinson – Investigation Supervisor;
 - b. DCI Young – original OIC;
 - c. DS Brown – OIC;
 - d. DCI Leggat – Team Leader;
 - e. DS Morgan – Team Leader;
 - f. DSC Paul Rullo – Investigator; and
 - g. DSC Michael Chebl – Investigator.⁴¹⁷
336. That email also contained a smaller list of officers involved in what was described as “Strike Force Macnamir – 2”. This list consisted of substantially the same officers; however, DCI David Laidlaw was identified as Investigation Supervisor, and five officers from the original 20 were not included.⁴¹⁸
337. Mr Willing said in his oral evidence that the list provided by the OGC was not accurate, as that list included persons who “*may not have actively played a part*” but who were merely “*available, should they [have been] required*”.⁴¹⁹ That was why, in the list of officers involved in SF Macnamir in his own statement,⁴²⁰ he did not include “*team leaders*” DCI Leggat and DS Morgan.⁴²¹ He said that DCI Young was the original Investigation Supervisor rather than the original OIC”.⁴²²
338. Mr Willing described his own role in SF Macnamir as involving “*reviewing its progress via verbal briefings*”. These occurred both on an *ad hoc* basis, and also in weekly scheduled meetings with the Investigation Coordinators, and via “*normal State Crime Command written reporting protocols as one of the 60-80 active matters*” for which the Homicide Squad was responsible.⁴²³
339. He said he “*took on a more active role*” in response to a “*strong desire from Johnson’s family to have communication with [him] if required*”.⁴²⁴ That more active role was said to have involved “*communication with members of the Johnson family, almost always Steve Johnson, usually via*

⁴¹⁷ Exhibit 6, Tab 9, (n 98).

⁴¹⁸ Ibid, 2.

⁴¹⁹ Transcript, T1568.3-7, T1659.12-33.

⁴²⁰ Exhibit 6, Tab 252, (n 113), [57]-[58].

⁴²¹ Transcript, T1658.36-46 (in relation to DS Morgan).

⁴²² Transcript, T1658.3-7.

⁴²³ Exhibit 6, Tab 252, (n 113), [47].

⁴²⁴ Ibid, [48].

email and telephone calls from time to time”, as well as with other “*supporters*” of the Johnson family.⁴²⁵

Overlaps and convergences among Strike Forces Macnamir, Neiwand and Parrabell

340. There was considerable overlap between and among Strike Forces Macnamir, Neiwand and Parrabell, in terms of (*inter alia*) timing, personnel and subject matter.

341. In terms of timing, the following may be noted:

- a. SF Macnamir was set up in February 2013, and ran until November 2017;
- b. SF Parrabell was set up in August 2015, and was substantially completed by late 2017, with the Parrabell Report being published in June 2018; and
- c. SF Neiwand was set up in October 2015, and ran until late 2017.

342. Thus, from the second half of 2015 until the end of 2017, all three Strike Forces Macnamir, Parrabell and Neiwand were running concurrently.⁴²⁶

343. In terms of personnel, there were numerous officers involved in both SF Macnamir and SF Neiwand at a high level of operational responsibility:

- a. DS Brown was the original Investigation Supervisor (or, in Mr Willing’s evidence, OIC)⁴²⁷ for SF Neiwand, from October 2015 until around early 2016,⁴²⁸ at a time when she was also OIC of SF Macnamir. She continued as a member of the SF Neiwand investigation team from May 2016 onwards,⁴²⁹
- b. DS Morgan, who became Investigation Supervisor for SF Neiwand in around May 2016,⁴³⁰ was also listed by the OGC as a “team leader” in SF Macnamir;
- c. DCI Leggat was Investigation Coordinator of SF Neiwand, as well as being listed by the OGC as a “team leader” of SF Macnamir;
- d. DSC Chebl, OIC of SF Neiwand from May 2016 onwards,⁴³¹ was also an investigator in SF Macnamir; and
- e. DSC Rullo was an investigator in both SF Macnamir and SF Neiwand.⁴³²

⁴²⁵ Ibid.

⁴²⁶ Transcript, T1627.26-31.

⁴²⁷ Transcript, T1791.44-1792.4.

⁴²⁸ Exhibit 6, Tab 5, Statement of Detective Sergeant Steven Morgan, 31 October 2022, [27] (SCOI.76962).

⁴²⁹ Transcript, 1792.21-24.

⁴³⁰ Exhibit 6, Tab 5, (n 428), [27]; Transcript, T1792.6-16.

⁴³¹ Transcript, T1792.18-19.

⁴³² Transcript, T1792.26-30.

344. As to DSC Chebl and DSC Rullo, Mr Willing reiterated that whilst they were included on the “resource list” for SF Macnamir and were available to be called upon, they “*may not have played an active part*”.⁴³³ However, he admitted he could not actually recall what role either played in SF Macnamir.⁴³⁴
345. Two of the three Strike Forces, Macnamir and Neiwand, were conducted by the UHT. The two senior officers in the UHT were DCI Lehmann and DCI Young, whose strong views about the extent of gay hate homicides in the 1970s, 1980s and 1990s (including that the death of Scott Johnson was not a “*probable*” or even “*possible*” example) had been expressed clearly in the Lehmann/Young Issue Paper of 25 September 2013.⁴³⁵
346. All three Strike Forces were looking into aspects of the reported wave of gay hate crimes in the period in question:
- a. As to SF Macnamir, the focus was the widely publicised death of Scott Johnson in 1988, in circumstances where the Johnson family was pressing its view that the death was likely to be gay hate homicide but the NSWPF was persisting in its view that it was a suicide (and thus not a gay hate crime at all);
 - b. As to SF Parrabell, it was set up to respond to years of widely publicised claims of more than 80 gay hate homicides, 30 of them unsolved, between the mid-1970s and 2000; and
 - c. As to SF Neiwand, it was set up to “reinvestigate” the three Bondi deaths in the 1980s, two of which had been the subject of express findings of homicide in the 2005 Taradale inquest, also widely publicised.
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*”,⁴³⁶

⁴³³ Transcript, T1792.35-41.

⁴³⁴ Transcript, T1792.43-45.

⁴³⁵ Exhibit 6, Tab 47, (n 110).

⁴³⁶ Exhibit 6, Tab 333, Submissions of the Commissioner of Police, 18 October 2017, [25] (SCOI.11069.00006).

- 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
- c. 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.
348. Moreover, as noted above, one reason given by Coroner Forbes in 2012, for making an open finding rather than a finding of suicide, was that *“the information about the deaths at Bondi has, however, sown a seed of doubt as to the positive finding of suicide”*.⁴³⁸ One of the possibilities, said the Coroner, was *“that Mr Johnson was the victim of a ‘gay hate’ crime similar to those that occurred in Bondi”*.⁴³⁹
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.
350. In DCI Young’s interview with Emma Alberici of ABC’s *Lateline* on 10 April 2015,⁴⁴⁰ DCI Young was asked *“What’s changed since the last coronial inquest that would warrant another one?”* Her answer included the following:
- We have put to the test some of the findings of Operation Taradale, which was – did identify or reinvestigate some gay-hate crimes in Bondi, and two were found to be possible homicides.*⁴⁴¹
351. Pausing there, the findings of Coroner Milledge in the Taradale inquest were not that two of the deaths were “possible” homicides. The findings were that those two deaths (Mr Warren and Mr Russell) were in fact homicides, and the Coroner also expressed the view that the evidence *“strongly supports the probability”* that all three of Mr Warren, Mr Russell and Mr Mattaini had met their deaths at the hands of *“gay hate assailants”*.⁴⁴²
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

⁴³⁷ Exhibit 1, Tab 2, (n 239), 24.

⁴³⁸ Exhibit 6, Tab 317, (n 96), 1.

⁴³⁹ Ibid.

⁴⁴⁰ Exhibit 6, Tab 342, Transcript of recorded interview between Emma Alberici and DCI Pamela Young in the *Lateline* Studio, 10 April 2015, 20 (NPL2017.0004.0549).

⁴⁴¹ Ibid.

⁴⁴² Exhibit 6, Tab 161, (n 75), 14.

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.

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 disregarded.
354. The attitude of both DCI Young and Mr Willing towards the Johnson family, and their contention that Scott Johnson’s death was likely to have been a gay hate homicide, emerged in clear focus in the course of Mr Willing’s evidence on 15 May 2023.
355. Mr Willing accepted that it was “*very clear*” that DCI Young regarded the Johnson family as “*opponents*” of the NSWPF in relation to the third inquest.⁴⁴³ He accepted that she had the view that “*one objective of the police in the third inquest would be to defeat the Johnson family by convincing the Coroner that it was not homicide*”.⁴⁴⁴
356. Mr Willing said that for his part he did not see the police objective as being to “*defeat*” the Johnson family, but he agreed that the relationship was “*adversarial*”.⁴⁴⁵
357. However, that evidence is unpersuasive. On 14 April 2015, the day after the *Lateline* broadcast, DCI Young and Mr Willing exchanged text messages. DCI Young expressed frustration at what she regarded as a lack of support for her in relation to the broadcast. Thereafter the exchange included the following (emphasis added):

Willing: I know Pam. I have felt this crap too and you know that I support you. I want all the hard work you have done to come out in court for what it is and show the Johnsons for what they are. We need to let that happen and can’t jeopardise that now by letting them win.

Young: Mick – I will not let them win – that is not in my DNA ...

*Willing: OK I understand. We will work through it and we will come out on top.*⁴⁴⁶

358. When asked about those texts, Mr Willing accepted that it was obvious that DCI Young wanted to defeat the Johnson family, and that a defeat, for the Johnson family, would be no finding of homicide. He agreed that by his responses he was effectively saying, “*I agree, we will defeat the Johnsons, we will win*”.⁴⁴⁷ However, he claimed that he only said those things because he was “*attempting to appease her, because she was very upset at the time*”.⁴⁴⁸

⁴⁴³ Transcript, T3727.45-3728.5

⁴⁴⁴ Transcript, T3728.10-18.

⁴⁴⁵ Transcript, T3728.25-30.

⁴⁴⁶ Exhibit 6, Tab 382A, Document titled ‘Mick Willing notes’, undated (NPL.2017.0001.0029).

⁴⁴⁷ Transcript, T3729.37-3730.19.

⁴⁴⁸ Transcript, T3729.26-35, T3730.21-24.

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.
360. One of the issues that the Inquiry has sought to explore and clarify, in the course of Public Hearing 2, is whether the three outcomes of the three Strike Forces, summarised above at [347], were merely coincidental, or whether there were other explanations for their overall convergence.
361. Mr Willing was the Homicide Commander at all of these points in time (from late 2011 to late 2017), and was aware of all of the events that were taking place.⁴⁴⁹ He stated that *"communication and/or cooperation between [the three strike forces] was generally a matter for the Investigation Coordinators and/or Supervisors within the UHT"*.⁴⁵⁰
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 2016,⁴⁵² and that AC Crandell had seen the Lehmann/Young Issue Paper as early as April 2015.⁴⁵³

SF Macnamir's investigations

363. By late 2013, it seems that the Young Statement had been largely prepared.⁴⁵⁴ The statement bears a date of 20 November 2013 on the front page, but was not signed until 13 July 2014 (see page 445).

⁴⁴⁹ Transcript, T1627.47-T1629.32.

⁴⁵⁰ Exhibit 6, Tab 252, (n 113), [98].

⁴⁵¹ Exhibit 6, Tab 47, (n 110).

⁴⁵² Exhibit 6, Tab 164A, Strike Force Neiwand Progress Report, 1 July 2016 (SCOI.82054).

⁴⁵³ Exhibit 6, Tab 54, Email from Shoba Sharma to Anthony Crandell re: meeting with Alex Greenwich MP, 22 April 2015 (SCOI.74081).

⁴⁵⁴ Exhibit 6, Tab 252F, (n 102).

364. Mr Willing called it a “*comprehensive overview*” of the work undertaken by SF Macnamir.⁴⁵⁵
365. On 4 October 2013, Mr Willing as Homicide Commander asked the NSW Crime Commission to review SF Macnamir’s investigative activities. He said he did so because he “*felt that an independent review of those investigation activities might help provide a level of comfort to the Johnson family ... that the reinvestigation into the death of Scott Johnson was thorough and objective*”.⁴⁵⁶
366. On 18 February 2014, the NSW Crime Commission responded to the effect that the investigation to that point had been comprehensive and thorough, that it had not identified any line of inquiry which had not already been undertaken, and that there was no scope for the NSW Crime Commission to exercise its statutory powers in a way which would assist the investigation any further.⁴⁵⁷

The ‘suicide hypothesis’ in the Young Statement

367. As previously noted, the Lehmann/Young Issue Paper of 25 September 2013 had excluded the Scott Johnson case from the short list of only eight (out of 30) cases that were – in the view of DCI Lehmann and DCI Young – “probable”, or even “possible”, gay hate-motivated murders.⁴⁵⁸
368. That assessment, it may be noted, was written some seven months into the work of SF Macnamir.
369. The Lehmann/Young Issue Paper had also expressed the view, in relation specifically to the Scott Johnson case, that “at this late stage of the investigation”,
- there is no indication that the deceased was subjected to ‘gay hate’ motivated violence causing his death or in any case, that he was murdered.*⁴⁵⁹ (emphasis added)
370. In January 2014, the Issue Paper by Mr Willing, as Homicide Commander, had endorsed the views expressed in the Lehmann/Young Issue Paper.⁴⁶⁰
371. The first 430 pages of the Young Statement (2874 paragraphs) dealt with the evidence available at the conclusion of the investigative and other work carried out by SF Macnamir. At page 430, paragraph 2875, appears a heading, ‘Opinion’. The final 15 pages (to paragraph 2798) constituted the opinions of DCI Young arising from that evidence.

⁴⁵⁵ Exhibit 6, Tab 252, (n 113), [63].

⁴⁵⁶ Ibid, [49]; see also Exhibit 6, Tab 350A, Document titled ‘DCoP Briefing Note 090415’ [Strike Force Macnamir – Death of Scott Johnson – Briefing Note – April 2015], April 2015, 3 (NPL.3000.0014.0195).

⁴⁵⁷ Exhibit 6, Tab 350A, (n 456), 3.

⁴⁵⁸ Exhibit 6, Tab 47, (n 110).

⁴⁵⁹ Ibid, 4.

⁴⁶⁰ Exhibit 6, Tab 48, (n 101).

372. In his oral evidence on 20 February 2023, Mr Willing declined to agree that these ‘Opinion’ paragraphs clearly convey to a reader that DCI Young’s view was that suicide was the likely explanation for Scott Johnson’s death.⁴⁶¹ He said that the Young Statement *“outlined her reasons or the evidence as she saw it for the hypotheses of suicide, homicide and misadventure”*;⁴⁶² and did not prefer or express any view, one way or the other, as to which of those scenarios was more open.⁴⁶³
373. However, on the resumption of his evidence on 15 May 2023, Mr Willing gave quite different evidence. He said that he had *“thought further”* about the impression a reader of the Young Statement would have drawn.⁴⁶⁴
374. He now agreed that although all three possibilities – suicide, homicide and misadventure – were dealt with in the Young Statement, it was *“quite clear that [DCI Young’s] own view was that suicide was more likely than either of the other two”*.⁴⁶⁵
375. He further agreed that DCI Young’s view was:
- a. that suicide was *“distinctly likely”*, with *“solid evidence supporting that theory”*;
 - b. that homicide was *“distinctly unlikely”* and that the evidence for that theory was *“weak to non-existent”*; and
 - c. that misadventure was *“possible”* but that the Young Statement did not devote much attention to that possibility.⁴⁶⁶
376. Mr Willing explained his change of perspective on this subject as the consequence of having *“read and received lots of different documents”* since he had last given evidence which had *“swayed [his] opinion”*.⁴⁶⁷
377. As for his own views about whether suicide was the most likely explanation for Scott Johnson’s death, Mr Willing said:

*My view changed at various points. I thought at some parts of the inquiry, at some points I thought that suicide was much more likely; other times I thought no, depending on my own analysis of what I was being told at the time. But I thought overall that suicide was a likely possibility – likely explanation for what occurred with Scott.*⁴⁶⁸

⁴⁶¹ Transcript, T1625.18-39.

⁴⁶² Transcript, T1625.8-13.

⁴⁶³ Transcript, T1625.18-39.

⁴⁶⁴ Transcript, T3722.30-34.

⁴⁶⁵ Transcript, T3722.36-41.

⁴⁶⁶ Transcript, T3722.43-3723.7.

⁴⁶⁷ Transcript, T3723.13-16.

⁴⁶⁸ Transcript, T3725.42-3726.2.

378. However, in his interview with the NSWPF's solicitors, Ashurst, on 24 April 2015, Mr Willing had said:

*I think he [Scott Johnson] has probably gone up there to engage in casual sex and either fallen asleep and fallen over or committed suicide. My theory is that he was enamoured with Alan Turing's story – talking about it and leading up to death.*⁴⁶⁹

379. On being directed to that interview transcript, and asked whether his view as at April 2015 (i.e. misadventure or suicide) had thereafter remained the same or not, Mr Willing stated:

*It did chop and change a bit. You'll see in the next line I mention Alan Turing, as a mathematician, similar sort of circumstances, a homosexual man who was concerned over the style of mathematics that Turing engaged in, and I thought that that was a likely scenario at the time, but it did change. There was another - you know, it was before the Coroner for a considerable period of time after that and I thought ultimately that you couldn't determine one way or the other.*⁴⁷⁰

380. It is submitted that the Young Statement unmistakably 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.

381. Mr Willing accepted that DCI Young was plainly saying that the homicide hypothesis was "unlikely to be right", and that the suicide hypothesis was "more likely to be right than the others".⁴⁷²

13 April 2015: The decision to conduct a third inquest; and the ABC Lateline programme

Application for a third inquest

382. On 19 March 2014, Mr Willing, as Homicide Commander, wrote to State Coroner Barnes, to "formally request that your office conduct a further examination of the circumstances surrounding the death of Scott Johnson following the finalisation of current investigations".⁴⁷³

⁴⁶⁹ Exhibit 6, Tab 382, Record of interview with Michael Willing, 24 April 2015, 3 (NPL.0147.0001.0005).

⁴⁷⁰ Transcript, T3727.12-20.

⁴⁷¹ Transcript, T3723.22-3724.35.

⁴⁷² Transcript, T3723.15-39.

⁴⁷³ Exhibit 6, Tab 252C, Letter from Detective Superintendent Commander Michael Willing to Magistrate Michael Barnes re: Request for further coronial investigations into the death of Scott Johnson, 19 March 2014 (SCOI.82369.00004).

383. Mr Willing said that this was not a request for a fresh inquest per se, but only for such a “*further examination*”; it would be a matter for the Coroner to decide whether to conduct a third inquest.⁴⁷⁴ His evidence was that he personally believed a third inquest would be appropriate, as it would address the “*breakdown in the relationship with the Johnson family*” and provide “*some confidence to the Johnson family and the wider public*”.⁴⁷⁵
384. The State Coroner agreed to such a “*further examination*”. That “*further examination*” was in essence, it seems, the work of SF Macnamir, as summarised in the Young Statement.
385. In due course, a directions hearing was listed by the State Coroner for 13 April 2015. As Mr Willing accepted, the two principal matters to be determined at that hearing were first, whether a third inquest was to be ordered, and secondly, whether the Young Statement would be made the subject of a non-publication order, or allowed to be published (in part or whole).⁴⁷⁶
386. Written submissions were filed by Counsel Assisting the Coroner; on behalf of the Commissioner of Police; and on behalf of the Johnson family.
387. Counsel Assisting the Coroner submitted that it would be appropriate to order that a fresh inquest be held.⁴⁷⁷
388. On behalf of the Johnson family, who had brought the application for a third inquest, it was urged that a third inquest should be ordered.⁴⁷⁸
389. In written submissions dated 1 April 2015, the Commissioner of Police took the position that:⁴⁷⁹
- a. it may be premature even to consider whether or not to hold a third inquest, having regard to “*resource implications*” (at [7] and [8]);
 - b. if that question were to be determined now, then one “*proper consideration*” was the “*desirability*” of “*allocating limited public resources to a third inquest*” (at [12]);
 - c. counsel were instructed by DCI Young that the “*new evidence or facts*” available were not such as would produce a different result from the open finding made by Coroner Forbes in 2012 (at [13]); and
 - d. non-publication orders should be made over the Young Statement (at [17]).

⁴⁷⁴ Transcript, T1697.1-7.

⁴⁷⁵ Transcript, T3444.37-47.

⁴⁷⁶ Transcript, T3736.19-37.

⁴⁷⁷ Exhibit 6, Tab 328, Submissions of Counsel Assisting, undated (served 18 March 2015) (SCOI.11062.00005).

⁴⁷⁸ Exhibit 6, Tab 330, Outline of Submissions of the family of Scott Johnson, 10 April 2015 (SCOI.11062.00014).

⁴⁷⁹ Exhibit 6, Tab 329, Submissions of the Commissioner of Police, 1 April 2015 (SCOI.11062.00007).

390. As to (d) above, the evidence has revealed that in fact, some six weeks earlier, in about mid-February, DCI Young had provided the Young Statement to Ms Alberici of the ABC: see below.
391. In oral submissions on 13 April 2015, counsel for the Commissioner of Police said that the Commissioner *“would not resist a fresh inquest being held”*, but reiterated that *“the Commissioner and DCI Young”* do not consider *“that an inquest would result in any findings being made that would produce a different result from the open finding made by Deputy State Coroner Forbes on 26 July 2012.”*⁴⁸⁰
392. Mr Willing gave evidence that, at that time, his own view was also that the open finding which had been delivered in the second inquest remained the appropriate one.⁴⁸¹
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.

The NSWPF “media strategy”

394. In the weeks before the directions hearing on 13 April 2015, the NSWPF discussed and adopted a media strategy in relation to the possibility of a third inquest.
395. The persons within the Police Media Unit who were involved in devising and communicating this media strategy relevantly included: Georgina Wells (Media Supervisor at State Crime Command); Siobhan McMahon (Media Liaison Officer (**MLO**)); Zdenka Vaughan (Executive Media Advisor, Public Affairs Branch; i.e. the Commissioner of Police’s personal media adviser); and Strath Gordon (Director, Public Affairs Branch).
396. As well as Mr Willing and DCI Young, Acting AC Kenneth Finch (Director of the Organised Crime Directorate) and DCSI Kerlatec (Director of the Serious Crime Directorate) were also involved in approving the strategy.
397. One particular aspect of what might happen on 13 April 2015, which was the subject of these discussions, was the possibility that the Young Statement could be made publicly available.
398. On about 1 April 2015, Mr Willing and DCI Young discussed with Ms Wells how to manage the media in relation to the upcoming 13 April directions hearing.⁴⁸² It was agreed that “backgrounders” would be arranged with two journalists, Dan Box of *The Australian* and Lorna

⁴⁸⁰ Exhibit 6, Tab 331, (n 125), 7.

⁴⁸¹ Transcript, T3444.8-18.

⁴⁸² Transcript, T3737.19-27; Exhibit 6, Tab 372, Email correspondence from Georgina Wells to Strath Gordon re: Chronology, 14 April 2015 (NPL.0138.0002.3306); Exhibit 6, Tab 382A, (n 446).

Knowles of the ABC.⁴⁸³ In that context, “backgrounding” meant they would speak to those journalists ‘off the record’, to provide an understanding on a topic on which they were likely to write, namely (in this case) the content of the Young Statement.⁴⁸⁴

399. It was also agreed that there would be a “*possibility of on record interviews if and when the [Young Statement] was made public by the Coroner*”.⁴⁸⁵

400. The Inquiry issued a number of summonses requiring production of documents relating to this “strategy”. Although a very large amount of material was eventually produced in response to those summonses, no one document constituting such a “strategy”, prior to 13 April 2015, was produced.

401. The document which appears to have been the fullest contemporaneous record of the “strategy” was an email dated 7 April 2015 from Ms Wells to DCSI Kerlatec and Acting AC Finch, copied to Mr Willing and DCI Young.⁴⁸⁶

402. That email referred to the approaching directions hearing, noted that the Scott Johnson case was of “*intense media interest*”, and identified a “*concern*” that because the Young Statement was so “*large*”, the media might rely on commentary about it from the Johnson family if it was released.⁴⁸⁷

403. The email then contained the following two paragraphs:

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.*⁴⁸⁸

⁴⁸³ Transcript, T3737.29-33.

⁴⁸⁴ Transcript, T3737.38-3738.13.

⁴⁸⁵ Exhibit 6, Tab 372, (n 482).

⁴⁸⁶ Exhibit 6, Tab 347, Email correspondence from Georgina Wells to John Kerlatec and Kenneth Finch re: Scott Johnson, 7 April 2015 (NPL.0138.0001.0037). See also Transcript, T3745.32-3749.25.

⁴⁸⁷ Exhibit 6, Tab 347, (n 486).

⁴⁸⁸ Ibid.

404. On 8 April 2015, it seems that this strategy was approved by at least DCSI Kerlatec and Deputy Commissioner Kaldas.⁴⁸⁹ It was also approved by Mr Gordon at about this time.⁴⁹⁰

405. Central to what later became the source of a great deal of consternation was the final sentence in the first of those two paragraphs quoted above, namely (emphasis added):

*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).*⁴⁹¹

406. Mr Willing's understanding of that aspect of the strategy was that it did not "immediately authorise" DCI Young to go 'on the record' as soon as the Young Statement was made public.⁴⁹² Rather, if the statement were to be made public, then further consideration would need to be given as to whether DCI Young would go 'on the record'. Any request for an on-the-record interview would have to undergo "further consideration and approval",⁴⁹³ including from himself, DCSI Kerlatec, Acting AC Finch, Mr Gordon and Deputy Commissioner Kaldas.⁴⁹⁴

407. Mr Willing said that if DCI Young had taken the sentence beginning "If and when" as giving her permission to give an interview on *Lateline*, as she ultimately did on the afternoon of 13 April 2015, that was a "massive stretch from what was agreed".⁴⁹⁵

408. Mr Willing said he was not party to conversations between DCI Young and Ms Wells in which the possibility of going "on the record" was discussed.⁴⁹⁶

409. Meanwhile, it is now clear that some eight weeks earlier in around mid-February 2015, DCI Young had provided a copy of the Young Statement to Ms Alberici (the then-presenter of *Lateline*). In emails from Ms Alberici to other ABC staff on 11 April 2015, Ms Alberici referred to having received a copy of the statement "8 weeks ago",⁴⁹⁷ and in an email from DS Brown to DCI Young dated 17 February 2015, titled 'Documents for Emma', DS Brown stated she had "placed a double sided copy of your large statement in a massive blue manila ... envelope on

⁴⁸⁹ Exhibit 6, Tab 380, Handwritten diary entries, April 2015, 91 (NPL.0138.0009.0185); Exhibit 6, Tab 382A, (n 446), 2; Transcript, T3756.

⁴⁹⁰ Exhibit 6, Tab 374, Email correspondence from Strath Gordon to Strath Gordon re: Notes on Pam Young matter, 21 April 2015 (NPL.0138.0004.5545).

⁴⁹¹ Exhibit 6, Tab 347, (n 486).

⁴⁹² Transcript, T3748.14-22, T3750.17-21, T3751.4-10.

⁴⁹³ Transcript, T3744.45-3745.26, T3747.27-33.

⁴⁹⁴ Transcript, T3751.13-18.

⁴⁹⁵ Transcript, T3747.43.47.

⁴⁹⁶ Transcript, T3738.18-22, 31-33.

⁴⁹⁷ Exhibit 6, Tab 354, Email correspondence from Emma Alberici to Bruce Belsham re: Entertainment expense, 11 April 2015 (SCOI.82991); see also Exhibit 6, Tab 348, Email correspondence between Emma Alberici and Lisa Whitby re: Interviews with Steve Johnson and Pamela Young, 8 April 2015 (SCOI.82992).

your desk”, in the context of arranging a time for a “catch up” between Ms Alberici and DCI Young.⁴⁹⁸

410. Mr Willing’s evidence was that he did not know DCI Young had done this,⁴⁹⁹ and that if he had known, it would have “*stopped the backgrounding strategy ... then and there*”.⁵⁰⁰ He described this conduct of DCI Young and DS Brown as “*completely inappropriate and wrong*”.⁵⁰¹

7-13 April 2015: The week before the Lateline interview

411. On about 7 April 2015, DCI Young indicated to Ms Wells that she would prefer to speak to Ms Alberici at the ABC rather than Lorna Knowles.⁵⁰² Mr Willing accepted that he briefly discussed this with Ms Wells and agreed to this course of action.⁵⁰³

412. On 8 April 2015, in an email to a colleague at the ABC, Ms Alberici said that she would have an “*exclusive interview with the head of homicide at NSW Police Pamela Young*”.⁵⁰⁴ Mr Willing agreed that the reference to an “*exclusive interview*” indicated that what was contemplated as between Ms Alberici and DCI Young was something quite different from the “*backgrounder*” which he understood to have been approved.⁵⁰⁵

413. On Friday 10 April 2015, DCI Young had a “*backgrounding*” discussion with Mr Box. Prior to doing so, she asked Ms McMahon (MLO) not to attend. The reasons given by DCI Young for this request, as recorded in Ms McMahon’s email of that day to Mr Gordon and Ms Wells, were that “*a free and frank discussion with Mr Box about the investigation*” would be “*hindered by the presence of an MLO*”, and also that her (DCI Young’s) “*decision*” was “*designed to protect [Ms McMahon] (or any MLO)*” from “*possible repercussions over her comments*”.⁵⁰⁶

414. According to Mr Willing, DCI Young had already told him this on the afternoon/evening of the previous day, 9 April 2015.⁵⁰⁷

415. Mr Willing’s evidence was that DCI Young’s comments that she did not want a media officer present caused him concern, because it “*wasn’t usual*”, but that he “*trusted that Pam [DCI*

⁴⁹⁸ Exhibit 6, Tab 346, Email from Penelope Brown to Pamela Young re: Documents for Emma, 17 February 2015 (NPL.0138.0001.0072).

⁴⁹⁹ Transcript, T3740.21-25.

⁵⁰⁰ Transcript, T3740.27-34.

⁵⁰¹ Transcript, T3744.11.

⁵⁰² Exhibit 6, Tab 367, Email correspondence between Kenneth Finch, Strath Gordon, John Kerlatec and Georgina Wells re: State Crime Command media update, 13-14 April 2015 (NPL.0138.0002.2771).

⁵⁰³ Transcript, T3751.23-40.

⁵⁰⁴ Exhibit 6, Tab 348, (n 497).

⁵⁰⁵ Transcript, T3752.46-3753.7.

⁵⁰⁶ Exhibit 6, Tab 352, Email correspondence from Siobhan McMahon to Blake Clifton re: Scott Johnson backgrounder – MLO asked not to attend, 10 April 2015 (NPL.0138.0004.7178).

⁵⁰⁷ Exhibit 6, Tab 382A, (n 446), 2; Transcript, T3757.3-3758.30.

Young] would do the right thing and it was backgrounding only".⁵⁰⁸ He said he "discussed it with Strath [Gordon] and [they] both came to [the] conclusion that [they] trusted Pam would know what to say".⁵⁰⁹ He did not consider it necessary to speak to DCI Young to remind her not to say anything controversial, because he "trusted that she had the experience and know-how" not to do so.⁵¹⁰

416. On Friday 10 April 2015, DCI Young also participated in a recorded interview with Ms Alberici at the ABC studio.⁵¹¹ In that interview DCI Young clearly indicated, among other things, that her personal view of Scott Johnson's death was that it was a suicide.⁵¹²
417. Mr Willing was aware that DCI Young went to the ABC on 10 April 2015. Ms Young telephoned him on her way there.⁵¹³ He said he thought this was a "backgrounding discussion" with Ms Alberici.⁵¹⁴ He said he did not know that they had actually recorded an interview on that day.⁵¹⁵
418. When taken to portions of the transcript of the interview which suggested that Ms Alberici and DCI Young were planning to use excerpts from the interview as promotional material for a *Lateline* broadcast the following week, Mr Willing said that this was "not at all" within what he understood DCI Young was authorised to do.⁵¹⁶
419. Elsewhere in his evidence, Mr Willing sought to suggest that he only knew that DCI Young had "started" the backgrounder with Ms Alberici on that day, 10 April 2015, and that she may not have finished it.⁵¹⁷ On that footing, he subsequently suggested that one possibility in his mind, on 13 April 2015, was that she went to the ABC on that second occasion, on 13 April 2015, in order to finish the backgrounding discussion.⁵¹⁸
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.

⁵⁰⁸ Transcript, T3757.12-26.

⁵⁰⁹ Transcript, T3757.38-41.

⁵¹⁰ See also Exhibit 6, Tab 374, (n 490); Exhibit 6, Tab 375, Email from Strath Gordon to Strath Gordon re: Pam Young, 22 April 2015 (NPL.0138.0004.7119).

⁵¹¹ Exhibit 6, Tab 342, (n 440).

⁵¹² Ibid, 2-3.

⁵¹³ Exhibit 6, Tab 382A, (n 446).

⁵¹⁴ Transcript, T3741.17-27, T3762.28-32.

⁵¹⁵ Transcript, T3771.21-23.

⁵¹⁶ Transcript, T3765.32-38.

⁵¹⁷ Transcript, T3761.18-27, T3762.28-32.

⁵¹⁸ Ibid; see also Exhibit 6, Tab 382A, (n 446), 2.

421. On Sunday 12 April 2015, Mr Willing received a text message from DCI Young, in which she advised that the ABC had called her to clarify a number of matters, and that they were sounding “*very much convinced of the true facts of the matter*”.⁵¹⁹

Monday, 13 April 2015 – up to about 5pm

422. At about 9:00am on 13 April 2015, Mr Willing spoke to DCI Young by phone. In the course of that conversation, he told her “*that she was okay to do a door-stop statement outside court welcoming the inquest should another inquest be ordered*”.⁵²⁰

423. At about noon or a little earlier on 13 April 2015, State Coroner Barnes did order a third inquest. He also ordered that a version of the Young Statement, with some redactions, be made public.⁵²¹

424. Mr Willing reiterated that in his mind these rulings did not have any effect on the possibility of DCI Young going ‘on the record’. He said:

*Nothing changed. In terms of going on the record to talk about the content of the investigation, her statement, she would have to come back and have a discussion and pose that, and we would discuss it involving a range of people, before that was approved.*⁵²²

425. Soon after the directions hearing, DCI Young was interviewed by an ABC journalist, on film, outside the Coroners Court.⁵²³ Part of that filmed interview was later shown during the ABC TV 7:00pm news bulletin that night.⁵²⁴

426. However, DCI Young did not tell Mr Willing that she had done this. To the contrary, what she did tell him was that, although (as noted above) he had given her approval to do a doorstep interview outside the Court, she had not in fact done so because “*there were no media left outside for her to do a doorstep statement with*”.⁵²⁵ Mr Willing responded that that was okay as a media release would go out.⁵²⁶

427. That evidence is of significance, as outlined below.

⁵¹⁹ Exhibit 6, Tab 382A, (n 446), 2-3; Transcript, T3768.29-3769.1.

⁵²⁰ Exhibit 6, Tab 382A, (n 446).

⁵²¹ Exhibit 6, Tab 331, (n 125), 5.

⁵²² Transcript of the Inquiry, 15 May 2023, T3769.36-40.

⁵²³ Exhibit 6, Tab 343, Transcript of interview with DCI Pamela Young outside NSW Coroners Court Glebe, 13 April 2015 (NPL.2017.0004.0588).

⁵²⁴ Exhibit 6, Tab 362A, Video footage of ABC News NSW 7pm news program, 13 April 2015 (SCOI.47474); Exhibit 6, Tab 362B, Transcript of ABC News segment re inquest into the death of Scott Johnson, 13 April 2015 (SCOI.47473).

⁵²⁵ Exhibit 6, Tab 382A, (n 446), 3.

⁵²⁶ Ibid.

428. At around 1:00pm a NSWPF media release was duly issued, welcoming the inquest.⁵²⁷
Mr Willing accepted that its terms were “bland” and “uncontroversial”.⁵²⁸

429. At 4:35pm on 13 April 2015, Ms Wells emailed a daily “media update” to various NSWPF personnel within State Crime Command and the Police Media Unit, including DCSI Kerlatec, Acting AC Finch and Ms Vaughan, but not including Mr Willing. That update stated that:

*Last week, backgrounders were facilitated by DCI Pam Young with Dan Box (Australian) and Emma Alberici (ABC TV) about the contents of the [Young Statement].*⁵²⁹

The 5pm telephone conversation between DCI Young and Mr Willing

430. At around 5:00pm on 13 April 2015, Mr Willing received a phone call from DCI Young.

431. What DCI Young said in that conversation, and what Mr Willing claimed to have understood from what she said, were the subject of a considerable amount of evidence, as discussed in the following paragraphs.

432. Mr Willing first gave evidence on this topic on 20 February 2023.⁵³⁰

433. On that occasion, he said that when DCI Young called on 13 April 2015, she was “on her way to the ABC studio”, and that she said, “I’m about to go and speak to Emma Alberici”. He said that she “might have” told him that she was likely to use the word “kowtowing” if she was asked about the Minister for Police.⁵³¹

434. When he gave further evidence on 15 May 2023, Mr Willing said (as outlined more fully below) that what DCI Young had said on 13 April 2015 was not that she was “on her way to” the ABC, but that she “had recorded an interview” with Ms Alberici.⁵³²

435. That 15 May 2023 evidence is consistent with Mr Willing’s “dot points”,⁵³³ apparently prepared by him at some time after 13 April 2015 in advance of his Ashurst interview on 24 April 2015.⁵³⁴ In those dot points, as discussed further below, Mr Willing recounts DCI Young saying to him in a phone conversation on 10 April 2015 (not 13 April 2015) that she was “on her way to the ABC now”, and that what she said in the phone call on 13 April 2015 was that she “had recorded an

⁵²⁷ Exhibit 6, Tab 356, Email correspondence between Georgina Wells, Michael Willing, Pamela Young and others re: UPDATED Media Release re Scott Johnson Inquest, 13 April 2015 (NPL.0138.0004.7162).

⁵²⁸ Transcript of the Inquiry, 15 May 2023, T3770.5-9.

⁵²⁹ Exhibit 6, Tab 361, Email correspondence from Georgina Wells to Kenneth Finch and John Kerlatec re: SCC media update, 13 April 2015 (NPL.0138.0002.2947).

⁵³⁰ Transcript, T1711.41-1724.45.

⁵³¹ Transcript, T1720.28-40.

⁵³² Transcript, T3770.35-38, T3776.2-11.

⁵³³ Exhibit 6, Tab 382, (n 469).

⁵³⁴ Ibid.

*interview with ABC*⁵³⁵ (emphasis added). It may be, therefore, that Mr Willing's evidence on 20 February 2023 at T1720.29-44 was mistaken.

436. In any event, what Mr Willing also said in his evidence on 20 February 2023 included the following:⁵³⁶

MR GRAY SC: Q. Okay. Now, you knew that Pamela Young was going to be interviewed for Lateline, didn't you?

A. No. I knew that she would be - that she would have a conversation with a journalist from the ABC, and also another journalist, from The Australian, prior to that, on background only, and I was unaware that that would - that she would actually give a live interview or an interview, I should say, that would be televised.

THE COMMISSIONER: Q. So do I understand it to say that she didn't tell you that she was going on air that night?

A. No, no.

Q. And it came as a complete surprise to you -

A. I received a telephone call -

Q. Well, if you wouldn't mind me just finishing the question, I'm so sorry.

A. Sorry.

Q. It must have come as a complete shock and a surprise when you saw her face on the television, then, did it?

A. Yes, I received a telephone call saying that, "Pam is on Lateline". I turned it on and saw her there.

Q. Well, to answer my question, did it come as a shock and a surprise -

A. Yes, it did.

Q. -- to see her on the television?

A. Yes, it did.

Q. (a) she never asked your permission?

A. To go on television like that, no.

Q. Yes, correct. And (b) therefore you had no knowledge that she was going on television?

A. Not like that, no.

Q. When you say "not like that", I'm so sorry, not at all?

A. No, not on - not on television at all.

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.

⁵³⁵ Exhibit 6, Tab 382A, (n 446), 2.

⁵³⁶ Transcript, T1711.40-1712.35.

438. In his “dot points”, Mr Willing wrote that the telephone conversation at about 5:00pm on 13 April 2015 proceeded as follows (emphasis added):

Later that afternoon around 5pm I was driving home when I received a call from DCI Young. She stated that she had recorded an interview with ABC and that her interview, along with interviews with Steve Johnson and Dan Glick would feature on that night’s Lateline program. The call caught me by surprise and I just told her thanks for telling me and that I would advise Georgie Wells. I did not know what form the interview took at that point and assumed that it was the original back-grounding discussion that was going to be used by Lateline. I then rang Georgie Wells and advised her of my conversation with DCI Young.⁵³⁷

439. To similar effect, he said in his 24 April 2015 Ashurst interview (emphasis added):

Next thing I hear I am driving home and she says she did an interview with Emma Alberici that will be on TV tonight. I was driving and I thought it meant backgrounding information being used. At most a stand up type interview.⁵³⁸

440. On 15 May 2023, when taken to these records, Mr Willing said that what he understood DCI Young to have meant, when she said she “*had recorded an interview*” which would be on TV that night on *Lateline*, was that DCI Young had recorded an interview “*at the court*”, “*in line with her approval to do a stand-up*”.⁵³⁹

441. When asked how this could be so when he had been told by DCI Young “*that there were no media left outside court for her to do a doorstep statement with*”, Mr Willing’s response was to say that either the “*ABC has turned up after she has told me that or she has told me an untruth*”.⁵⁴⁰

442. He said that he had “*put together*” this interpretation in the last month or so (i.e. in April or May 2023).⁵⁴¹

443. There followed this exchange:

Q. You see, if she told you, as she evidently did, that she had not done a media interview outside the court because there were no media left, then when she rang you at 5pm to say that she had recorded an interview with the ABC, she must have been talking about something else, mustn’t she?

A. No. No, not at all. Like, so she’s - that’s the only thing it could have been at that time, because I’d given her approval to do a door-stop. I didn’t know about the interview on the Friday at all, the recording. I knew she’d done a background. But I didn’t know of a recorded interview until she told me at 5 o’clock.

⁵³⁷ Exhibit 6, Tab 382A, (n 446), 2.

⁵³⁸ Exhibit 6, Tab 382, (n 469), 6.

⁵³⁹ Transcript, T3776.17-25. See also T3770.35-43.

⁵⁴⁰ Transcript, T3776.27-30.

⁵⁴¹ Transcript, T3776.23-3777.10.

Q. I see. So you agree, of course, that you knew that she had done a backgrounder on the Friday?

A. Yes.

Q. But you're saying that although you knew that, you didn't know that it was in the form of a recorded interview?

A. Correct.

Q. And is this your evidence, then, that when she rings you at 5 o'clock and says, "I have recorded an interview with the ABC" --

A. Yes.

Q. -- you now think that you must have assumed that that was a reference to the door-stop that she must have done that day?

A. Yes.

Q. Even though she had actually told that you there were no media left when she came out of the court?

A. That's right. And she said the same thing to Georgie Wells as well.

Q. Yes. Maybe so. But my point is you think -- your evidence is that when she told you she'd recorded an interview with the ABC on the Monday, you understood that to mean an interview by way of a door-stop outside the court, even though she had told you there were no media left when she came out of the court?

A. Yes.

Q. It's hard to fathom how that could be right, Mr Willing.

A. Not if a journalist has turned up after she's told both myself and Georgie Wells around midday that there were no media present.

Q. What would make you think that that must have happened?

A. It was the only logical explanation because I didn't know of the interview that had been recorded on the Friday.⁵⁴²

444. Ms Wells, in her Ashurst interview, said she received a call from Mr Willing at about 5:00pm, from which she knew that DCI Young would be on *Lateline*. However, just what she thought would be on *Lateline* is unclear. She told Ashurst at one point that she assumed it would be "snippets" or "quick grabs". At another point she said, "I was expecting it to just be a backgrounder", but she then immediately said that the backgrounder could not have been used as an interview. She said she was "speechless" when she watched the *Lateline* programme that night.⁵⁴³

⁵⁴² Transcript, T3777.12-3778.19.

⁵⁴³ Exhibit 6, Tab 384, Record of interview with Georgina Wells, 27 April 2015, 3 (NPL.0147.0001.0001).

445. On 14 April 2015, the day after the *Lateline* broadcast, Ms Wells set out a summary of her recollections in an email to Mr Gordon.⁵⁴⁴ As to what she was told by Mr Willing at 5:00pm on 13 April 2015 (some 24 hours earlier), Ms Wells wrote:

*DCI Young did indicate ABC were doing a story but I was not aware an interview had been conducted until Det Supt Willing was advised by DCI Young about 5pm. No issues of concern were raised at the time.*⁵⁴⁵

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 doorstep 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).

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

⁵⁴⁴ Exhibit 6, Tab 372, (n 482).

⁵⁴⁵ Ibid, 1.

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.⁵⁴⁶ 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 doorstep interview (which at the time, on 13 April 2015, he believed had not occurred) should not be accepted.⁵⁴⁷ 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*”.

The evening of 13 April 2015

452. At 6:18pm, after Mr Willing had told Ms Wells of his conversation with DCI Young,⁵⁴⁸ Ms Wells circulated, by email to the same recipients, a “late addition” to her earlier 4:35pm media update.⁵⁴⁹ Mr Willing was not one of those recipients.

453. In this email, Ms Wells stated (emphasis added):

*In addition to the media update re SF Macnamir, Det Ch Insp Pam Young spoke to Emma Alberici from ABC Lateline on camera today. The reporter also spoke with Steve Johnson. Both are to appear on tonight’s Lateline.*⁵⁵⁰

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 doorstep at the court because “the media had left”.⁵⁵¹ 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 doorstep. That in turn would tend to indicate that Mr Willing also had that understanding.

455. At 7:00pm, the ABC evening news was broadcast.⁵⁵² Early in the broadcast was a story about the Johnson case in the Coroners Court that day. Most of the story was presented by “*Lateline*’s Emma Alberici”. It included footage of both Steve Johnson and DCI Young outside the court.

456. The newsreader concluded the news item as follows (emphasis added):

⁵⁴⁶ Transcript, T3812.12-40.

⁵⁴⁷ Transcript, T3779.8-38.

⁵⁴⁸ Transcript, T3784.21-30; Exhibit 6, Tab 382A, (n 446), 3.

⁵⁴⁹ Exhibit 6, Tab 362, Email correspondence from Georgina Wells to Kenneth Finch and John Kerlatec re: LATE ADDITION – SCC media update, 13 April 2015 (NPL.0138.0002.3238).

⁵⁵⁰ Ibid.

⁵⁵¹ Exhibit 6, Tab 384, (n 543), 3.

⁵⁵² Exhibit 6, Tab 362B, (n 524).

*And you can see an exclusive interview with the lead detective in that case on Lateline tonight at about 10.30 here on ABC TV.*⁵⁵³

457. Mr Willing's evidence was that he did not watch the 7:00pm news broadcast.⁵⁵⁴ However, he suggested that the "exclusive interview" on *Lateline* to which the newsreader referred was a reference to nothing more than a more extensive part of the same doorstep interview outside the Coroners Court, some of which had been shown in the preceding news story.⁵⁵⁵
458. Having regard to the evidence discussed above, this suggestion is implausible.
459. At some time between 7:00pm and about 7:30pm, DCI Young exchanged text messages with Mr Willing and Ms Wells. Those texts are set out in an email sent by DCI Young to herself on 17 April 2015, which Mr Willing did not dispute was a faithful reproduction of messages actually sent and received.⁵⁵⁶ The texts were as follows (emphasis added):⁵⁵⁷
- a. from DCI Young to Mr Willing and Ms Wells: *"Mick & Georgie – in case you missed it the ABC news coverage was balanced with a reference to an exclusive tonight on Lateline. I am glad we went with ABC as they go with the journalism not the ratings. Hair & lippy good too – especially on Penny!"*;
 - b. a reply from Ms Wells to DCI Young: *"Thanks Pam, look forward to seeing it."*; and
 - c. a reply from Mr Willing to DCI Young: *"Ta Pam. I will have to stay up late... on a school night too!"*
460. He maintained that the references to an "exclusive tonight on *Lateline*" and to the ABC "go[ing] with the journalism not the ratings" were again to a doorstep.⁵⁵⁸ He said that DCI Young's reference to DS Brown ("Penny") must have been a reference to an interview conducted at court, as DS Brown was with DCI Young at court but was not part of the *Lateline* programme which was ultimately broadcast that night.⁵⁵⁹
461. However, such an interpretation (regardless of its merits) was not available to Mr Willing as on the evening of 13 April 2015, since he had not watched the ABC news broadcast.
462. Moreover, the second sentence of DCI Young's text (beginning "*I am glad*") is plainly not addressed to the interview outside the court. DCI Young knew that interview had occurred, but

⁵⁵³ Ibid, 2.

⁵⁵⁴ Transcript, T3787.7-8.

⁵⁵⁵ Transcript, T3786.30-3787.1.

⁵⁵⁶ Transcript, T3787.46-3788.2.

⁵⁵⁷ Exhibit 6, Tab 364, Email from Pamela Young to Pamela Young re: Texts Mick Willing & Georgie Wells, 13 April 2015 (NPL.0138.0001.0042).

⁵⁵⁸ Transcript, T3789.1-21.

⁵⁵⁹ Transcript, T3789.1-6.

Mr Willing did not. DCI Young also knew (but Mr Willing did not) that the interview at court had already been shown on the 7:00pm news. Rather, that second sentence was addressed to a different topic, namely the *“exclusive tonight on Lateline”*.

463. Further, *“I am glad we went with ABC”* indicates a confirmation of the correctness of a particular media strategy which included choosing the ABC rather than another media outlet or programme. It does not relate to a doorstep with whatever media representatives may have been present outside court.
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 doorstep) interview; and that she 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.
466. At 8:11pm on 13 April 2015, Mr Willing sent a text message to State Coroner Barnes.⁵⁶⁰ Included in the text was the following:

Pam has been interviewed by the ABC and the Australian concerning SF Macnamir. She will most likely be on Lateline tonight. ... This was something that we discussed up to our Deputy Commissioner and head if (sic) public affairs and we all agreed that we needed to do it for a number of reasons.

467. Mr Willing accepted that in fact he knew that it was more than *“most likely”* that DCI Young would be on *Lateline*, as he had been told it would be occurring.⁵⁶¹
468. When asked why he *“watered down”* his language for the State Coroner, he said there was *“no reason at all”*, and he accepted it *“could be”* careless.⁵⁶²
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,⁵⁶³ was

⁵⁶⁰ Exhibit 6, Tab 366, Text message sent from Michael Willing to State Coroner Michael Barnes, 13 April 2015 (SCOI.47469).

⁵⁶¹ Transcript, T3791.26-42.

⁵⁶² Transcript, T3792.1-9.

⁵⁶³ Transcript, T3793.5-3794.12.

again to seek to resort to reliance on the doorstep interview outside the court. Again, that evidence should be rejected.

470. Mr Willing also accepted he was in regular contact with State Coroner Barnes at this time, and was having regular discussions with him about the Johnson case which did not cease once the third inquest was announced.⁵⁶⁴ He maintained that this degree of contact was normal or routine.⁵⁶⁵
471. Later that evening, the *Lateline* programme was broadcast.⁵⁶⁶
472. Mr Willing initially gave evidence, on 20 February 2023, that he began to watch the *Lateline* broadcast as a result of receiving a phone call from a person he could not remember.⁵⁶⁷ On 15 May 2023 he accepted that DCI Young had alerted him to the broadcast by text message at around 7:30pm.⁵⁶⁸
473. He gave evidence that although he replied to DCI Young by saying that he “*would have to stay up late*”, in fact he had not watched the programme that night until he received an email from DCI Peter Yeomans on the evening of 13 April 2015 at 9:43pm,⁵⁶⁹ which prompted him to turn on the television.⁵⁷⁰
474. He said that when he turned on the television, DCI Young was on the screen. He did not see the part of programme prior to her appearance.⁵⁷¹
475. During the interview as broadcast on *Lateline*, DCI Young:
- a. said she did not accept (“*not at all*”) that the initial investigation into Scott Johnson’s death was “*flawed*”; rather it was “*to the standard of the day*”;
 - b. immediately volunteered that “*there’s still evidence and information that Scott may have suicided*”;
 - c. said that it was “*very important*” to mention the Golden Gate Bridge and compare it to North Head;

⁵⁶⁴ Transcript, T3794.35-3795.1.

⁵⁶⁵ Transcript, T3795.26-27.

⁵⁶⁶ Exhibit 6, Tab 318, (n 126).

⁵⁶⁷ Transcript, T1713.32-37.

⁵⁶⁸ Transcript, T3788.18-22, T3790.32-35.

⁵⁶⁹ Exhibit 6, Tab 366A, Email correspondence between Peter Yeomans and Michael Willing re: Channel 24 story, 13 April 2015 (NPL.0138.0009.0356_E).

⁵⁷⁰ Transcript, T3735.33-46, T3797.29-38.

⁵⁷¹ Transcript, T3803.31-3804.5.

- d. accused Steve Johnson of using “influence”, “on the government, to make the death of Scott a priority in my office over other jobs that we had”; and
- e. accused the Minister for Police of “kowtowing” to Steve Johnson.⁵⁷²

476. Mr Willing’s evidence was that when he heard the interview, he was “shocked” and “angry”.⁵⁷³ However, he did not ring or text DCI Young or any other police officer. He said he believed it would be dealt with in the morning. He did not recall why he did nothing himself.⁵⁷⁴

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.

14 April onwards: The fallout from the Lateline interview

478. On the following day, 14 April 2015, Mr Willing spoke to State Coroner Barnes, who said (apparently in a reference to a request which had been made by senior counsel for the Johnson family that DCI Young be removed from the investigation, and apparently not having yet seen the programme himself):

*I tend to think it’s a tactic by Agius and it’s a storm in a teacup ... It serves me no purpose to move Pam from this.*⁵⁷⁵

479. When Mr Willing arrived at work that morning there was a message to call DCSI Kerlatec,⁵⁷⁶ who had received a “terse” email from Acting AC Finch.⁵⁷⁷ Mr Willing called DCSI Kerlatec and “advised him of the content of the interview.”⁵⁷⁸

480. Shortly afterwards Mr Willing received a call from Ms Vaughan. Ms Wells and DI Christopher Olen were with him at the time. With Ms Vaughan on speaker phone, they discussed the *Lateline* interview. All agreed that the best option would be to make no comment to the media.⁵⁷⁹

481. A little later, after having spoken with the Commissioner of Police, Ms Vaughan also told him that the Commissioner “wanted everyone to know that he supported DCI Young and was aware

⁵⁷² Exhibit 6, Tab 318, (n 126).

⁵⁷³ Transcript, T3807.7-24.

⁵⁷⁴ Transcript, T3807.26-3810.15.

⁵⁷⁵ Transcript, T3799.34-47.

⁵⁷⁶ Exhibit 6, Tab 382A, (n 446), 3.

⁵⁷⁷ Exhibit 6, Tab 367, (n 502).

⁵⁷⁸ Transcript, T3813.19-22.

⁵⁷⁹ Exhibit 6, Tab 382A, (n 446), 3.

- of the hard work she had done on the case*".⁵⁸⁰ Mr Willing had the impression, from Ms Vaughan, that at that stage the Commissioner of Police was "relaxed" about the broadcast.⁵⁸¹
482. On that basis, some "lines" were drafted, by Mr Willing, Ms Wells and DI Olen, for a potential public statement. These "lines" were distributed from Mr Willing's email account at 9:18am. They were generally supportive of DCI Young.⁵⁸²
483. One such "line" was that the "majority of points [DCI Young] raised [on Lateline] are contained within her statement provided to the Coroner".⁵⁸³ As Mr Willing acknowledged, that was simply not true.⁵⁸⁴ The most problematic parts of what DCI Young had said on *Lateline* were certainly not in the Young Statement.
484. Mr Willing acknowledged that he (with the other two) was proposing this media release at a time when he himself had still not seen the full *Lateline* programme.⁵⁸⁵
485. Within a few hours, however, following various "media inquiries" to the Commissioner of Police as to whether he "stood by his officer's comments", Ms Vaughan told Mr Willing that something would have to be put out, and that "you will have to own this Mick".⁵⁸⁶ "Alarm bells" were now ringing.⁵⁸⁷
486. Mr Willing accordingly drafted another proposed statement, in very different terms. This time DCI Young's comments were to be described as "inopportune".⁵⁸⁸
487. Such a public statement was released, at around 3:20pm. Its terms were as follows:
- Detective Chief Inspector Pamela Young is an experienced officer who, along with her team, has worked hard on this case and conducted an outstanding investigation.*
- Perhaps some of her comments (on Lateline) were inopportune in light of the Coroner's decision yesterday to hold a third inquest, a decision that is fully supported by the NSW Police Force.*
- In light of that decision yesterday it would be inappropriate to make further comment.*⁵⁸⁹

⁵⁸⁰ Transcript, T3814.14-47; Exhibit 6, Tab 382A, (n 446), 4.

⁵⁸¹ Transcript, T3817.24-39.

⁵⁸² Exhibit 6, Tab 368, Email correspondence from Michael Willing to Zdenka Vaughan (sent by Georgina Wells) re: Lines re Pam Young, 14 April 2015 (NPL.3000.0009.0669).

⁵⁸³ Ibid.

⁵⁸⁴ Transcript, T3806.15-33, T3816.17-3817.20.

⁵⁸⁵ Transcript, T3816.17-20.

⁵⁸⁶ Exhibit 6, Tab 382A, (n 446), 4.

⁵⁸⁷ Transcript, T3818.27-29.

⁵⁸⁸ Exhibit 6, Tab 382A, (n 446), 4.

⁵⁸⁹ Exhibit 6, Tab 371, Email correspondence from Georgina Wells to Rick Feneley re: Statement from Det Supt Mick Willing, 14 April 2015 (NPL.0138.0002.6717).

488. During the course of 14 April 2015, Mr Willing also exchanged text messages and spoke on the telephone with DCI Young. She was very upset.⁵⁹⁰ However, Mr Willing's evidence was that at no stage on that day did DCI Young suggest to him that he knew or had approved of what she was going to say on *Lateline*.⁵⁹¹
489. By 23 April 2015, DCI Young had been removed as the Investigation Supervisor of SF Macnamir. Following her removal, DS Brown (who was the incumbent OIC) assumed control over SF Macnamir, with DCI Dickinson serving as Investigation Supervisor. Both reported directly to Mr Willing.
490. Nevertheless, in late May 2015, after her removal from the Johnson investigation, the NSWPF sought approval for DCI Young to travel to England to obtain statements from two witnesses in order to bolster a hypothesis of suicide in relation to Scott Johnson's death.⁵⁹²
491. Mr Willing's evidence was that he learned of this proposal from DAS Laidlaw, who was at that time relieving him as Homicide Commander whilst Mr Willing filled in as acting Assistant Commissioner in a different area.⁵⁹³ Mr Willing said he thought it was an "*unlikely proposal that the Coroner would agree to*", and that he told DAS Laidlaw to raise it with the State Coroner.⁵⁹⁴ Mr Willing accepted that this suggested a "considerable attachment to the suicide theory" on DCI Young's part.⁵⁹⁵

Late 2017: The conclusion of SF Macnamir

492. On 30 November 2017, State Coroner Barnes delivered his findings in the third inquest. His Honour concluded that that Scott Johnson had fallen from the cliff top at Blue Fish Point, North Head "*as a result of actual or threatened violence by unidentified persons who attacked him because they perceived him to be homosexual*".⁵⁹⁶ He considered it was unlikely that either misadventure or suicide was the cause of death.⁵⁹⁷

⁵⁹⁰ Transcript, T3823.25-33.

⁵⁹¹ Transcript, T3824.31-37.

⁵⁹² Exhibit 6, Tab 377, Email correspondence between David Laidlaw, State Coroner Michael Barnes and Michael Willing re: Advice Sought – Strike Force Macnamir – Scott Johnson Death, 20 May 2015 (NPL.3000.0003.2864).

⁵⁹³ Transcript, T3725.26-30.

⁵⁹⁴ Transcript, T3725.26-30.

⁵⁹⁵ Transcript, T3725.32-38.

⁵⁹⁶ Exhibit 6, Tab 232, (n 95).

⁵⁹⁷ Ibid, [247], [258].

493. DAS Olen described DS Brown and DSC Clancy, with whom he attended the hearing on 30 November 2017, as having been *“understandably ... pretty upset”* at hearing the State Coroner’s finding.⁵⁹⁸
494. When asked on 20 February 2023 why a finding of homicide would upset UHT officers on a strike force responsible for reinvestigating an unsolved homicide, Mr Willing accepted that it *“could be one hypothesis”* that they were *“so heavily invested in one of the other alternatives [suicide or misadventure] that the homicide alternative was unpalatable to them”*.⁵⁹⁹
495. Mr Willing added, on 20 February 2023, that the investigation was *“under the guise and direction of the Coroner”* from April 2015, so that their personal views did not affect the lines of inquiry from that point onwards.⁶⁰⁰ However, in his further evidence on 15 May 2023, Mr Willing accepted a series of propositions to the effect that both officers had started from April 2015 with a view that it was not homicide and was very likely to be suicide, and that they had continued to hold that view until November 2017 and had *“conducted the inquiry, albeit under the direction of the Coroner, from that perspective”*.
496. Mr Willing agreed that such an approach was hardly open-minded.⁶⁰¹
497. In 2018, following the State Coroner’s finding of homicide, Strike Force Welsford was established to investigate Scott Johnson’s death, led by DCI Yeomans.⁶⁰² That strike force was initiated under Mr Willing’s successor as Homicide Commander, under a new Commissioner of Police, and led by an officer who was not in the UHT or indeed in the Homicide Squad.⁶⁰³
498. The work of Strike Force Welsford resulted in the apprehension of a suspect, who on 12 May 2020 was arrested and charged for the alleged murder of Scott Johnson.⁶⁰⁴ That suspect ultimately pleaded guilty to a charge of manslaughter in February 2023.

General submissions in relation to SF Macnamir

499. It is submitted that the evidence would permit at least the following findings.
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

⁵⁹⁸ Exhibit 6, Tab 311, Email correspondence between Christopher Olen, Jason Dickinson and Scott Cook re: Response from Mr David Shoebridge re Scott Johnson Inquest, 1 December 2017 (NPL.0115.0002.8325).

⁵⁹⁹ Transcript, T1705.39-42.

⁶⁰⁰ Transcript, T1705.42-1706.2.

⁶⁰¹ Transcript, T3731.4-33.

⁶⁰² Transcript, T1706.17-30.

⁶⁰³ Transcript, T1709.11-13.

⁶⁰⁴ Transcript, T1706.32-37.

Johnson family and in response to media pressure which had come to a head with the *Australian Story* episode on 11 February 2013.

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.
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.
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.

PART D: STRIKE FORCE NEIWAND

Background leading to SF Neiwand

504. SF Neiwand was created in or around October 2015 and concluded on 30 November 2017. SF Neiwand, like SF Macnamir, was conducted by the UHT.⁶⁰⁵
505. SF Neiwand was established with the following terms of reference:

*To re-investigate the suspicious disappearance and death of Giles Mattaini from Bondi on 01/09/1985; the suspicious disappearance and death of Ross Warren from Bondi on 22/07/1989 and; the suspected murder of John Russell at Bondi on 23/11/1989.*⁶⁰⁶

506. The deaths of Mr Mattaini, Mr Russell and Mr Warren had previously been examined by Operation Taradale and the Taradale Inquest before Coroner Milledge.

1985-1989: The deaths of Ross Warren, John Russell and Gilles Mattaini

Ross Warren

507. At the time he disappeared, Mr Warren was 25 years old and a television presenter with WIN 4 Television in Wollongong. He was a gay man and some of his friends were aware that he sometimes went to beats.
508. On the evening of 21 July 1989, Mr Warren drove from Wollongong to Sydney after presenting the weather report at the end of the 6pm news. At about 10.30pm he drove to Oxford Street in Darlinghurst. He and a work colleague visited several bars and nightclubs along the Oxford Street strip before going their separate ways in the early hours of the morning on 22 July 1989. He was said to have been in good spirits.⁶⁰⁷
509. On 23 July 1989, Mr Warren did not turn up for work, which was uncharacteristic of him. His friends in Sydney went to Paddington Police Station (**Paddington Police**) on the Sunday evening and reported him missing. After searching for Mr Warren, his friends located his car in Kenneth Street, Bondi, very close to Marks Park. They reported their finding to Paddington Police the same night.⁶⁰⁸

⁶⁰⁵ Exhibit 6, Tab 253, (n 370), [31]-[32].

⁶⁰⁶ Exhibit 6, Tab 17, Terms of Reference, 30 June 2016 (SCOI.74884).

⁶⁰⁷ Exhibit 6, Tab 174, (n 140), 1.

⁶⁰⁸ Ibid.

510. The next morning, Monday, 24 July 1989, Mr Warren's friends went back to Marks Park again when Mr Warren's keys were located in a rock 'pocket' below the cliff near the water's edge. Again, Mr Warren's friends reported this discovery to Paddington Police.
511. On 26 July 1989, the *Daily Telegraph* reported that there were fears that Mr Warren had been murdered. However, on 28 July 1989 the OIC of the investigation at Paddington Police, DS Kenneth Bowditch, wrote in the Occurrence Pad that investigating police had no such view, and were of the opinion that Mr Warren had "*fallen into the ocean in some manner and it is anticipated that in the near future his body will surface and be recovered*". The investigation seems to have effectively finished after four days.⁶⁰⁹
512. Mr Warren's body has never been found.⁶¹⁰ Mr Warren's suspected death was never reported to the Coroner.⁶¹¹

John Russell

513. Around four months later, in November 1989, Mr Russell was found dead on the rocks at the bottom of the cliffs at Marks Park. At the time of his death, Mr Russell was 31 years old. He had been working as a barman at the Bronte Bowling Club, and living with his brother, Peter Russell, in Bondi. He was a gay man and at the time of his death, Mr Russell was said to have been excited about his plans to leave Sydney and build a 'kit home' on his father's property at Wollombi that was to be funded by an inheritance from his grandfather. He also intended to use some of those funds to travel around Australia.⁶¹²
514. On the evening of Wednesday, 22 November 1989, Mr Russell attended farewell drinks with a friend at the Bondi Hotel. He had a similar evening planned for the following night, and then, on the Friday, his father, Ted Russell, was going to drive down from Wollombi to collect him. He left the Bondi Hotel at about 11:00pm.⁶¹³ His body was found the following morning.⁶¹⁴ He had multiple injuries including fractures to his skull.⁶¹⁵
515. The position of Mr Russell's body when he was found was such that his head and upper body were facing towards the cliff face, while his feet were towards the ocean. A number of coins were found proximate to his body, and human hair which may have been from another person was observed on one of his hands. There was evidence that those hairs were "bagged" for

⁶⁰⁹ Ibid, 1-11; Exhibit 6, Tab 161, (n 75), 2 (SCOI.02751.00021).

⁶¹⁰ Exhibit 6, Tab 161, (n 75), 1-2.

⁶¹¹ Ibid, 2.

⁶¹² Ibid, 1.

⁶¹³ Ibid, 1; Exhibit 6, Tab 173, (n 140), 1.

⁶¹⁴ Exhibit 6, Tab 161, (n 75), 1.

⁶¹⁵ Exhibit 6, Tab 173, (n 140), [139].

analysis, but they were lost prior to the initial inquest into Mr Russell's death which was conducted on 2 July 1990. No forensic analysis was ever performed on those hairs.⁶¹⁶

516. Police from Bondi Police Station investigated the scene. The OIC was a junior plain clothes detective constable.⁶¹⁷ The OIC deemed that Mr Russell's death was "accidental" and it was not pursued as a homicide, although some police involved in the investigation believed Mr Russell had been the victim of an assault.⁶¹⁸
517. No transcript of the initial inquest remains, but the cause and manner of Mr Russell's death was recorded as "*the effects of multiple injuries sustained then and there when he fell from a cliff to the rocks below, but whether he fell accidentally or otherwise, the evidence does not enable me to say.*"⁶¹⁹

Gilles Mattaini

518. Mr Mattaini was a gay man born in France who lived with his partner, Jacques Musy, who was also French, in Bondi, near the northern end of Bondi Beach. Mr Mattaini was 27 years old at the time of his disappearance on around 15 September 1985.
519. At the time of his disappearance, Mr Mattaini worked at the Menzies Hotel in the city as a barman. Mr Mattaini had been concerned about his residency because he had overstayed his visa. However, he was also looking forward to a visit from a friend from France and was in the process of decorating his apartment in Bondi in the expectation that his friend from France would be staying with him.⁶²⁰
520. One of the leisure time activities that Mr Mattaini enjoyed was walking around the beachside areas and paths near Bondi, including the scenic coastal path very popular with walkers and joggers that went through Marks Park.⁶²¹ Mr Mattaini, according to Mr Musy and his friends, was a shy and private person and was not a user of the beat at Marks Park.⁶²²
521. On 16 September 1985, Mr Mattaini failed to show up for his shift at the Menzies Hotel. There was concern amongst his friends who did what they could to try to find out what had happened to him, but they had no success.⁶²³ Mr Musy was in France at the time. He was informed of Mr Mattaini's disappearance and was very distressed by it. Mr Musy appears to have had the

⁶¹⁶ Exhibit 6, Tab 161, (n 75), 1.

⁶¹⁷ Transcript, T2347.32-2347.40.

⁶¹⁸ Exhibit 6, Tab 161, (n 75), 1.

⁶¹⁹ Ibid.

⁶²⁰ Exhibit 6, Tab 160, (n 74), 2.

⁶²¹ Exhibit 6, Tab 161, (n 75), 1.

⁶²² Ibid, 1-3.

⁶²³ Ibid, 2-3.

impression that one or other of Mr Mattaini's friends had reported the matter to the Police. However, no record of any such report has ever been found, and there was no police investigation into Mr Mattaini's disappearance in 1985.⁶²⁴ By the time of the Taradale inquest, nearly twenty years later, the person said to have reported him missing to the police was deceased.⁶²⁵

522. Mr Mattaini was last seen walking in Bondi on or about 15 September 1985. His headphones, a yellow spray jacket and his keys were missing from his house.⁶²⁶

1990-1991: Investigation by Detective Sergeant McCann

523. As outlined in Part A, DS McCann was the lead investigator into the murders of Richard Johnson in January 1990 and Kritchikorn Rattanajurathaporn in July 1990.

524. In April 1991, DS McCann compiled a summary of connections and links he had uncovered, both in relation to the deaths of Mr Johnson and Mr Rattanajurathaporn and also in relation to other attacks on gay men, some of them also resulting in deaths, in various parts of Sydney up to that time.⁶²⁷ These incidents included the deaths of William Allen (Alexandria), Wayne Tonks (Artarmon) and Raymond Keam (Randwick).⁶²⁸ Relevantly for present purposes, they also included the deaths of Mr Warren and Mr Russell at Marks Park.

525. On 15 April 1991, DS McCann sent his summary, in the form of a letter, to Chief Superintendent Norm Maroney, who was then the Director of Operations at State Command.⁶²⁹ DS McCann had in mind that State Command would sanction and resource a task force to investigate the incidents. However, he received no answer to the letter.⁶³⁰

526. On 10 August 1991, DS McCann sent a more detailed version of this summary, again in the form of a letter, to the Commander, Modus Operandi Section.⁶³¹

527. DS McCann said that his understanding and expectation at the time was that the Modus Operandi Section would be able to locate and/or generate intelligence concerning the individuals and groups he had identified in his report and provide him with that intelligence. He

⁶²⁴ Ibid, 2.

⁶²⁵ Ibid, 3.

⁶²⁶ Ibid, 2.

⁶²⁷ Exhibit 6, Tab 233, (n 54), [11].

⁶²⁸ Exhibit 6, Tab 233A, (n 56).

⁶²⁹ Ibid.

⁶³⁰ Exhibit 6, Tab 233, (n 54), [13]-[14].

⁶³¹ Exhibit 6, Tab 233B, (n 59).

considered that this may have enabled him to pursue further inquiries in relation to some of the unsolved deaths referred to in the report. Again, however, he received no response.⁶³²

2000-2005: Taradale

2000-2002: Operation Taradale

528. In May 2000, DS Page, then the Investigations Manager at Rose Bay Local Area Command, received a file in relation to the disappearance of Mr Warren. Mr Warren's file contained a series of letters from his mother, Kay Warren, requesting that inquiries be made so that a death certificate could be issued in relation to her missing son.⁶³³
529. On becoming aware of Mrs Warren's requests, and of the belated and limited response she had received, DS Page began to examine documents associated with the 1989 investigation and requested resources to investigate the matter.⁶³⁴
530. Operation Taradale was subsequently established to investigate the disappearance and suspected death of Mr Warren, the death of Mr Russell in November 1989, and an assault on David McMahon in December 1989, both of which had also occurred at Marks Park. Operation Taradale ran from 2001 to 2004.
531. In about August 2002, in the wake of publicity concerning Operation Taradale, Jacques Musy reported the disappearance of Mr Mattaini to DS Page. Thereafter, Operation Taradale was expanded to include the disappearance of Mr Mattaini.
532. Apart from DS Page there were, at various stages of Operation Taradale, up to 12 police officers working on Operation Taradale.⁶³⁵ The scope of Operation Taradale was described by Mr Page, the Page Statement⁶³⁶ as "*very substantial*".⁶³⁷
533. Mr Page gave evidence that Operation Taradale adopted "*a 'bottom-up' approach*", meaning that "*the team went in with an open mind in an attempt to gather and understand the information that was 'out there'*".⁶³⁸ Operation Taradale "*had no preconceptions*" in relation to the likely manner and cause of death in relation to each case and "*sought to explore all possible lines of inquiry in each case, including suicide, misadventure or foul play*".⁶³⁹

⁶³² Ibid, [17]-[18].

⁶³³ Exhibit 6, Tabs 314A-F, Letters from Mrs Kay Warren to NSW Police dated 1998-2000 (SCOI.82476).

⁶³⁴ Exhibit 6, Tab 160, (n 74), [3].

⁶³⁵ Transcript, T2347.15-T2347.17.

⁶³⁶ Exhibit 6, Tab 253, (n 370)

⁶³⁷ Ibid, [17].

⁶³⁸ Ibid, [12].

⁶³⁹ Ibid.

534. Mr Page recalled that Operation Taradale also did the following:⁶⁴⁰

[13] *As part of its investigation, Taradale conducted a thorough analysis of the general location (Bondi/Tamarama) in which Mr Russell died and Mr Warren and Mr Mattaini were last seen. In my experience, a basic requirement of an investigation is conducting a canvass of the relevant location. For example, if I were investigating a break and enter offence, I would knock on neighbouring houses and ask if they had information that could assist. For offences possibly involving violence at beats, I would speak with victims of similar assaults, among others, to build my understanding of the local landscape and context in which the offence took place.*

[14] *Accordingly, as part of Taradale we did a search of all known or reported assaults perpetrated in the relevant local area, being all around Bondi and Tamarama (not just assaults that occurred in Marks Park) and interviewed many victims of possible gay hate violence. This strategy led to useful intelligence being provided by a number of victims of assaults. Taradale also sought to obtain intelligence in other ways including by issuing media releases, canvassing members of the community and through covert surveillance. This intelligence was turned into evidence where possible.*

[15] *As part of its investigation, Taradale sought to learn about and understand the personal background of each of Mr Russell, Mr Warren and Mr Mattaini, through locating and speaking to their relatives and associates, reviewing their financial and medical background and any criminal history, and generally seeking to gain an understanding of their lifestyle and relationships.*

535. In oral evidence, Mr Page reiterated that as the commander of Operation Taradale, he kept an open mind in relation to the likely manner and cause of death (or disappearance and suspected death) of each of the three deceased. The approach of Operation Taradale included utilising victimology to understand Mr Russell, Mr Warren and Mr Mattaini,⁶⁴¹ including by speaking to family, friends, associates and workmates of each of Mr Warren, Mr Russell and Mr Mattaini, which was then used to form a view about the likely manner and cause of death (or disappearance and suspected death) in relation to each of the men.⁶⁴²

536. At the conclusion of Operation Taradale, then-DS Page prepared a brief of evidence for Taradale Inquest.

537. The brief of evidence which he submitted to Coroner Milledge included a 287-page statement by him dated 25 July 2002, in relation to the disappearance and suspected death of Mr Warren and the death of Mr Russell (**Russell/Warren Statement**) and a 7-page statement dated 28 August 2002, in relation to the disappearance and suspected death of Mr Mattaini (**Mattaini Statement**).⁶⁴³

⁶⁴⁰ Ibid, [13]-[15].

⁶⁴¹ Transcript, T2339.43-2340.22.

⁶⁴² Transcript, T2340.18-22.

⁶⁴³ Exhibit 6, Tab 253, (n 370), [16].

538. These statements annexed 276 further documents. The documentary material before her Honour consisted of six lever arch folders.⁶⁴⁴
539. The lengthy and comprehensive Russell/Warren Statement was finalised in July 2002, more than two years after Mr Page received the file in relation to the death of Mr Warren. By contrast, it was only in August 2002 that Operation Taradale expanded to include the death of Mr Mattaini, after Mr Musy contacted Mr Page. This occurred after the Russell/Warren Statement had been prepared.
540. It is immediately obvious that it was not possible for Operation Taradale to investigate Mr Mattaini's death in the same detail as it investigated the deaths of Mr Warren and Mr Russell, given the limited time available to it. No criticism of Operation Taradale should or could reasonably be made on that basis.

2003-2005: Taradale Inquest

541. The Taradale Inquest was held between 31 March 2003 and 10 September 2003, and oral submissions were heard on 23 December 2004. Operation Taradale was ongoing during the Taradale Inquest, and further statements were taken from witnesses as they became known.⁶⁴⁵ During the course of the Taradale Inquest, "*dozens of witnesses, police officers, victims and perpetrators*" gave evidence.⁶⁴⁶
542. Coroner Milledge delivered findings and recommendations on 9 March 2005.⁶⁴⁷
543. Throughout the Taradale Inquest, the Commissioner of the NSWPF was represented by counsel and solicitors. The closing submissions by counsel for the Commissioner of the NSWPF in December 2004 contained the following:

*The climate which then existed [referring to the 1980s] ... was a climate I think that no-one in society could really be proud of, and that is the culture of gay hate, a gay hate crime. The Police Service, whatever defects it may have suffered from during that period, was no more than a reflection of it was exhibiting the broader values and principles of the then society.*⁶⁴⁸

And a little later in his submissions, counsel for the Commissioner of the NSWPF said:

...prior to 1990 police reaction to gay hate related crime could not be described generally as positive or pro-active. There was much hostility between the gay and lesbian community and the police, particularly taking into account that homosexuality was only

⁶⁴⁴ Exhibit 6, Tab 161, (n 75), 9.

⁶⁴⁵ Ibid.

⁶⁴⁶ Ibid.

⁶⁴⁷ Exhibit 6, Tab 253, (n 370), [18]-[19].

⁶⁴⁸ Exhibit 6, Tab 323, (n 193), 16.

*decriminalised in 1984. This led to a situation for a number of years when police were viewed as the enemy of gay people.*⁶⁴⁹

544. On 9 March 2005, Coroner Milledge's findings in relation to the manner and cause of death of Mr Warren, Mr Russell and Mr Mattaini were as follows:

- a. Mr Warren died in Sydney on or about 22 July 1989 as a victim of a homicide perpetrated by a person or persons unknown;
- b. Mr Russell died between 22 and 23 November 1989 from multiple injuries sustained when he was thrown from the cliff onto rocks by a person or persons unknown; and
- c. Mr Mattaini died on or about 15 September 1985, and that the manner and cause of his death could not be determined.⁶⁵⁰

545. Coroner Milledge said the evidence strongly supported the probability that both Mr Warren and Mr Russell met their deaths at the hands of what her Honour called "*gay hate assailants*". In relation to Mr Mattaini, her Honour said that there was a "*strong possibility*" he died in similar circumstances to the other two men.⁶⁵¹

546. Coroner Milledge also accepted, in the course of her findings, that:

- a. Marks Park operated as a beat during the night time, and it was very busy and popular. However, during "*the 1980s and 1990s police were aware of a number of gangs of youths that were systematically engaged in the assault and robbery of gay men in Marks Park and other areas*".⁶⁵²
- b. The initial police investigation into the death of Mr Warren in 1989 was "*a grossly inadequate and shameful investigation. Indeed, to characterise it as an 'investigation' is to give it a label it does not deserve.*"⁶⁵³ Her Honour described the fact that DS Bowditch had "*effectively 'closed' any further investigation*" within the week, and the failure of the NSWPF to produce the brief of evidence submitted to the coroner in 1990 in relation to the initial inquest into Mr Warren's death (or indeed any documents produced during the course of that investigation), as "*appalling*" and a "*state of affairs*" that "*defies belief*".⁶⁵⁴ Her Honour concluded that:

Had police paid careful attention to the crime scene and the vital evidence that presented to them, the perpetrator of that brutal act may have been identified or,

⁶⁴⁹ Ibid, 16-17.

⁶⁵⁰ Exhibit 6, Tab 161, (n 75), 14.

⁶⁵¹ Ibid.

⁶⁵² Ibid, 4.

⁶⁵³ Ibid, 6.

⁶⁵⁴ Ibid, 5-6.

*at the very least, Mr Russell's death would have been seen differently and not simply as a result of 'misadventure'.*⁶⁵⁵

- c. Although a “*better investigation was undertaken for Mr Russell*” in that photographs were taken and consideration was given to the possibility of foul play, “*it too was far from adequate*”.⁶⁵⁶ Her Honour observed that “[w]hilst it was known that Marks Park was an area where homosexual men were bashed and robbed, little investigation regarding this type of activity was undertaken into Mr Russell's death”.⁶⁵⁷ Her Honour described the loss of the hairs that had been found on Mr Russell's hand and the absence of forensic testing as “*disgraceful*” and considered that no satisfactory explanation was given as to the loss of the exhibit.⁶⁵⁸ Her Honour went on to say:

In both Warren's disappearance and Mr Russell's death there were similarities that should have linked them in the early stages of the investigation and suggested to the police the possibility of foul play in both deaths.

*Both men were homosexual. The last place either man was prior to death was Marks Park. Mr Russell had coins scattered near his body, Mr Warren's keys were found on the rocks. These items were used by some men to attract attention in that area and may have been used for that purpose by the victims. Marks Park was a known area for brutal attacks on homosexual males. Yet investigating police believed Mr Warren and Mr Russell met their death by 'misadventure'. The earlier investigations into these men were inadequate and naïve.*⁶⁵⁹

- d. By contrast to the earlier investigations, Coroner Milledge considered that Operation Taradale had been “*impeccable*”:

*Not only was the investigation thorough, it was impeccable. Everything that could be done was done. Extremely sophisticated police techniques and methodology were used. The Detective in charge of the investigation, Detective Sergeant Stephen Page, was committed and was an abundantly talented investigator.*⁶⁶⁰

- e. Her Honour added that the information gathered by Mr Page and Operation Taradale would provide an excellent source of information for future investigations.

547. As noted in Part A, Operation Taradale, the Taradale Inquest and its findings were widely publicised. Among that prominent coverage was the work of Greg Callaghan, who gave evidence to the Inquiry.⁶⁶¹ In October 2003, Mr Callaghan wrote a feature story for *The Weekend*

⁶⁵⁵ Ibid, 6.

⁶⁵⁶ Ibid.

⁶⁵⁷ Ibid.

⁶⁵⁸ Ibid.

⁶⁵⁹ Ibid, 8.

⁶⁶⁰ Ibid.

⁶⁶¹ Exhibit 2, Tab 4, (n 18).

Australian Magazine on the investigation titled 'Bondi Badlands',⁶⁶² which received a significant amount of attention.⁶⁶³ Mr Callaghan was subsequently approached by Allen & Unwin to write a book on the topic. *Bondi Badlands* was published in 2007.⁶⁶⁴

2005-2015: No reinvestigation

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. Indeed, Mr Willing has acknowledged that it is fundamental to the role of the UHT to review matters referred by a coroner.⁶⁶⁵

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.

550. In 2012, the Coroners Court, by contrast, did make use of the findings of the Taradale Inquest.

551. In June 2012, Coroner Forbes made an open finding at the conclusion of the second inquest into the death of Scott Johnson. As noted in Part C, one reason for departing from the earlier finding of suicide was that *"the information about the deaths at Bondi has, however, sown a seed of doubt as to the positive finding of suicide"*.⁶⁶⁶ One of the possibilities, said Coroner Forbes, was *"that Mr Johnson was the victim of a 'gay hate' crime similar to those that occurred in Bondi."*⁶⁶⁷

552. Later in 2012, the deaths of Mr Warren, Mr Russell and Mr Mattaini were examined by DSC Alicia Taylor of the UHT. In a document entitled 'Review of an Unsolved Homicide Case Screening Form' prepared by DSC Taylor and dated 25 October 2012, DSC Taylor stated that, *"The investigation into the death of Ross Warren, John Russell and Gilles Mattaini was meticulously undertaken by an experienced investigator, Detective Sergeant Page."*⁶⁶⁸ In that same document, DSC Taylor recommended that an opportunity existed, given the passage of time, to engage persons of interest via an undercover operation in relation to the murders of Mr Russell and Mr Warren.⁶⁶⁹

⁶⁶² Exhibit 6, Tab 206, Greg Callaghan, 'Bondi Badlands', *The Weekend Australian Magazine* (Sydney), 4 October 2003, 20-24 (SCOI.77290).

⁶⁶³ Exhibit 2, Tab 4, (n 18), [32].

⁶⁶⁴ *Ibid*, [33].

⁶⁶⁵ Exhibit 6, Tab 252, (n 113), [89]-[94].

⁶⁶⁶ Exhibit 6, Tab 317, (n 96), 1.

⁶⁶⁷ *Ibid*.

⁶⁶⁸ Exhibit 6, Tab 162, Review of an Unsolved Homicide Case Screening Form re: John Russell, Ross Warren and Gilles Mattaini, completed by Detective Senior Constable Alicia Taylor, 25 October 2012, 33 (NPL.0113.0001.0001).

⁶⁶⁹ *Ibid*, 33.

553. Again, it might be thought that this would have prompted a reinvestigation of the deaths. Again, this did not occur.
554. On 11 February 2013, an episode of *Australian Story* aired, concerning the death of Scott Johnson. Following that program, the Minister for Police held a meeting with Steve Johnson, DCI Young and DAS Olen. Within a day or two of the story airing and the meeting being held, SF Macnamir was established. As explained in Part C, this was in large part due to the media interest in the death of Scott Johnson and the *“intense lobbying by members of the Johnson family.”*⁶⁷⁰
555. Meanwhile, in early 2013, there was increased media interest in the “list of 88”. As outlined in Part A, there was a series of powerful articles on the topic, by Paul Sheehan in March and by Rick Feneley in July and August.
556. In particular, on 9 August 2013, one of Mr Feneley’s articles noted that NSW homicide detectives had appealed to the public for assistance identifying persons of interest in connection to the deaths of Mr Warren, Mr Russell and Mr Mattaini. The article quoted then DSI Willing as saying:
- I know I’ve been quiet until this point and there is a reason for that – and that’s because we’re quietly working away on it.*⁶⁷¹
557. Mr Willing was taken to this article in oral evidence. He said that the three Bondi cases were being *“reviewed”* at that time as part of SF Macnamir. He conceded, however, that that *“review”* exercise *“wasn’t in any way reinvestigating or reviewing the three Taradale deaths themselves”*, that the *“review”* was looking at *“whether there were similarities between the Bondi matters and what happened to Scott Johnson”*, so as *“to see whether they shed any light on the Johnson case”*, and that the cases were not being reviewed *“to see who killed those three men”*.⁶⁷²
558. Mr Willing did not accept that his statement to Mr Feneley was *“stretching the truth”*. Nor did he accept that he *“wanted the public to think that something was actually being done about these three cases, when in truth, it wasn’t.”*⁶⁷³
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.

⁶⁷⁰ Transcript, T1683.32-34.

⁶⁷¹ Exhibit 6, Tab 214, (n 109).

⁶⁷² Transcript, T1767.1-1769.2.

⁶⁷³ Transcript, T1768.6-43

560. Between July 2013 and September 2013, DCI Lehmann and DCI Young “conducted an assessment of the 30 ‘unsolved’ cases listed by Ms Thompson to determine the veracity of her information.”⁶⁷⁴ They presented their conclusions in an Issue Paper as follows:

Only 8 cases from 30 were probable or possible ‘gay hate’ motivated murders and these are on file at the Unsolved Homicide Team with consideration for future investigation.

*There is no doubt that anti gay hostility, particularly in the 1980’s and 1990’s resulted in a number of murders and serious crime of violence in NSW. In my opinion, the suggestion of 30 ‘gay hate’ related unsolved murders is a gross exaggeration. Certainly there was no consultation with this command prior to the Sydney Morning / Sunday Herald articles which I suggest is poor, irresponsible journalism bordering on sensationalism.*⁶⁷⁵

561. The Lehmann/Young Issue Paper included the following conclusions as to the three Bondi deaths:

- a. Mr Warren: “*This case is probably a ‘gay hate’ motivated crime*”;
- b. Mr Russell: “*There are a number of suspects in a case that is probably ‘gay hate’ motivated*”; and
- c. Mr Mattaini: “*It is believed that Mattaini is a possible victim of ‘gay hate’ motivated crime.*”⁶⁷⁶

562. In other words, notwithstanding their general view that the number of cases referred to in the media was a gross exaggeration, and that only eight of the 30 said to be “unsolved” were probable or possible hate crimes, DCI Lehmann and DCI Young considered that three of those eight were these three cases.

563. Again, it might be thought that this would have prompted a reinvestigation of the deaths. Again, this did not occur.

564. In July 2014, DCI Young signed a 445-page statement outlining the work done by SF Macnamir in relation to the death of Scott Johnson.⁶⁷⁷ DCI Young made reference to three possible hypotheses as to manner of death, namely suicide, homicide and misadventure. However, as Mr Willing conceded in his oral evidence, DCI Young’s statement plainly conveyed her view that suicide was “*distinctly likely*” and that homicide was “*distinctly unlikely.*”⁶⁷⁸

⁶⁷⁴ Exhibit 6, Tab 47, (n 110), 1.

⁶⁷⁵ Ibid, 9.

⁶⁷⁶ Ibid, 3, 5-6.

⁶⁷⁷ Exhibit 6, Tab 252F, (n 102).

⁶⁷⁸ Transcript, T3722-3725.

565. On 13 April 2015, State Coroner Barnes decided to hold a third inquest into the death of Scott Johnson.
566. Later that day, DCI Young gave the *Lateline* interview, in which she:
- a. emphasised the suicide hypothesis in respect of Scott Johnson;
 - b. accused the former Minister of Police Mike Gallacher of having “kowtowed” to Steve Johnson when setting up SF Macnamir in February 2013; and
 - c. had the following exchange with Ms Alberici:

Q. What’s changed since the last coronial inquest that would warrant another one?

A. We have put to the test some of the findings of Operation Taradale, which was, - did identify or reinvestigate some gay-hate crimes in Bondi, and two were found to be possible homicides.⁶⁷⁹
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.
568. On 23 June 2015, the NSWPF announced rewards of \$100,000 for information leading to the conviction of person/s who may be responsible for the disappearance and suspected deaths of Mr Warren, Mr Russell and Mr Mattaini. Mr Willing was quoted as saying that “*the matters are the subject of review based upon coronial findings that they were suspicious in nature and possibly the result of gay-hate related crimes.*”⁶⁸⁰
569. However, on the evidence available to the Inquiry, no such “review” of the three Bondi deaths was actually underway at that time.
570. On 30 August 2015, SF Parrabell was established.

⁶⁷⁹ Exhibit 6, Tab 318, (n 126).

⁶⁸⁰ Exhibit 6, Tab 163, NSW Police Force Media Release – Deaths of Gilles Mattaini, Ross Warren and John Russell, 23 June 2015 (SCOI.76962.00014).

571. In or around October 2015, SF Neiwand was established.

2015: Why then? Why not sooner?

572. The question squarely arises: what actually prompted the establishment of SF Neiwand in or around October 2015?

573. SF Neiwand was not established in 2005, after the Taradale Inquest delivered its findings and expressed the expectation that the information would be of assistance to future investigators. It was not established in 2012, when the UHT recommended that opportunities existed for undercover operations. It was not established in 2013, when DCI Lehmann and DCI Young concluded that each of these three deaths was a probable or possible hate crime. It was not established when Mr Willing told Mr Feneley that police were “*quietly working away on it*,”⁶⁸¹ or when the media release of 23 June 2015 claimed that the deaths were the subject of “*review*”.

574. What changed? Why was SF Neiwand suddenly established when it was, in October 2015?

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.

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 establishment of SF Neiwand

577. Mr Willing’s evidence was that:⁶⁸²

As Commander of the Homicide Squad I was not directly involved in the establishment of Strike Force Neiwand but endorsed it occurring.

⁶⁸¹ Exhibit 6, Tab 214, (n 109).

⁶⁸² Exhibit 6, Tab 252, (n 113), [74].

578. However, the request to establish SF Parrabell was in fact made by Mr Willing. An Issue Paper dated 4 May 2016 states:⁶⁸³

- *“In October 2015, Detective Superintendent Willing requested the Unsolved Homicide Team to re-investigate [the suspicious deaths of Mr Warren, Mr Russell and Mr Mattaini]; and*
- *“In October 2015, Detective Chief Inspector Lehmann of Unsolved Homicide Team created Strike Force Neiwand to re-investigate the three deaths.”*

579. When reminded of that document, Mr Willing maintained his contention that he had not been *“directly involved”* in the establishment of SF Neiwand. He said that he had been involved only in relation to the *“administrative process to establish the strike force”* and not in *“the actual resourcing of it and Terms of Reference and all those sorts of things”*.⁶⁸⁴

580. Mr Willing’s evidence on this point suggested an early tendency to distance himself from SF Neiwand, a tendency that was increasingly apparent as his evidence continued.

581. Mr Willing added that he would not have requested that a strike force be formed unilaterally, and that before a strike force was established, a discussion would occur with members of the UHT and consideration would be given to matters such as what is currently being investigated, what they current had *“on their books”* and what the priorities were.⁶⁸⁵

582. Mr Willing confirmed that up to October 2015, notwithstanding (*inter alia*) the 2012 UHT review by DSC Taylor, there was no investigation under way at all of the three Taradale deaths.⁶⁸⁶

583. As to why SF Neiwand was established in October 2015, Mr Willing nominated:⁶⁸⁷

- a. the fact that SF Macnamir had, for its purposes, looked at the Taradale cases;
- b. the fact, according to Mr Willing, that DS Brown (OIC of SF Macnamir) had the view that the Taradale cases were worth pursuing; and
- c. the availability at that time of UHT resources as a consequence of an arrest having recently been made in another case.

⁶⁸³ Exhibit 6, Tab 291, Issue Paper by Detective Chief Inspector Christopher Olen re: *Request for creation of Terms of Reference and allocation of WBS number in relation to Strike Force Neiwand*, 4 May 2016 (NPL.0115.0001.0009_E).

⁶⁸⁴ Transcript, T1747.33-1748.29.

⁶⁸⁵ Transcript, T1761.12-45.

⁶⁸⁶ Transcript, T1757.3-30

⁶⁸⁷ Transcript, T1759.23-44; T1762.34-43

590. In the Morgan Statement, DS Morgan claimed that he had *“no particular knowledge or involvement about the reasons for the establishment of Strike Force Neiwand,”*⁶⁹⁷ but he believed that *“former Deputy Commissioner Michael Willing... may be able to address the reasons for the establishment”* of SF Neiwand”.⁶⁹⁸

591. In his oral evidence, he initially said on several occasions that he *“did not know”* why it was set up.⁶⁹⁹

592. However, in an email on 26 February 2016, very early in SF Neiwand, DS Morgan told colleagues that he had *“been put with SF Neiwand”*. He went on, speaking of SF Neiwand:⁷⁰⁰

Apparently it is going to be a political and media-driven hot potato later this year, and the Boss wants to be able to say that his squad are further investigating the matter.

Why would I be surprised ...

It was agreed by both DS Morgan and Mr Willing that the word *“Boss”* refers to Mr Willing.⁷⁰¹

593. When taken to this email, DS Morgan gave evidence that he did have the view he there expressed. At first he referred to this view as an *“impression”* that he had, but eventually his evidence was that a senior officer, either Mr Willing or DCI Lehmann, had told him that the SBS *Deep Water* programs were going to be on television later in the year and that Mr Willing wanted to be on the *“front foot”* in relation to the criticisms that were anticipated to be made by those programs.⁷⁰²

594. Mr Willing steadfastly maintained that although this email might have reflected DS Morgan’s view and opinion, SF Neiwand *“was about identifying and seeing whether or not we could effect arrest for those matters.”*⁷⁰³ Mr Willing acknowledged there was a political element to these cases being considered by SF Neiwand, but the *“intent behind Neiwand was to investigate it, and again if there was a chance of uncovering evidence that led to an arrest or arrests, that was the desired outcome.”*⁷⁰⁴

595. Mr Willing denied that part of the reason for setting up SF Neiwand was to *“make a show”* of not being homophobic, because he *“thought that would be demonstrable.”*⁷⁰⁵

⁶⁹⁷ Exhibit 6, Tab 5, (n 428), [25].

⁶⁹⁸ Ibid, [26].

⁶⁹⁹ Transcript, T1920.44, T1922.21, T1922.44

⁷⁰⁰ Exhibit 6, Tab 285, Email from Steven Morgan to Sebastian Herft re: Strike Force Neiwand, 26 February 2016 (NPL.0115.0004.3512).

⁷⁰¹ Transcript, T1760.23-24.

⁷⁰² Transcript, T1924.9-26, T1936

⁷⁰³ Transcript, T1760.27-29.

⁷⁰⁴ Transcript, T1760.31-44.

⁷⁰⁵ Transcript, T1762.12-17.

The conduct of SF Neiwand

596. SF Neiwand did not proceed in the manner described in its Terms of Reference or at [73] of the Willing Statement.
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);⁷⁰⁶ 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.
598. The recommendations of DSC Taylor had not been adopted or implemented at all prior to the creation of SF Neiwand, a fact which Mr Willing accepted.⁷⁰⁷ Nor were they implemented as part of SF Neiwand, as acknowledged by Mr Willing and DS Morgan.⁷⁰⁸
599. According to Mr Willing, the decision not to pursue POIs was not a choice he made in his capacity as Homicide Commander. Rather, it would have been made by the investigative team, and likely the officer in charge – either DS Brown or DSC Chebl.⁷⁰⁹
600. According to DS Morgan (and assuming that SF Neiwand was not actually set up in the first place to undermine Operation Taradale and overturn the findings of Coroner Milledge), the change in SF Neiwand’s approach arose early – away from seeking to investigate POIs, to deliberately not doing so. He thought the decision was made during the course of a team meeting.⁷¹⁰
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.
602. As Mr Willing agreed, the chances of SF Neiwand’s resources being able to investigate those 116 POIs were “*limited*”.⁷¹¹
603. Mr Morgan also conceded that SF Neiwand would have been likely to need more resources if it were to actually investigate any of the identified POIs, that no such resources were ever sought

⁷⁰⁶ Transcript, T1773.33-41.

⁷⁰⁷ Transcript, T1757.3-25.

⁷⁰⁸ Exhibit 6, Tab 5, (n 428), [18]; Transcript, T2193.42, T1757.25-30.

⁷⁰⁹ Transcript, T1790.22-1791.34.

⁷¹⁰ Transcript, T2016.36-40.

⁷¹¹ Transcript, T1794.26-32.

by him, and that inquiries in relation to the identified POIs interests were not pursued other than in possibly one or two cases.⁷¹²

The conclusions of SF Neiwand

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.
605. In oral evidence, DS Morgan denied that an obvious focus of SF Neiwand was finding fault with Operation Taradale wherever possible, but he accepted that SF Neiwand made criticisms of Operation Taradale.⁷¹³ When asked directly whether the object of the attacks by SF Neiwand on Operation Taradale and Mr Page was to undermine the force of Coroner Milledge’s analysis and findings, DS Morgan stated, *“It threw doubt on those findings, yes”*.⁷¹⁴
606. When asked why the UHT would permit SF Neiwand to contradict the findings of a coroner, DS Morgan said *“I think there were concerns that the investigation had not been all that objective”*.⁷¹⁵ When pressed about who held these concerns, he couldn’t recall a specific person, then admitted *“but certainly having read material, I became concerned myself”*.⁷¹⁶ DS Morgan went on to say that *“I think ultimately, Strike Force Neiwand had concerns about the Taradale - the objectivity of the Taradale investigation, which obviously would influence the findings that her Honour came to.”*⁷¹⁷
607. Mr Willing denied that the purpose of SF Neiwand was to undermine and contradict the findings of Coroner Milledge.⁷¹⁸ However, he agreed that *“the course of action that ultimately seems to have evolved”* was that SF Neiwand was focused on analysing Operation Taradale and criticising it where possible.⁷¹⁹ Mr Willing said he could not comment on whether this was deliberate and if so, whose motivations these reflected.⁷²⁰
608. Mr Willing denied that SF Neiwand *“purposely”* undermined or contradicted the findings of Coroner Milledge, and this was not part of his *“mindset”*.⁷²¹

⁷¹² Transcript, T1960.27-1961.15.

⁷¹³ Transcript, T1955.42-T1956.3.

⁷¹⁴ Transcript, T1955.24-36.

⁷¹⁵ Transcript, T1921.24-25.

⁷¹⁶ Transcript, T1921.28-29.

⁷¹⁷ Transcript, T1959.24-45.

⁷¹⁸ Transcript, T1710.4-1711.8.

⁷¹⁹ Transcript, T1803.24-31.

⁷²⁰ Transcript, T1803.23-45.

⁷²¹ Transcript, T1710.4-1711.8.

SF Macnamir, SF Neiwand and SF Parrabell

609. As noted in Part C, the Inquiry has sought to explore and clarify whether the three outcomes of the three Strike Forces were merely coincidental, or whether there were other explanations for their remarkable convergence on a position which downplayed the extent of the homicidal violence against members of the LGBTIQ community.
610. The submissions in Part C focused on commonalities between SF Macnamir on the one hand, and SF Neiwand or SF Parrabell on the other. It is now convenient to explore some commonalities between SF Neiwand and SF Parrabell, as well as some of the evidence about SF Neiwand.

Meetings between SF Neiwand and SF Parrabell

611. Mr Willing agreed that SF Neiwand was set up a few months after SF Parrabell, and from the second half of 2015 until the end of 2017, SF Macnamir, SF Parrabell and SF Neiwand were all running concurrently.⁷²² Mr Willing also accepted that between late 2011 and late 2017, he was the Homicide COmmander (which included the UHT) and was aware of all of the relevant events.⁷²³
612. In his oral evidence, Mr Willing stated that he recalled “*a couple of meetings*” with AC Crandell about SF Parrabell and that he also recalled attending a meeting with Alex Greenwich MP at NSW Parliament in relation to SF Parrabell.⁷²⁴
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;⁷²⁵
 - 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;⁷²⁶
 - c. On 17 May 2016 there was another meeting between AC Crandell and Mr Willing, at Parliament House;⁷²⁷

⁷²² Transcript, T1627.26-31.

⁷²³ Transcript, T1627.47-1629.32.

⁷²⁴ Transcript, T1740.35.

⁷²⁵ Exhibit 6, Tab 164A, (n 452); Transcript, T696.8-28.

⁷²⁶ Exhibit 6, Tab 60, Email correspondence between Anthony Crandell, Georgie Wells and Ainslie Blackstone re SF Parrabell meeting, 6-7 May 2016 (SCOI.74209); Exhibit 6, Tab 61, Email correspondence between Ainslie Blackstone, Anthony Crandell and others re NSWPF statement re Operation Parrabell, 20 May 2016 (SCOI.74221).

⁷²⁷ Transcript, T697.5-9, T1740.27-43.

- 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.⁷²⁸ (See further below).
614. In the Willing Statement at [100]-[104], Mr Willing outlined a meeting with AC Crandell about SF Parrabell, at which DCI Olen may have been present.⁷²⁹ Mr Willing recalled giving AC Crandell his full support in conducting SF Parrabell. It was mutually agreed that SF Parrabell would be conducted independently from the UHT given the allegations being propagated that the UHT was biased, and that the Operation Taradale and Scott Johnson cases would (at least initially) be excluded from SF Parrabell given that they were the subject of ongoing investigations and coronial proceedings.⁷³⁰ Mr Willing could not recall any of the specifics of any conversations at any meetings where he may have been present.⁷³¹
615. In the Willing Statement at [108], Mr Willing also recalled meeting with Dr Dalton, but again, he did *“not recall the specifics of any conversation with him.”*
616. In October 2016, AC Crandell wrote to Mr Willing to advise him that Dr Dalton had been contracted and to offer a meeting: *“Given the connection between Parrabell and the Unsolved Homicide Team, would you like to meet with him?”*⁷³²
617. In his oral evidence, AC Crandell explained what he meant by *“the connection between Parrabell and the Unsolved Homicide Team”*:
- Well, the Unsolved Homicide Team are responsible for unsolved homicides, so there is a connection between Parrabell and the Unsolved Homicide Team, and so really, in my view, Commander Willing should have been involved in processes of review to understand - particularly in unsolved matters, to understand whether there was any progress or not.*⁷³³
618. However, AC Crandell was unable to identify any example in which anybody from the UHT was asked about any particular case or the classification of that case by SF Parrabell.⁷³⁴

⁷²⁸ Exhibit 6, Tab 221, Ava Benny-Morrison, ‘Police to Review 88 Possible Gay-Hate Deaths’, *The Sydney Morning Herald* (online), 21 May 2016 (SCOI.82030); Exhibit 6, Tab 222, Ava Benny-Morrison, ‘Police Reopen Sydney Gay-Hate Homicide Cases’, *Sydney Morning Herald* (Sydney), 23 May 2016 (SCOI.82028); Exhibit 6, Tab 259, Ava Benny-Morrison, ‘Unsolved homicide investigation reopens into Sydney’s gay killings’, *The Sydney Morning Herald* (online), 20 May 2016 (SCOI.82370).

⁷²⁹ Exhibit 6, Tab 252, (n 113), [101].

⁷³⁰ Ibid, [1]-[4].

⁷³¹ Ibid, [100].

⁷³² Exhibit 6, Tab 70, Email correspondence between Anthony Crandell to Michael Willing re: Meeting with Derek Dalton, 13 October 2016 (SCOI.74338).

⁷³³ Transcript, T762.19-25.

⁷³⁴ Transcript, T763.24-30.

“Collaborative media”

619. AC Crandell referred to his dealings with Mr Willing in about May 2016 as referring to “*collaborative media*.”⁷³⁵ The collaborative media in question involved a series of articles by Ava Benny-Morrison published in short succession in *The Sydney Morning Herald*.

620. On 21 May 2016, an article by Ms Benny Morrison was published in *The Sydney Morning Herald* titled, ‘*Police to review 88 possible gay-hate deaths*’. The article outlined the work of SF Parrabell and quoted then-Superintendent Crandell:

*The true beauty of Parrabell is it is an open and honest and transparent investigation and we are here to make sure that happens... Whether the outcomes are good or bad for the police I am not concerned about that. We will report the truth.*⁷³⁶

621. On 22 May 2016, a second article by Ms Benny-Morrison was published in *The Sydney Morning Herald* titled, ‘*Unsolved homicide investigation reopens into Sydney’s gay killings*’. The article outlined the establishment of SF Neiwand (although not by name) and quoted Mr Willing:

*Flowing on from the UHT’s ongoing investigation into the death of Scott Johnson, the investigations into the deaths of Gilles Mattaini, John Russell, and Ross Warren have been recommenced...As the death of Scott Johnson is subject to an upcoming coronial inquiry, and will touch on these matters, I’m not in a position to comment further. I would like to remind the community there are government rewards on offer for information in each investigation.*⁷³⁷

622. On 23 May 2016, Ms Benny-Morrison published a third article in *The Sydney Morning Herald* titled, ‘*Police reopen Sydney gay-hate homicide cases*’. The substance of this article was essentially the same as the second article.⁷³⁸

623. Mr Willing was asked about the sequence and timing of these articles in quick succession. He could not recall how it came about, other than that Ms Benny-Morrison was a police reporter who regularly asked questions of the Police Media Unit. He denied speaking to AC Crandell directly about the matter, but suggested that they may have coordinated through a media liaison officer who would “*gather the response together*”. He did not recall whether he spoke to Ms Benny-Morrison about this article, but he did recall speaking to her regularly. He assumed that AC Crandell had also spoken to her, but denied that they had spoken to her together. He thought that the impetus for the two stories came from Ms Benny-Morrison.⁷³⁹

⁷³⁵ Transcript, T763.45-764.7.

⁷³⁶ Exhibit 6, Tab 221, (n 728).

⁷³⁷ Exhibit 6, Tab 259, (n 728).

⁷³⁸ Exhibit 6, Tab 222, (n 728).

⁷³⁹ Transcript, T1873.38-1874.16.

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.

Role of DCI Lehmann

625. DCI Lehmann was the original investigation supervisor for SF Neiwand. Having co-written the 25 September 2013 Lehmann/Young Issue Paper, DCI Lehmann had devoted considerable time to the issue of suspected hate crime deaths, the police response to those deaths, and the public criticism of that response. He had made his views on these issues known in the Lehmann/Young Issue Paper, in which he characterised the number of unsolved suspected hate crime deaths as “a gross exaggeration” and accused *The Sydney Morning Herald* and *The Sun Herald* of “irresponsible journalism bordering on sensationalism.”⁷⁴⁰

626. DCI Lehmann included the three Taradale deaths among the eight cases (out of 30) of “probable or possible” hate crime deaths in the Issue Paper, although he expressed this view with rather more doubt than Coroner Milledge’s findings.

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.

628. In his oral evidence, AC Crandell underlined this problem. His evidence included the following:

Q. *What is your view of the suitability of DCI Lehmann, having expressed that view, for the role of supervising a reinvestigation of three of the deaths in question?*

A. *Yes, look, I - I think that his - what he has expressed in terms of his understanding of those cases would probably exclude him from that investigation.*

Q. *Do you think he might have been chosen precisely because he held those views?*

MR TEDESCHI: I object.

THE COMMISSIONER: I allow it.

*THE WITNESS: I can't say. I don't know.*⁷⁴¹

629. AC Crandell went on to agree that the choice of DCI Lehmann was a “very striking choice”, and an “unfortunate choice”. He agreed with the proposition put by the Commissioner that “it certainly doesn’t aid the notion of objectivity”.⁷⁴²

⁷⁴⁰ Exhibit 6, Tab 47, (n 110), 9.

⁷⁴¹ Transcript, T676.32-46

⁷⁴² Transcript, T676.32-677.21.

630. He also agreed that *“one possibility”* was that *“the objective of someone”* was *“to support a contention that all four deaths – namely the North Head death and the three Bondi deaths – were not or may not have been gay hate-related”*.⁷⁴³

Overlap of other personnel

631. There was a considerable overlap between the personnel involved in SF Neiwand and SF Macnamir, including that DS Brown, DSC Chebl and DSC Rullo were all involved in both. DS Brown was the OIC of SF Macnamir, and DSC Chebl was the OIC of SF Neiwand. (Mr Willing said he did not know whether DSC Chebl or DSC Rullo actually *“played an active part”* in the SF Macnamir investigation or whether they were merely *“listed on the resource list”*, meaning that they would only be used as required).⁷⁴⁴

632. DS Morgan (who according to OGC’s email to the Inquiry of 16 September 2022 was a Team Leader in SF Macnamir)⁷⁴⁵ denied any involvement in the investigative side of SF Macnamir. However, he agreed he prepared a statement for the third inquest into the death of Scott Johnson which sought to rebut the suggestion, made publicly by Mr Wotherspoon, that people don’t tend to take their clothes off to commit suicide. DS Morgan said that he informed DCI Young that this was not correct and *“volunteered”* to prepare a statement to this effect. Mr Morgan accepted that the effect of this statement was to advance the police theory that Scott Johnson died by suicide.⁷⁴⁶

633. AC Crandell gave evidence that the overlap in the resourcing between the two Strike Forces meant that: *“it’s very difficult for them to have objectivity, given their history.”*⁷⁴⁷

634. It is submitted that his evidence on that point is plainly right and should be accepted.

Conclusions

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).

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

⁷⁴³ Transcript, T678.43-679.11.

⁷⁴⁴ Transcript, T1791.44-1792.45.

⁷⁴⁵ Exhibit 6, Tab 9, (n 98).

⁷⁴⁶ Transcript, T1904.34-1908.1.

⁷⁴⁷ Transcript, T678.9-11.

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.

637. Perhaps this was merely a coincidence. Perhaps each strike force came to its conclusions independently. Perhaps this is “*an artefact of the reproductive power of police culture*”.⁷⁴⁸ Perhaps it is an indication that the ‘company line’ on hate crime deaths was so well-known that it did not need to be said.
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.⁷⁴⁹
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

⁷⁴⁸ See Exhibit 6, Tab 255, (n 169), [143]-[144].

⁷⁴⁹ See AC Crandell’s inability to recall any instance in which SF Parrabell consulted anybody in the UHT about any particular case: Transcript, T763.29-30.

The conduct of SF Neiwand

642. The conduct of SF Neiwand is described in its Post-Operational Assessment (**POA**) this way, by DI Leggat: “*Strike Force Neiwand investigators focused on victimology, associates and the last known movements of the three males*”.⁷⁵⁰
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.

What was not done?

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 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.*⁷⁵¹;
 - b. SF Neiwand did not ‘investigate’ any of the 116 POIs listed in the spreadsheet circulated by DS Brown on 1 February 2016;⁷⁵² 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.⁷⁵³ No evidence has

⁷⁵⁰ Exhibit 6, Tab 176, Post Operational Assessment – Strike Force Neiwand, 22 February 2018, 13 (SCOI.76962.00007).

⁷⁵¹ Exhibit 6, Tab 162, (n 668).

⁷⁵² Exhibit 6, Tab 306, (n 693); Exhibit 6, Tab 306A, Excel spreadsheet titled ‘TARADALE’, undated (NPL.3000.0001.0027).

⁷⁵³ Transcript, T1954.22.

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.

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).⁷⁵⁴ 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.
647. The SF Neiwand Progress Reports, the Neiwand Summaries and the POA all make clear that SF Neiwand made a deliberate choice not to pursue POIs. Mr Willing agreed that it was open to infer that a deliberate decision was made in this respect.⁷⁵⁵ DS Morgan similarly agreed that SF Neiwand “*made a deliberate decision*” not to pursue further those POIs and instead focus on other approaches, such as victimology.⁷⁵⁶

What was done?

Mattaini

648. It is submitted that for the Mattaini matter, SF Neiwand overwhelmingly, if not exclusively, pursued evidence supporting suicide, not homicide.
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.
650. DS Morgan agreed that SF Neiwand pursued lines of inquiry that were relevant to the possibility of suicide.⁷⁵⁷ He also agreed that SF Neiwand made no attempt to explore the possibility of finding POIs with respect to 1985 and Mr Mattaini.⁷⁵⁸ He did not believe that there were any lines of inquiry in relation to homicide to pursue.⁷⁵⁹
651. Mr Willing also agreed that, based on the progress reports, there is no record of any investigation pursuing possible homicide in the case of Mr Mattaini.⁷⁶⁰

⁷⁵⁴ Transcript, T1790.22-1791.34.

⁷⁵⁵ Transcript, T1771.39-1172.41.

⁷⁵⁶ Transcript, T1955.9-16.

⁷⁵⁷ Transcript, T2019.42, T2026.11-12.

⁷⁵⁸ Transcript, T2004.13.

⁷⁵⁹ Transcript, T2019.46-47, T2020.21-32, T2026.18.

⁷⁶⁰ Transcript, T1787.42.

652. DS Morgan accepted that SF Neiwand did not do any canvassing of the locality of Mr Mattaini's disappearance, or probe whether youth gangs of any kind might have been operating in the area as early as 1985.⁷⁶¹

653. The "investigation" by SF Neiwand into Mr Mattaini's death was very short. [REDACTED]

654. In other words, by 10 April 2017, SF Neiwand had stopped work on the Mattaini case.⁷⁶³

655. And the reason for doing so was that there was "*no evidence of homicide*". But none had been sought. Homicide had simply never been pursued.

Warren

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.

657. In his evidence, DS Morgan asserted that there were suspicions of some "*associates*" of Mr Warren.⁷⁶⁴ [REDACTED]

[REDACTED].⁷⁶⁵ However, as DS Morgan ultimately accepted, none of those inquiries could be pursued any further.⁷⁶⁶ [REDACTED]

[REDACTED].⁷⁶⁷ DS Morgan's evidence was that this was a consensus view held by SF Neiwand at the time.⁷⁶⁸

⁷⁶¹ Transcript, T2045.25-38.

⁷⁶² Exhibit 6, Tab 164F, Progress report, 16 May 2017, 4 (SCOI.82051).

⁷⁶³ Transcript, T1787-8.

⁷⁶⁴ Transcript, T2018.38-42.

⁷⁶⁵ Exhibit 6, Tab 164D, Progress report, 23 January 2017, 4 (SCOI.82050).

⁷⁶⁶ Transcript, T2018.38-42.

⁷⁶⁷ Exhibit 6, Tab 164E, Progress report, 20 March 2017, 5 (SCOI.82048). See also Transcript, T1784.4.

⁷⁶⁸ Transcript, T2021.24-32, T2024.23.

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.⁷⁶⁹ It is submitted that there is no evidence of any such steps being taken.

Russell

659. In relation to the investigation of Mr Russell's death, SF Neiwand pursued the possibility of misadventure, not homicide.

660. DS Morgan conceded that, as the SF Neiwand investigation progressed in 2016 and 2017, SF Neiwand put far more effort into finding evidence that might indicate suicide or misadventure than it did into finding evidence that might indicate homicide.⁷⁷⁰

661. By the same 10 April 2017 meeting referred to above in relation to Mr Mattaini, SF Neiwand noted, [REDACTED]
[REDACTED].⁷⁷¹ As Mr Willing readily agreed, that did not "make any sense".⁷⁷²

Investigation Plan

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 2015.⁷⁷³

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.⁷⁷⁴

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.⁷⁷⁵

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,⁷⁷⁶ no such step was undertaken by SF Neiwand. Nor were any "*freshly identified witnesses*" approached other than family members.⁷⁷⁷

⁷⁶⁹ Transcript, T2024.40.

⁷⁷⁰ Transcript, T2020.34-2021.6, T2027.9-16.

⁷⁷¹ Exhibit 6, Tab 164F, (n 762), 4.

⁷⁷² Transcript, T1789.7-36.

⁷⁷³ Exhibit 6, Tab 18, (n 689). See also Transcript, T1796.6, T2007.19-20.

⁷⁷⁴ Exhibit 6, Tab 18, (n 689), 1-2.

⁷⁷⁵ Transcript, T2007.38

⁷⁷⁶ Exhibit 6, Tab 18, (n 689), 3.

⁷⁷⁷ Transcript, T2007.46-2008.28. See also Transcript, T1798.4-36.

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.⁷⁷⁸ When asked about the reason for the lack of detail in the Investigation Plan, DS Morgan suggested that *“Well, keeping in mind that, as you’ve pointed out, this investigation plan wasn’t done for some considerable months, it may have been done on the basis that that was what we’d arrived at by that stage.”*⁷⁷⁹
667. DS Morgan’s evidence was that it was during or after September/October 2016 that a decision was made not to follow the Investigation Plan, and instead to focus on *“victimology, associates and the last known movements of the three males”*.⁷⁸⁰ He could not recall who made the decision, but believed that it was a consensus position, with which he agreed.⁷⁸¹
668. Mr Willing agreed that the Investigation Plan for SF Neiwand was *“a great deal shorter”* than the Investigation Plan for SF Macnamir, which contained *“quite a lot of detail”* and a more comprehensive list of tactical steps, including findings POIs.⁷⁸² He said that the SF Neiwand Investigation Plan had *“very, very limited”* detail under the heading *‘Strategies/Execution’*.⁷⁸³ Mr Willing stated that the two Investigation Plans were *“certainly different”*, but that he did not know why that was.⁷⁸⁴ He accepted that an assertion that could be made was that the reason was that SF Neiwand’s real objective was not to reinvestigate the deaths in any comprehensive way but rather to focus on the possibilities of suicide or misadventure and to case a critical eye over Operation Taradale. But he said he did not believe that that was the case.⁷⁸⁵

Progress Reports

669. There were nine Progress Reports for SF Neiwand, which outline the steps taken by SF Neiwand between 1 July 2016 and 20 November 2017.⁷⁸⁶
670. These Progress Reports starkly reveal the minimal steps taken by SF Neiwand to pursue the Operation Taradale POIs.
- a. In the first Progress Report, dated 1 July 2016, the *“Future Directions”* focused on, *inter alia*, completing the victimology for the three deceased men, reviewing and uploading the Operation Taradale material and finding relevant experts.

⁷⁷⁸ Transcript, T2008.39.

⁷⁷⁹ Transcript, T2009.4-7.

⁷⁸⁰ Transcript, T2016.27.

⁷⁸¹ Transcript, T2016.29-47.

⁷⁸² Exhibit 6, Tab 7, Investigation Plan, 13 March 2013 (SCOI.75757); Transcript, T1794.5-18, T1796.6.

⁷⁸³ Transcript, T1797.11-24.

⁷⁸⁴ Transcript, T1800.10-13.

⁷⁸⁵ Transcript, T1800.25-26.

⁷⁸⁶ Exhibit 6, Tabs 164A-I.

- b. DS Morgan accepted that “*at that stage*” that none of those directions involved pursuing lines of inquiry associated with POIs.⁷⁸⁷ Mr Willing also accepted that under the ‘*Future Directions*’ heading, one POI was listed for Warren but beyond that, there was no reference to any attempt to pursue any of the Taradale POIs for Warren, Mattaini or Russell.⁷⁸⁸
- c. In a State Crime Command ‘Initial Consultation’ form for SF Neiwand dated 17 August 2016, an entry is made under the heading ‘Persons of Interest’: “*None known at this stage*”.⁷⁸⁹
- d. DS Morgan agreed that this was utterly inaccurate,⁷⁹⁰ and that it “*clearly*” indicated that whoever was composing that document did not have in mind pursuing POIs.⁷⁹¹ Mr Willing also stated that this was “*incorrect*” and agreed that there were at least 50-100 POIs known.⁷⁹² (In fact, the number of POIs on DS Brown’s spreadsheet was 116.)
- e. The third Progress Report records advice given by Detective Acting Inspector Mathieu Russell, who was at the time one of the UHT Investigator Coordinators,⁷⁹³ [REDACTED]
[REDACTED]
[REDACTED]⁷⁹⁴
- f. DS Morgan said that he did not know if any of the POIs were targeted with CCRs.⁷⁹⁵ Mr Willing said that we would have expected some targeting of POIs to have ensued, but did not know if it had.⁷⁹⁶
- g. It is submitted that there plainly was not. [REDACTED]
[REDACTED]
[REDACTED].⁷⁹⁷ By the time of the next two Progress Reports, no such targeting had been mentioned as being done.⁷⁹⁸

⁷⁸⁷ Transcript, T2018.5.

⁷⁸⁸ Transcript, T1777.16-32.

⁷⁸⁹ Exhibit 6, Tab 295A, Document titled ‘NEIWAND ICON’ [State Crime Command Operational Legal Support - Initial Consultation SF Neiwand], 17 August 2016, 2 (NPL.0115.0003.1501).

⁷⁹⁰ Transcript, T2022.47.

⁷⁹¹ Transcript, T2023.4.

⁷⁹² Transcript, T1779.32-39.

⁷⁹³ Transcript, T1780.40-43.

⁷⁹⁴ Exhibit 6, Tab 164C, Progress report, 26 October 2016, 5 (SCOI.82053).

⁷⁹⁵ Transcript, T2023.40-2024.4.

⁷⁹⁶ Transcript, T1781.41-44.

⁷⁹⁷ See Exhibit 6, Tab 164E (n 767), 5; Transcript, T1785.23-27.

⁷⁹⁸ Transcript, T1782.22-45, T1783.46-1784.14.

The Neiwand Summaries: Generally

671. At the conclusion of SF Neiwand, “investigative summaries” were prepared in relation to each of the matters involving Mr Russell (**Russell Summary**),⁷⁹⁹ Mr Warren (**Warren Summary**) and Mr Mattaini (**Mattaini Summary**) (together, the **Neiwand Summaries**).

672. Each of the Neiwand Summaries was said to have been created by DSC Chebl and reviewed by DS Morgan, on 27 December 2017 (as to Mattaini),⁸⁰⁰ and on 8 January 2018 (as to Warren and Russell).⁸⁰¹

DS Morgan’s involvement in the Summaries

673. The extent of DS Morgan’s involvement with the preparation of the Neiwand Summaries was a vexed issue at the hearing.

674. On the cover page of all three Neiwand Summaries, there is a notation which says:

Created by *DET SEN CONSTABLE MICHAEL CHEBL*
Reviewed By *DET SERGEANT STEVN MORGAN*

675. Yet initially, and then intermittently throughout his evidence, DS Morgan asserted that the Neiwand Summaries were the work of DSC Chebl as the OIC, alone, and (apparently) not documents that he himself stood by.

676. However, in the course of further questioning, DS Morgan later conceded that, as he was the Investigative Supervisor, “*there would have been some consultation*” in DSC Chebl’s creation of the Neiwand Summaries.⁸⁰² At different times in his evidence, DS Morgan stated that he would have “*reviewed it and accepted it*”,⁸⁰³ “*read through it and accepted it*”,⁸⁰⁴ and “*accepted it as being accurate enough*”.⁸⁰⁵

677. Ultimately, albeit with obvious reluctance, DS Morgan said that he took responsibility for the final versions of the summaries.⁸⁰⁶ Even then, he later sought to again backtrack his involvement by saying that he “*clearly didn’t read [the summaries] in enough detail*”,⁸⁰⁷ and claiming that it

⁷⁹⁹ Exhibit 6, Tab 172, (n 140); Exhibit 6, Tab 173, (n 140); Exhibit 6, Tab 174, (n 140).

⁸⁰⁰ Exhibit 6, Tab 172A, e@gle-i Product Details Form: Summary of investigation - Gilles Mattaini, 27 December 2017 (SCOI.76962.00004_0001).

⁸⁰¹ Exhibit 6, Tab 173A, e@gle-i Product Details Form: Summary of investigation – John Russell, 8 January 2018 (SCOI.76962.00005_0001); Exhibit 6, Tab 174A, e@gle-i Product Details Form: Summary of investigation – Ross Warren, 8 January 2018 (SCOI.76962.00006_0001).

⁸⁰² Transcript, T2030.14-15.

⁸⁰³ Transcript, T2030.23-24.

⁸⁰⁴ Transcript, T2031.1-2.

⁸⁰⁵ Transcript, T2047.37.

⁸⁰⁶ Transcript, T2048.46, T2335.32.

⁸⁰⁷ Transcript, T2264.21-22.

was not his role as reviewer to check the factual accuracy of evidence or facts contained within the Neiwand Summaries.⁸⁰⁸

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.
679. DS Morgan could not recall if he had suggested any changes to the Neiwand Summaries during this review process, but thought that if he had, those changes would have been incorporated into the final versions of the documents.⁸⁰⁹

Criticisms of Operation Taradale which are common to the Neiwand Summaries

680. While each of the Neiwand Summaries addressed the particular circumstances of each case and the surrounding investigation, there were several common criticisms of Operation Taradale and Mr Page that were made across the Summaries.
681. First, each Summary contained the following paragraph verbatim:

On the 09/03/2005 Magistrate Jacqueline Milledge [Senior Deputy State Coroner] delivered her findings following an Inquest into [death], which was premised on the 'gay hate' line of inquiry. Operation Taradale focused on 'gay hate' and relied on investigation confirmation bias which was a major factor that ultimately limited the validity of the Coroner's findings. Confirmation bias 'is the tendency to bolster a hypothesis by seeking consistent evidence while disregarding inconsistent evidence. In criminal investigations, preference for hypothesis-consistent information could contribute to false convictions by leading investigators to disregard evidence that challenges their theory of a case.'⁸¹⁰

682. As Mr Page noted in his statement, this definition of "confirmation bias" appears to have been cut and pasted from the abstract of a paper published in 2006 entitled, 'Confirmation Bias in Criminal Investigations' authored by two academics from the US, which Mr Page "easily found after doing an online search for 'confirmation bias'".⁸¹¹
683. Secondly, both the Warren Summary and Russell Summary contained accusations to the effect that Operation Taradale had approached the investigation into these deaths with "tunnel vision" by focusing on members of youth gangs, and that no other hypotheses were "considered" or "explained".⁸¹²

⁸⁰⁸ Transcript, T2274.28-29.

⁸⁰⁹ Transcript, T2030.39-2031.2.

⁸¹⁰ Exhibit 6, Tab 172, (n 140), [59]; Exhibit 6, Tab 173, (n 140), [152]; Exhibit 6, Tab 174, (n 140), [268].

⁸¹¹ Exhibit 6, Tab 253, (n 370), [38].

⁸¹² Exhibit 6, Tab 173, (n 140), [107], [148]; Exhibit 6, Tab 174, (n 140), [79a].

684. Thirdly, both the Warren Summary and Russell Summary also criticised Operation Taradale for failing to conduct a thorough “victimology”.⁸¹³
685. Mr Page’s responses to these general criticisms are outlined below.
686. While not a criticism of Operation Taradale per se, the Neiwand Summaries also all included a common statement about the solvability of the matters, namely: *“There are no further lines of inquiry for the [deceased’s name] matter. There is no forensic evidence, no identified suspect and/or witnesses.”*⁸¹⁴ The accuracy of such a statement is discussed further below in relation to the Mattaini Summary.

Overturning of coronial findings

687. The Neiwand Summaries purported to overturn the 2005 findings of the Taradale Inquest.
688. Coroner Milledge had returned findings of homicide for Mr Warren and Mr Russell, and an open finding for Mr Mattaini.
689. By contrast, SF Neiwand made the following findings (emphasis in original):

In relation to Mr Warren:

*“WARREN’S disappearance – cause and manner of death remain **‘undetermined’** despite the 2005 ‘homicide’ findings of the Coroner, which list it as a homicide. It is recommended that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available...”*⁸¹⁵

In relation to Mr Russell:

*“The manner of RUSSELL’s death should be reclassified as **‘undetermined’** despite the 2005 ‘homicide’ findings of the Coroner. It is recommended that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available.”*⁸¹⁶

In relation to Mr Mattaini:

*“... it can be suggested that MATTAINI may well have taken his own life rather than met with foul play. ... MATTAINI’s disappearance – cause and manner of death remain **‘undetermined’**. It is recommended that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available.”*⁸¹⁷

690. DS Morgan agreed that each of the three Neiwand Summaries arrived at conclusions which essentially contradicted, first, the findings of homicide as to Mr Russell’s and Mr Warren’s

⁸¹³ Exhibit 6, Tab 173, (n 140), [144]; Exhibit 6, Tab 174, (n 140), [79c].

⁸¹⁴ Exhibit 6, Tab 172, (n 140), [61]; Exhibit 6, Tab 173, (n 140), [154]; Exhibit 6, Tab 174, (n 140), [270].

⁸¹⁵ Exhibit 6, Tab 174, (n 140), [270].

⁸¹⁶ Exhibit 6, Tab 173, (n 140), [154].

⁸¹⁷ Exhibit 6, Tab 172, (n 140), [61].

deaths, and, secondly, the “*expression of probability*” about all three deaths.⁸¹⁸ He also agreed that this contradiction of the coronial findings was made even though SF Neiwand had, in fact, uncovered nothing of any consequence beyond what was before Coroner Milledge.⁸¹⁹

691. It is submitted that SF Neiwand had no proper or reasonable basis for contradicting the coronial findings in any way.

692. Mr Willing agreed that it was “*breathhtaking*” for SF Neiwand to reverse the decision of the Coroner Milledge, and said that he had never seen the like of it before.⁸²⁰

Response of Mr Page

693. Mr Page pointed out that the Summaries indicated that the objectives of SF Neiwand were actually narrower than as set out in its Terms of Reference. He noted:

Each of the Neiwand summaries devotes much of its attention to criticising the work of Taradale and myself. For example:

- *the Russell Summary describes the purpose of Neiwand, at [140], as to “identify any new lines of inquiries [sic] and ensure the case [of John Russell] was previously investigated thoroughly”, and “to cast fresh eyes over the work previously done”;*
- *the Russell Summary then goes on to assert, at [152], that “TARADALE focused on ‘gay hate’ and relied on investigation confirmation bias which was a major factor that ultimately limited the validity of the Coroner’s findings”;*
- *the Warren Summary, at [268], repeated verbatim those words quoted from [152] of the Russell Summary;*
- *the Mattaini Summary, at [59], again repeated verbatim those words quoted from [152] of the Russell Summary; ...*⁸²¹

694. Mr Page observed (correctly, it is submitted) that SF Neiwand’s approach “*largely involved pursuing case theories other than homicide, together with a focus on the discrediting of Taradale, and arriving at conclusions which contradicted findings of homicide by Deputy State Coroner Milledge.*”⁸²²

695. He gave evidence that it was “*absolutely false*” to suggest that Operation Taradale had been guilty of tunnel vision, saying: “*The Taradale brief of evidence shows examinations in multiple areas including suicide and the like.*”⁸²³ He also asserted that SF Neiwand’s claim, that Operation

⁸¹⁸ Transcript, T2031.32.

⁸¹⁹ Transcript, T2296.31.

⁸²⁰ Transcript, T1815.2-31.

⁸²¹ Exhibit 6, Tab 253, (n 370), [38].

⁸²² *Ibid*, [43].

⁸²³ Transcript, T2340.21-23.

Taradale has “relied on investigation confirmation bias which was a major factor that ultimately limited the validity of the Coroner’s findings”, should be rejected.⁸²⁴

696. Mr Page further stated:

*I note in addition that, notwithstanding Neiwand’s stated emphasis on the importance of examining each case individually from a victimology perspective, in fact Neiwand appears to have approached all three Taradale cases in essentially the same way. This is particularly clear from the similarities between the Russell Summary and the Warren Summary, in which numerous sentences, paragraphs and whole passages are substantially repeated, either in word-for-word identical form or close to it. This is contrary to the approach that an objective and dispassionate investigation should take, and it casts doubt on the reliability of Neiwand’s findings.*⁸²⁵

697. Mr Page’s evidence, on these matters and indeed in its entirety, was not challenged. No suggestion was put to him, on behalf of the Commissioner of Police, that any part of his evidence was in any way incorrect, much less untrue.

698. It is submitted that Mr Page’s evidence as to factual matters, both in his statement and his oral evidence, should be accepted.

Evidence of DS Morgan

699. DS Morgan accepted that SF Neiwand was heavily focused on finding fault with Operation Taradale, including the criticisms in relation to confirmation bias, tunnel vision and victimology.⁸²⁶ He conceded that the vast majority of the criticisms of Mr Page and Operation Taradale were in fact unjustified.⁸²⁷ He denied that anyone in NSWPF directed or suggested to him what direction SF Neiwand should take.⁸²⁸

The Neiwand Summaries in respect of each case

Ross Warren

Assertions of SF Neiwand

700. SF Neiwand arrived at the conclusion that Mr Warren’s death “could be one of several possibilities” including misadventure, suicide or homicide, and should be treated as “undetermined”.⁸²⁹

⁸²⁴ Exhibit 6, Tab 253, (n 370), [89].

⁸²⁵ Exhibit 6, Tab 253, (n 370), [76].

⁸²⁶ Transcript, T2204.12, T2264.43-2265.2.

⁸²⁷ Transcript, T2272.18, T2291.44.

⁸²⁸ Transcript, T2292.2-3

⁸²⁹ Exhibit 6, Tab 174, (n 140), [270].

701. Most of the Warren Summary placed emphasis on evidence relating to possible misadventure and possible suicide, as opposed to homicide.
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.⁸³⁰ 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.
703. In relation to suicide, SF Neiwand acknowledged that suicide was “*an unlikely scenario*”, but nevertheless drew attention to following matters so as to suggest that the possibility was still available, “*despite his family and friends saying he wasn’t suicidal or depressed*”:⁸³¹
- a. evidence of Mr Warren’s mother that Mr Warren may have missed out on a job opportunity with another TV station;⁸³²
 - b. reported statements from work colleagues that Mr Warren was “*always concerned about the effect his homosexuality would have on his career*”;⁸³³
 - c. two alleged rejections from potential romantic interests;⁸³⁴ and
 - d. Mr Warren’s potential exposure to HIV/AIDS.
704. In relation to homicide, SF Neiwand asserted that there was “*no evidence*” to support a theory that Mr Warren’s death could be linked to a man that he met at the beat, and noted that Operation Taradale was unable to link any individual or group to Mr Warren’s disappearance.⁸³⁵
705. SF Neiwand also downplayed the incidence of violence against the LGBTIQ community at the Marks Park beat. The Warren Summary stated:
- An interesting detail from several witnesses who frequented the Mackenzie’s Point gay beat was that they did not witness or encounter violence of any sort. They were aware that ‘gay bashings’ happened at beats but were not aware that they happened at the Mackenzie’s Point gay beat. [...] Based on this information police confirmed that attacks on gay men did occur, but may not have been as prevalent as portrayed by the Operation Taradale investigation or the media.*⁸³⁶
706. In addition, the Warren Summary explicitly drew attention to several of Operation Taradale’s “*investigative deficiencies*”, including:

⁸³⁰ Ibid, [178].

⁸³¹ Ibid, [263].

⁸³² Ibid, [192].

⁸³³ Ibid, [195].

⁸³⁴ Ibid, [225].

⁸³⁵ Ibid, [264].

⁸³⁶ Ibid, [266]

- a. That Operation Taradale overly relied on the witness account of Mr McMahon, and that as a result of Mr McMahon's account, investigators formed a hypothesis that Mr Warren and Mr Russell were subject to the same style of "gay hate gang attack".⁸³⁷
- b. That Operation Taradale investigators did "very little" to learn more about Mr Warren and a thorough "victimology" was not conducted.⁸³⁸ The Warren Summary claimed that "a thorough review of all aspects of Mr Warren's life was not conducted. Some of Mr Warren's associates and former partners were not identified and interviewed. Mr Warren's last known movements were not thoroughly explored."⁸³⁹
- c. That Operation Taradale investigators implemented poor strategies when covert strategies were in place,⁸⁴⁰ and inappropriately disclosed and publicised police methodology to witnesses and persons of interest through the Taradale Inquest.⁸⁴¹

Response of Mr Page

707. Mr Page responded to the Warren Summary at [88]-[107] of his statement. That evidence, from [92] onwards, is reproduced below.

- [92] *Several aspects of these conclusions by Neiwand should be rejected.*
- [93] *First, it is simply incorrect to say that there were no credible suspects in relation to Mr Warren's case.*
- [94] *Several persons of interest were identified by Taradale, and some of those appeared at the Taradale Inquests. Indeed, the main persons of interest are identified in the Warren Summary. However, Neiwand took no steps whatsoever to investigate those persons of interest further. Neiwand did not pursue the "youth gangs" line of inquiry at all, and instead focused almost exclusively on Mr Warren's "background, social groups and relationships" (see WS [180]). This is so even though it appears that Neiwand did receive further information about potential persons of interest, as a result of publicity generated at around the time Neiwand commenced and as a result of Neiwand generally (see Annexure 8 to the Morgan Statement) (SC01.82054). There is no indication that Neiwand followed up these leads at all.*
- [95] *The reason why Taradale did not result in any criminal charges in relation to the deaths of the three men was not the absence of any credible suspects, but the absence of admissible evidence, at that time, to support criminal charges against those individuals.*
- [96] *Taradale established that numerous members of the LGBTIQ community, gay men in particular, had been subjected to serious assaults by predatory groups of youths at least between October 1987 and July 1990 in and around Bondi, and also that many other such incidents had not been reported to the NSWPF. The recorded conversations and intelligence indicated that these groups were prolific in their violent offences against*

⁸³⁷ Ibid, [107]. See also Exhibit 6, Tab 173, (n 140), [68].

⁸³⁸ Ibid, [112], [179].

⁸³⁹ Ibid, [258].

⁸⁴⁰ Ibid, [179].

⁸⁴¹ Ibid, [179].

gay men, making it very unlikely (given the circumstances) that Mr Warren was not a victim of violence.

- [97] Secondly, the possibility that Mr Warren's case was a domestic homicide involving a former partner, a possibility evidently favoured by Neiwand, is in my view unlikely. Neiwand has provided no indication of any plausible motive, or opportunity, to substantiate such a theory. I know of no other domestic homicides that happen to have occurred at beats. Moreover, Taradale looked at the close associates of Mr Warren including his friends and partners, and there was no indication of any conflict in his former relationships which might have impacted on his disappearance.
- [98] Thirdly, evidence used by Neiwand to bolster theories relating to misadventure, and to undermine the likelihood of foul play or homicide, is tenuous at best.
- [99] In support of the theory of misadventure, one factor relied on in the Warren Summary is the opinion of former Detective Sergeant Kenneth Bowditch, the initial investigator into the disappearance of Mr Warren, who thought (in the absence of any evidence) there was a possibility that Mr Warren slipped on the rock ledge overlooking McKenzie's Bay.
- [100] Mr Bowditch's initial investigation into Mr Warren's disappearance was described by Deputy State Coroner Milledge in her findings, as Neiwand was aware (see WS [175]), as "a grossly inadequate and shameful investigation. Indeed, to characterise it as an 'investigation' is to give it a label it doesn't deserve". For Neiwand to rely on Mr Bowditch's account in these circumstances is extraordinary. In contrast, although Neiwand acknowledges the "spate of assaults/robberies/murders committed against gay men in the Eastern Suburbs of Sydney around the period of WARREN's disappearance", at WS 162], no investigative work appears to have been done in relation to that "spate" by Neiwand.
- [101] Fourthly, the evidence used by Neiwand to bolster theories relating to suicide is also tenuous. Even after acknowledging that suicide was an "unlikely scenario" in Mr Warren's case, the Warren Summary nevertheless concludes that certain factors "may have led to him to taking his own life". This is maintained despite Mr Warren's family and friends saying that he was not suicidal or depressed at the time he disappeared (see WS [263]), and despite other evidence that also tends against suicide as a possible manner of death, including that Mr Warren locked his car, took his keys with him, and was a gay man attending a location that he knew was a beat.
- [102] Fifthly, in drawing its conclusions, Neiwand again makes explicit criticisms of Taradale which I reject.
- [103] Again, I reject the suggestion that Taradale was infected by "confirmation bias" or "tunnel vision". In relation to youth gangs (such as the Tamarama 3 and the Alexandria 8) Taradale investigated gangs that were known to have killed two gay men, and the Bondi Boys were known to have been involved in violence in the immediate area where Mr Warren disappeared. There were also instances of non-youth gang violence against men in the area.
- [104] I also reject the suggestion that Taradale relied too strongly on Mr McMahon's identification evidence. Mr McMahon was by no means the only victim of violent crime in and around Bondi that Taradale relied upon. Neiwand's reference to Mr McMahon as someone whom I "viewed" as a survivor — with the word 'survivor' placed in quotation marks — is consistent only with Neiwand's seeking to undermine or downplay the possibility of homicide. I did not merely "view" Mr McMahon as a survivor (of a gang attack on a gay man near Marks Park); he was in fact a survivor of such an attack, as

was readily accepted by counsel for the Commissioner of Police when Mr McMahon gave evidence before Deputy State Coroner Milledge.

[105] Taradale was also criticised by Neiwand for failing to conduct interviews with witnesses (family and associates) about the type of person Mr Warren was, who he associated with and his lifestyle, and for only addressing these matters in a peripheral way (see WS at [117]). I reject this criticism. Everything that witnesses had to say that was relevant to the investigation was captured. While Taradale did not obtain statements from all of Mr Warren's family members or all of his associates, it was considered unlikely that the others would have anything material to add that would shed any light on the circumstances of Mr Warren's disappearance. That assessment is borne out by the fact that Neiwand, which did purport to engage in the more extensive exercise supposedly called for, failed to find anything of significance.

[106] Finally, Neiwand's focus on victimology again closed down other possible avenues of inquiry that should have been pursued. It is true, as Neiwand emphasises, that at the time of Operation Taradale in 2001-2003 the abundance of evidence and intelligence in relation to identified persons of interest was not specifically or positively tied to Mr Warren's disappearance. However, it is extraordinary, in my view, for Neiwand in 2016-2017 simply to decline to follow up, and essentially to disregard, that evidence and intelligence, which could have proven invaluable had it been supplemented by fresh and/or additional evidence at a later stage. But Neiwand made no attempt at all to explore that possibility.

[107] Neiwand nominates three matters which it regarded as having been "established" by means of that approach, namely (see WS [269]): (1) the possibility that Mr Warren had been exposed to HIV [REDACTED]; (2) Mr Warren's supposed unrequited romantic interest in Mr Chadwick and Kingi Marsh; and (3) Mr Warren's failure to gain employment with a major television network. These theories appear to be little more than speculation.

708. This evidence was unchallenged. The points made by Mr Page are sound and are adopted. It is submitted that they should be accepted.

709. In his oral evidence, Mr Page was taken to evidence available to SF Neiwand regarding Mr Warren's rejection by two men, his failure to obtain employment and the risk of exposure to HIV/AIDS. Mr Page agreed that, accepting those things as true, it was reasonable for SF Neiwand to take them into account.⁸⁴²

Evidence of DS Morgan

710. In answer to a question from senior counsel for the Commissioner of Police, DS Morgan accepted counsel's suggestion that the investigations by Operation Taradale into the death of Mr Warren were "*appropriate and fulsome*",⁸⁴³ and that SF Neiwand's criticisms of Operation Taradale were "*largely unwarranted*".⁸⁴⁴

⁸⁴² Transcript, T2357.46.

⁸⁴³ Transcript, T2290-30.

⁸⁴⁴ Transcript, T2291-25.

711. DS Morgan conceded that SF Neiwand's work did not shed any further light on what had happened to Mr Warren,⁸⁴⁵ and that SF Neiwand did nothing beyond what was already done in Operation Taradale to pursue the possibility of a gay-hate homicide.⁸⁴⁶
712. When asked why SF Neiwand had not focused at all on the youth gangs, DS Morgan suggested that it was because Coroner Milledge had commented so favourably on Operation Taradale that SF Neiwand did not want to "*go over old ground*".⁸⁴⁷ It is submitted that such an explanation is both inadequate and unconvincing, and should not be accepted.
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*"⁸⁴⁸ and by Mr Willing that they were "*incorrect*".⁸⁴⁹
714. DS Morgan further admitted that, in Mr Warren's case, the allegation by SF Neiwand of tunnel vision or confirmation bias was unwarranted.⁸⁵⁰ He agreed that the idea that very little was done by Operation Taradale to learn about Mr Warren's life was an exaggeration,⁸⁵¹ and conceded that it was factually wrong to have said that Mr Warren's last movements were not thoroughly explored by Operation Taradale.⁸⁵²
715. In relation to the assertion at [705] above, DS Morgan conceded that this paragraph was "*totally inaccurate*"⁸⁵³ and at odds with the evidence of the two witnesses in question, who had actually given evidence in the Taradale Inquest proceedings.⁸⁵⁴ DS Morgan also conceded that even if there were two men who did say that they were not aware of bashings at Marks Park, that would not be a sufficient basis for suggesting that attacks on gay men may not have been as prevalent as portrayed by Operation Taradale or the media.⁸⁵⁵
716. DS Morgan was asked whether the paragraph was included to downplay or minimise gay hate attacks. His revealing response was:

⁸⁴⁵ Transcript, T2220-45.

⁸⁴⁶ Transcript, T2021.15-26.

⁸⁴⁷ Transcript, T2192-43-2193-1.

⁸⁴⁸ Transcript, T2346.7-11, T2291.23-5.

⁸⁴⁹ Transcript, T1858.37-T1859.19.

⁸⁵⁰ Transcript, T2291.44.

⁸⁵¹ Transcript, T2186.37.

⁸⁵² Transcript, T2209.29.

⁸⁵³ Transcript, T2215.27.

⁸⁵⁴ Transcript, T2211.6-10, T2213-39.

⁸⁵⁵ Transcript, T2214.28.

*Yes, I - I can only think that it was - it is totally wrong, that statement, and I can only think that it suited Senior Constable Chebl's findings on it to put that forward, that he wanted to put that forward as a fact, when clearly it wasn't.*⁸⁵⁶

Evidence of Mr Willing

717. Mr Willing agreed that the Warren Summary's assertion that Operation Taradale was "*merely*" a continuation of the investigation conducted by DS McCann, and that somehow that was a weakness or a defect in Operation Taradale's approach, was "*ridiculous*".⁸⁵⁷
718. Mr Willing similarly conceded that the statement at [705] above was "*inaccurate*".⁸⁵⁸ He also could not conceive of a reason why one would not regard Mr McMahon's account as a likely occurrence.⁸⁵⁹

John Russell

Assertions of SF Neiwand

719. The Russell Summary concluded "*there was still a possibility of Mr Russell's death being a result of a homicide; unfortunately, a lack of corroborating evidence, physical evidence and witness accounts prevents this investigation being considered as a homicide from proceeding any further.*" It added that "*consideration needed to be given to the fact that Russell may have died as a result of misadventure, which can be supported by corroborating evidence*".⁸⁶⁰
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.
721. The Russell Summary highlighted that Plain Clothes Constable Dunbar concluded that no evidence suggested that Mr Russell committed suicide or that there were any suspicious circumstances surrounding his death.⁸⁶¹ It also referred to:
- a. the statement of DSC Rivera, who noted that there was some damage to the vegetation on the seaward side of the path above the deceased's location;⁸⁶² and
 - b. the statement of DS Cameron, who wrote: "*In one area between the walkway and the cliff edge, where there was vegetation growing, there was a small amount of damage*

⁸⁵⁶ Transcript, T2216.43-47.

⁸⁵⁷ Transcript, T1848.37-1849.4.

⁸⁵⁸ Transcript, T1852.1-5.

⁸⁵⁹ Transcript, T1847.1-12.

⁸⁶⁰ Exhibit 6, Tab 173, (n 140), [149].

⁸⁶¹ *Ibid*, [31]-[32].

⁸⁶² *Ibid*, [36].

to the vegetation. ***In my opinion, this could only have occurred if one person were to walk in that area***” (emphasis in original).

722. The Russell Summary went on:

*If we accept that evidence of the shrubbery on the cliff top being disturbed, then consideration needs to be given to the fact that RUSSELL had strands of grass near and underneath his body on the rock shelf. This would refute the theory of him being thrown over the edge of the cliff.*⁸⁶³

723. The Russell Summary also refers to steps taken by SF Neiwand investigators to source an additional opinion of a forensic pathologist in order to “*corroborate or refute*” the 2001 opinion of Dr Allan Cala.⁸⁶⁴ In that opinion, Dr Cala considered that the position of Mr Russell’s body was “*unusual*”, on the basis that the body would have to twist 180 degrees in a relatively short fall to land in this position. Dr Cala considered that the red jumper exposing the lower abdomen of Mr Russell suggests that it was pulled up prior to the fall. He also stated that the hairs on the left hand are suggestive that Mr Russell might have pulled them from the head of another person, raising the possibility of foul play. Dr Cala also noted that some injuries to the face and hand are suggestive of an assault.⁸⁶⁵ According to the Russell Summary, “*the second inquest into Russell’s death relied on and was heavily influenced by the evidence of Dr Cala.*”⁸⁶⁶

724. SF Neiwand investigators obtained in June 2017 an additional report from Professor Anthony Moynham (who had also prepared a statement in the matter in 2001). The 2017 report focused on the blood alcohol level at the time of Mr Russell’s death (estimated to be 0.244-0.385 grams/100mL) and the level of impairment expected to be caused by that level of inebriation. Professor Moynham indicated that his opinion had not altered since the preparation of his 2001 report and stated that it was not possible to determine if Mr Russell was the victim of an accident or foul play, as both were possible.⁸⁶⁷ The Russell Summary asserted that Mr Russell’s level of intoxication, as explored in the Moynham report,⁸⁶⁸ supported the misadventure theory.

725. Another report was obtained by SF Neiwand from forensic pathologist Professor Johan Duflou, in August 2017. Professor Duflou also found that the position of the body was somewhat unusual for an accidental or suicidal fall, as Mr Russell likely faced the walkway when he

⁸⁶³ Ibid, [150]

⁸⁶⁴ Ibid, [133].

⁸⁶⁵ Ibid, [93]-[94]

⁸⁶⁶ Ibid, [133].

⁸⁶⁷ Ibid, [136].

⁸⁶⁸ Ibid, [149].

commenced his fall.⁸⁶⁹ Professor Duflou further commented that a laceration on Mr Russell's scalp (at the back of the head) could be an impact injury. Significantly, he also considered that it was relatively unlikely that the hair located on Mr Russell's hand originated from the head of the deceased.⁸⁷⁰

726. The comparison of Dr Cala and Professor Duflou's reports at [153]-[154] of the Russell Summary incorrectly suggests that there is a marked contrast or significant difference between Professor Duflou and Dr Cala. In fact the differences between the two opinions are few and slight.
727. According to the Russell Summary, SF Neiwand "*encountered great difficulties as a result of crucial errors or oversights made by Operation Taradale.*" These "errors" were said to be "*a premature approach towards persons of interest being made, tunnel vision, a lack of identifying witnesses and a lack of physical evidence being present.*"⁸⁷¹
728. Both Mr Willing⁸⁷² and DS Morgan⁸⁷³ conceded in their oral evidence that such criticisms were groundless. In particular, it is plainly untenable to describe the absence of witnesses or of physical evidence as an "error", much less a "crucial error".

Response of Mr Page

729. Mr Page responded to the criticisms and assertions of SF Neiwand in relation to Mr Russell's matter in his statement, in particular at [108]-[126]. Some of Mr Page's responses are similar to those outlined in response to the Warren Summary. Additional reasons specific to the Russell case include the following:

[108] *Taradale concluded that it was likely that Mr Russell met his death at Marks Park as a result of violence. Deputy State Coroner Milledge found that Mr Russell was a victim of homicide perpetrated by an unknown person or persons.*

[109] *In contrast, in its final "Key Findings" section (RS [152]-[154]), Neiwand again repeated the claim, made in Mattaini and Warren, that Taradale had "relied on investigation confirmation bias which was a major factor that ultimately limited the validity of the Coroner's findings". Again, I reject that claim.*

[110] *Neiwand went on to conclude that "the available facts could support death by misadventure and/or homicide". The basis for this elevation of the misadventure theory appears to be a supposedly different expert opinion and Mr Russell's high Blood Alcohol Concentration (BAC) at the time of his death.*

[111] *As with Mr Warren, and adopting the same language, Neiwand categorised the cause and manner of Mr Russell's death as "undetermined", "despite the 2005 'homicide' findings of the Coroner". As with Mr Mattaini and Mr Warren, again verbatim, Neiwand*

⁸⁶⁹ Ibid, [138].

⁸⁷⁰ Ibid, [139].

⁸⁷¹ Ibid, [140].

⁸⁷² Transcript, T1839.13-1840.23.

⁸⁷³ Transcript, T2265.24-2266.24.

recommended “that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available”.

- [112] *The approach and conclusions reached by Neiwand in relation to Mr Russell’s death are also flawed, both for similar reasons to some of those outlined above in relation to Mr Warren, and for additional reasons specific to the Russell case. Some of those additional reasons are outlined below.*
- [113] *First, I note again that large slabs of text appear, verbatim or near-verbatim, in both the Warren Summary and the Russell Summary. Among numerous examples are the accusations of “tunnel vision” and “Investigation confirmation bias” on the part of Taradale.*
- [114] *Secondly, Neiwand’s treatment of the available expert opinion is troubling, in at least two respects.*
- [115] *The first of those concerns Neiwand’s attempt to contrast some aspects of the evidence of a forensic pathologist, Dr Allan Cala, in the Taradale Inquests, with a statement obtained by Neiwand in 2017 from another forensic pathologist, Professor Johan Duflou.*
- [116] *In his report of 14 August 2001 (Annexure 24 to the Morgan Statement) (SC01.76962.00024), Dr Cala had considered foul play to be a possibility and that Mr Russell “might have been forcibly thrown off the cliff”. He had pointed to such matters as the position of Mr Russell’s body, which Dr Cala considered “unusual in a case of jumping or falling from a height”; the fact that Mr Russell’s red jumper was pulled up and exposed his abdomen; and the fact that Mr Russell was found with hairs on his hand that Dr Cala said was “suggestive the deceased might have pulled them from the head of another person at the time he fell, implying the presence of another person or persons at the time of the fall”.*
- [117] *In Professor Duflou’s 2017 statement (Annexure 23 to the Morgan Statement) (SC01.76962.00023), he expressed broadly similar views on each of these matters, at [121(a), (e) and (g).*
- [118] *The differences between the views of Dr Cala and Professor Duflou on these issues, if any, are slight. Yet the Russell Summary is expressed in terms suggesting that there is a stark contrast between the two. There is not.*
- [119] *The second aspect of Neiwand’s treatment of the expert material concerns Mr Russell’s level of intoxication, and what consequences may have flowed from it.*
- [120] *Neiwand focuses heavily on Mr Russell’s high BAC, in order to support its suggestion that it may have led to him falling from the cliff — i.e. misadventure.*
- [121] *However, while Mr Russell did have a high BAC reading at post-mortem, these facts need to be tempered by other evidence from the Taradale inquests, available to Neiwand, including: first, Mr Russell’s close friend, Peter Redmile, who was the last person to see Mr Russell alive, described him as only appearing moderately intoxicated; second, Mr Russell’s brother, who would drink with Mr Russell regularly, described him as someone who would drink “a fair bit” but never until he was sick or lost control.*
- [122] *In 2017, Neiwand obtained an opinion from Dr Moynham (who had also given evidence at the Taradale inquests, and who by 2017 had become Professor Moynham). That 2017 opinion includes detailed observations by Professor Moynham about Mr Russell’s level of intoxication and on the typical effects of such levels on a person’s perceptive skills and reaction time (see RS [134], [135]). Neiwand uses this evidence to support its preferred theory that Mr Russell died as a result of misadventure (see RS [148]).*

[123] However, the Russell Summary conspicuously omits, or fails to acknowledge the significance of, several important aspects of Professor Moynham's evidence:

- (1) Professor Moynham was not provided with Mr Russell's drinking history (see RS [135], top p 36). On that topic the evidence of Mr Redmile and Mr Peter Russell, noted above, would have been of some significance.
- (2) At the Taradale inquest, Professor Moynham's evidence included his opinion that one effect of Mr Russell's intoxication would have been a diminished capacity to protect himself from danger.
- (3) To similar effect, in his 2017 statement provided to Neiwand, Professor Moynham stated that Mr Russell's BAC would have made him "more vulnerable to predatory behaviour by other persons. His capacity to protect himself would be impaired."
- (4) In his 2017 statement, Professor Moynham went on to say: "It is not possible to determine if he was the victim of an accident or if he was the victim of foul play. Both are possible."

[124] However, although the lengthy extract from Professor Moynham's 2017 statement contained in RS [136] includes the passages referred to at (3) and (4) above, neither is referred to in the Russell Summary, either in the section headed "Summary" (see RS [140]-[151]) or in the section headed "Key Findings" (RS [152]-[154]). Evidence of intoxication appears to have been used by Neiwand only to undermine the possibility of foul play, whereas (as Professor Moynham plainly appreciated) it was equally capable of making a victim more vulnerable to foul play.

[125] Thirdly, as in the Warren Summary, Neiwand criticises the approach taken by Taradale to persons of interest, highlighting a lack of identifying witnesses and of forensic evidence directly linking such persons to Mr Russell's death. This criticism is misconceived. As with the case of Mr Warren, the difficulty in 2001-2003 in obtaining evidence that directly incriminated those persons of interest, such that charges could be laid, does not mean that those individuals and groups are no longer persons of interest. Taradale's conclusions were not drawn as a result of "tunnel vision" but rather, were based on (amongst other things) toxicology reports, postmortem reports, expert reports, crime scene photographs, and a detailed understanding of the specific context in which Mr Russell's death took place.

[126] Fourthly, the Russell Summary (at [150]) suggests that the evidence relating to disturbed shrubbery would "refute the theory" of Mr Russell being thrown from the cliff. As a matter of logic, this is a perverse conclusion. It is at least equally possible, for example, that shrubbery could be disturbed during a struggle.

730. Again, this evidence was unchallenged, it is cogent, and it should be accepted.

Evidence of DS Morgan

731. In his oral evidence, DS Morgan agreed that:⁸⁷⁴

- a. Mr Russell's intoxication would have made him more vulnerable to attack as well as misadventure (which might be thought to "corroborate" the homicide theory, as a

⁸⁷⁴ Transcript, T2243.25, T2248.36, T2251.17, T2256.42, T2260.7-28, T2262.19.

person may be more prone to trauma as a consequence of physical impairment, or vulnerable to predatory behaviour by other persons).

- b. Intoxication and impairment had been considered by Coroner Milledge (Professor Moynham was in fact a witness).
- c. Professor Moynham's evidence was used by SF Neiwand only for the single purpose of advancing the accident or misadventure possibility. Such use is itself an example of "*confirmation bias*" or "*tunnel vision*".
- d. Professor Dulfou's findings that the position of the body was somewhat unusual for an accidental or suicidal fall, as the deceased likely faced the walkway when he commenced his fall, was essentially the same view that had been expressed by Dr Cala.
- e. Both Dr Cala and Professor Duflou considered that neither assault nor misadventure could be positively excluded, and considered various hypotheses in terms of "*possibilities*" and "*likelihoods*".
- f. Professor Duflou said in the inquest that he considered it less likely that Mr Russell's body rotated during the fall to land in the way depicted. He stated, "*I agree with Dr Cala that it would be most unlikely that the deceased would have moved significantly after sustaining the injuries from the fall.*"
- g. Professor Duflou does not exclude it as a possibility, but considered it was relatively unlikely to have been the deceased's own hair. This was substantially the same as Dr Cala's opinion.

Evidence of Mr Willing

732. Mr Willing agreed in his oral evidence that for SF Neiwand to purport to say that the death of Mr Russell should be reclassified as undetermined, in effect thereby contradicting the findings of the Coroner, was "*completely without foundation*".⁸⁷⁵
733. Mr Willing accepted that Coroner Milledge had described the original investigation into Mr Russell's death as "*far from adequate*", and that the hairs located on the back of Mr Russell's hand were a very important exhibit which had been lost.⁸⁷⁶ Mr Willing agreed that, given the inadequacy of the initial investigation, SF Neiwand was, for the most part, not seeking to

⁸⁷⁵ Transcript, T1811.45-1812.7.

⁸⁷⁶ Transcript, T1802.4-1803.22.

reinvestigate the three cases but was rather seeking to analyse Taradale and criticise it where possible.⁸⁷⁷

734. Mr Willing agreed that the presence of grass would not refute the possibility of Mr Russell having been thrown over the cliff, a proposition with which DS Morgan also agreed.⁸⁷⁸

Gilles Mattaini

Assertions of SF Neiwand

735. SF Neiwand considered that it can be suggested that Mr Mattaini “*may well have taken his own life rather than met with foul play. There are no further lines of inquiry for the Mattaini matter. There is no forensic evidence, no identified suspect and/or witnesses that can provided [sic] a time line for his last movements*”.⁸⁷⁹

736. The Mattaini Summary asserts that a review of the Operation Taradale investigation revealed “*a number of areas which were not explored*” by Operation Taradale, including “*but not limited to*”, obtaining a DNA sample from Mr Mattaini’s mother, obtaining Mr Mattaini’s medical and military records, and obtaining further statements from Mr Mattaini’s associates to clarify his previous suicide attempts.⁸⁸⁰

737. DS Morgan conceded that the work of SF Neiwand with respect to the first two of these areas was unfruitful.⁸⁸¹

738. The primary focus of SF Neiwand was overwhelmingly to try to obtain further information as to Mr Mattaini’s previous suicide attempts, and to attempt to bolster a theory of suicide.

739. This was primarily done through communications with Mr Musy, who had previously provided a statement to the NSWPF and given evidence at the Taradale Inquest.

740. In December 2016, DSC Chebl had a telephone conversation with Mr Musy. In the Mattaini Summary, Mr Musy’s account is referred to as follows:

[39] ... Musy stated throughout his relationship with Mattaini he found him to be comfortable with death and would speak openly about dying on his own accord rather than naturally. Musy elaborated on this by saying, following Mattaini’s discharge from the army and prior to the pair moving to Australia, Mattaini would make comments about taking his own life. Musy explained this by stating “He (Mattaini) spoke of death as being a release for him from this life. He believed death was more attractive than life, he believed he would be happier dead.

⁸⁷⁷ Transcript, T1803.24-31.

⁸⁷⁸ Transcript, T2269.6-7.

⁸⁷⁹ Exhibit 6, Tab 172, (n 140), [61].

⁸⁸⁰ Ibid, [30], [37].

⁸⁸¹ Ibid, [42]-[43], [50].

[40] *Detective Senior Constable Chebl asked Musy about the information he provided Eyraud in relation to Mattaini stating “he wanted to die and nobody would find his body”. Musy agreed this comment was said by Mattaini, he elaborated on this by explaining that Mattaini believed that if nobody found his body it would cause less pain and grief for his family. Musy quoted Mattaini “If I die, I will do it so no one finds my corpse, it would cause less pain and grief for my mother.” When Musy was explaining this comment, he reinforced the point Mattaini was making that he did not want his body to be found to ease the grief on his mother and friends.*

741. In summarising the conversation, the Mattaini Summary failed to acknowledge that Mr Musy made it clear that both suicide attempts had occurred years before 1985, when Mr Mattaini still lived in France. When asked how many times Mr Mattaini had planned to die by suicide, Mr Musy had said:

Gilles made two suicide attempts. However, with me he had become someone happy to live. His new life in Australia suited him fully. He was happy. Throughout this period, he has never shown an suicidal intent. Those two attempts were made in France and being younger.⁸⁸²

742. In addition, the evidence given by Mr Musy at the Taradale Inquest (when Mr Musy pointed out he had a better recollection of events than in 2017) made it even more clear that he considered that Mr Mattaini was not at all inclined to suicide in 1985. Mr Musy recalled that at the time of Mr Mattaini’s disappearance, Mr Mattaini was “happy” that Mr Musy was returning from France and that he had made some recent purchases for his Bondi flat.⁸⁸³
743. None of this is referred to in either the Mattaini Summary or the POA. Either DS Morgan and DSC Chebl did not read the transcript of Mr Musy’s evidence to the Taradale Inquest, or they did read it but omitted reference to it from the Mattaini Summary. Either alternative is indefensible.
744. The Mattaini Summary made a number of very serious allegations against Mr Page, including in particular that he deliberately withheld from the Coroner evidence from Mr Musy as to previous suicide attempts and suicidal thinking on the part of Mr Mattaini:

In 2002 Jacque MUSY had provided former Detective Sergeant PAGE with a statement. The statement outlined 2 suicide attempts by Mattaini whilst he was in France, but failed to outline prior suicidal ideation despite MUSY raising it with PAGE. In 2017, SF Neiwand spoke with MUSY provided French Police with a statement which clearly outlined MATTAINI’s suicidal ideation and multiple attempts at suicide. PAGE’s failure to include all the information about MATTAINI’s suicidal ideation in MUSY’s 2002

⁸⁸² Exhibit 6, Tab 170, Statement of Jacques Musy (English version), 10 May 2017, 3 (SCOI.10397.00007).

⁸⁸³ Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, 1 April 2003, T50.33-39 (SCOI.82371).

*statement was a key factor in the Coroner not considering suicide as a possibility in MATTIANI's disappearance.*⁸⁸⁴

745. The Mattaini Summary also alleged, at [52], that in 2002 Mr Page “convinced” Mr Musy that Mr Mattaini had been murdered.
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.

Response by Mr Page

747. Mr Page responded to the criticisms and assertions of SF Neiwand in relation to Mr Mattaini's matter in his statement, particularly at [77]-[87]. His evidence there stated (emphasis in original):

[79] *In ... its final “Key findings” section (MS [60], [61]), Neiwand asserted, wrongly, that Deputy State Coroner Milledge had not considered suicide as a possibility in Mr Mattaini's disappearance, and put forward the view that Mr Mattaini “may well have taken his own life rather than met with foul play”. Neiwand added that “[t]here are no further lines of inquiry”. Neiwand categorised the cause and manner of Mr Mattaini's death as “undetermined” and recommended “that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available”.*

[80] *At MS [59], Neiwand claims that Taradale “relied on investigation confirmation bias which was a major factor that ultimately limited the validity of the Coroner's findings”. I reject those claims, which are also contained, in identical words, in the other two Neiwand Summaries.*

[81] *At MS [60], Neiwand claims that Taradale, and I personally, “fail[ed] to include all the information about Mattaini's suicidal ideation” in a 2002 statement by Jacques Musy, Mr Mattaini's partner, and that this “failure” was “a key factor in the Coroner not considering suicide as a possibility in Mattaini's disappearance”. I reject those claims as well.*

[82] *First, Mr Musy gave evidence at the Taradale Inquests by way of a written witness statement dated 3 August 2002, and also by oral evidence on 1 April 2003. In his statement, Mr Musy expressly referred to Mr Mattaini having “tried to take his own life” on two separate occasions in France when he was young — once before, and once after, he and Mr Musy had met. He gave oral evidence to similar effect, Mr Musy also gave oral evidence that while Mr Mattaini had had suicidal thoughts in the past, that was before meeting Mr Musy (which was in about 1978).*

[83] *I referred to these matters in my own Mattaini Statement, at [803] and [825].*

[84] *The matters emphasised by Neiwand in relation to its preferred view that Mr Mattaini may have died by suicide were before Deputy State Coroner Milledge at the Taradale Inquests, and were referred to in closing submissions by counsel assisting. Having considered that evidence and those submissions, her Honour's conclusion was that*

⁸⁸⁴ Exhibit 6, Tab 172, (n 140), [60].

“there is no evidence before me to support the finding of ‘suicide’. The claim made by Neiwand, that her Honour did not consider suicide as a possibility, is simply wrong.

[85] Secondly, I note the following matters:

- a. *The Mattaini Summary refers to Mr Mattaini’s “multiple attempts at suicide” and states that Mr Mattaini made suicide attempts “before he went missing”. Such language is apparently intended to imply, wrongly, that Mr Mattaini had made more than two suicide attempts, and that they were shortly prior to his disappearance in September 1985. Neither of those suggestions is correct.*
- b. *Neiwand places weight on the hearsay evidence in 2002 of Mr Antony Wyszynski, who said that he had been told by another person that Mr Mattaini left his keys in the house. However, this was incorrect. Mr Musy gave evidence that in fact, when he returned from France to the flat he shared with Mr Mattaini, although Mr Mattaini’s wallet, watch and credit card were there, his keys and Walkman were missing.*
- c. *The Mattaini Summary three times makes reference to Mr Mattaini’s not usually going out at night, apparently to support the suicide theory in some way, or to cast doubt on the homicide possibility. For example, the third such reference (at MS [57]) is immediately followed by reference to Mr Mattaini’s having spoken of death being more attractive than life. However, in Mr Musy’s 2002 Tarada le statement, Mr Musy recalled that Mr Mattaini was known to take walks both during daylight hours and “the early evening”, and that his walks would be on the coastal walk and around Marks Park.*
- d. *There was an abundance of evidence inconsistent with suicide, including: his keys, spray jacket and headphones were missing; there was no suicide note left; there was a calendar in use by Mr Mattaini at the time diarising future events; his financial affairs had not fallen into disarray; and both Mr Musy and other witnesses described Mr Mattaini as being happy at the time. Such evidence is either downplayed, or not considered at all, by Neiwand.*
- e. *In December 2016 DSC Chebl spoke to Mr Musy by telephone. This conversation is recorded only by way of an Investigators Note composed by DSC Chebl. Given the significance of the suicide theory to Neiwand’s approach to Mr Mattaini’s case, and the importance Mr Musy’s recollections in relating to this, I would have expected there to be an audio recording of the conversation, to ensure that nothing was “lost in translation” and that the information could be independently assessed at a later stage.*
- f. *On 19 December 2017, Neiwand received, from the French authorities, a document in French dated 10 May 2017. It seems that Neiwand had it translated it from French to English using “Google translate”. A more rigorous method than “Google translate” may have produced a more reliable translation. However, assuming the document (which seems to be a record of an interview or conversation between Mr Musy and a French police officer) is accurately translated, I note that Mr Musy states among other things that Mr Mattaini’s references to suicide had been made in France before moving to Australia in 1983, and that since moving to Australia “he has never shown any suicidal intent”.*
- g. *The Mattaini Summary is composed in a way which suggests that Mr Mattaini’s “suicidal ideation” existed at or near the time of his death. In fact the evidence was that such “ideation” had been in the past as distinct from the present.*

- h. *Neiwand does not appear to have made any real attempt to pursue the possible involvement of youth gangs, who were actively engaged in gay hate crimes at the time, in the disappearance of Mr Mattaini. Indeed Neiwand repeatedly plays down this possibility: see MS [35]-[58]. At [55], the Mattaini Summary states:*

The investigation conducted under Operation Taradale did not identify any Person/s of interest that could be linked to the death of MATTAINI. It need be noted the basis of the Operation Taradale investigation focused on members of marauding youth gangs who loitered or frequented the Bondi area. It is fair to say Operation Taradale exhausted all avenues related to members of these youth gangs and their possible involvement in criminal offences in and around McKenzie's Point... One cannot dismiss the involvement of the members of these youth gangs but based on the investigation carried out under SF Neiwand no evidence has come to light to draw a nexus between youth gangs and the disappearance and suspected death of MATTAINI.

The underlined passage is misleading. The Neiwand "investigation" made no attempt to seek or find any evidence which might establish such a "nexus" in the case of Mr Mattaini.

- [86] *Overall, the approach of Neiwand seems to have been not to pursue all possible avenues of enquiry, including evidence which was contrary to the theory that Mr Mattaini committed suicide, and instead to give weight and preference only to evidence that might have suggested that he did.*
- [87] *I entirely reject the suggestion, made in the Mattaini Summary, that the investigation into the disappearance of Mr Mattaini conducted in Taradale was infected with "confirmation bias" or that any attempt was made to persuade witnesses such as Mr Musy that one theory was more likely to be correct than any other.*

748. In his oral evidence, Mr Page also directly refuted any suggestion that he had in any way withheld information from the Coroner.⁸⁸⁵

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.

Evidence of DS Morgan

750. In his evidence, DS Morgan stated, "*There are some serious concerns about the reliability of the summary*".⁸⁸⁶ He accepted that numerous aspects of the Mattaini Summary were incorrect, including among others:

- a. The allegations that the Coroner did not consider suicide as a possibility, and that this was because then DS Page had not put certain material before her;⁸⁸⁷

⁸⁸⁵ Transcript, T2341.25-2346.39

⁸⁸⁶ Transcript, T2075.14-15.

⁸⁸⁷ Transcript, T1974.20-43, T2053.31-34, T2092.37-47, T2135.26, T2158.6-9.

- b. That in connection with 1985, Operation Taradale had exhausted all avenues related to members of youth gangs in and around Mackenzie's Point;⁸⁸⁸
 - c. That there was an investigation carried out by SF Neiwand in connection to youth gangs and Mr Mattaini;⁸⁸⁹
 - d. That Mr Mattaini was last seen walking along a track around Mackenzie's Point;⁸⁹⁰ and
 - e. The failure to record that Mr Mattaini's keys were also noted as missing by Mr Musy.⁸⁹¹
751. DS Morgan accepted that it was unfair not to have told Mr Page about the serious accusations against him in the Mattaini Summary, and to have asked him for a response.⁸⁹²
752. It was put to DS Morgan that, given the extensive evidence concerning violence against gay men in the Bondi, Tamarama and Marks Park area, and the fact that SF Neiwand overwhelmingly focused on one hypothesis, namely suicide, that was an example of the very "confirmation bias" of which he accused Operation Taradale. DS Morgan acknowledged that he could see how that allegation could be made.⁸⁹³

Evidence of Mr Willing

753. Mr Willing accepted that SF Neiwand had not made the slightest attempt to obtain any forensic evidence, identify a suspect, or approach any witnesses in the reinvestigation of Mr Mattaini's case.⁸⁹⁴
754. Mr Willing accepted that in all the progress reports, there did not appear to be any record of any investigation pursuing possible homicide in the case of Mr Mattaini.⁸⁹⁵
755. Mr Willing further agreed that the assertion that Operation Taradale did not identify any POIs that could be linked to the death of Mr Mattaini was "*misleading*", as Operation Taradale essentially had no opportunity to carry out any inquiries.⁸⁹⁶ He agreed that Operation Taradale had not in fact done any investigations about POIs apropos 1985 and Mr Mattaini, and that the statement in the Mattaini Summary, that Operation Taradale had done all that could be done about looking for youth gangs in 1985, was "*completely wrong*".⁸⁹⁷ He also conceded that the

⁸⁸⁸ Transcript, T2046.29.

⁸⁸⁹ Transcript, T2047.30-46.

⁸⁹⁰ Transcript, T2096.7.

⁸⁹¹ Transcript, T2104.12.

⁸⁹² Transcript, T2035.29-34.

⁸⁹³ Transcript, 2163.21-T2165.9.

⁸⁹⁴ Transcript, T1810.7.

⁸⁹⁵ Transcript, 1787.18-42.

⁸⁹⁶ Transcript, T1832.6-10.

⁸⁹⁷ Transcript, T1833.3-9.

claim in the Mattaini Summary that SF Neiwand’s investigation had produced no evidence of “*a nexus*” between youth gangs and Mr Mattaini’s disappearance was “*simply meaningless*”.⁸⁹⁸

Submissions

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.

The dissemination of the Summaries

757. The Neiwand Summaries and the POA were disseminated up the chain of command of the NSWPF. The POA, and most likely the Neiwand Summaries themselves,⁸⁹⁹ were provided to three high-ranking officers, namely Detective Superintendent Scott Cook (Commander Homicide), Detective Acting Chief Superintendent Deborah Wallace (Director of Crime Operations) and AC Mal Lanyon (Commander of State Crime Command).⁹⁰⁰

758. The Neiwand Summaries were also available on the NSWPF e@gle.i. investigative database.⁹⁰¹ There is no evidence that access to the Neiwand Summaries was restricted.⁹⁰² Thus, they were not only available to the SF Neiwand investigators, but potentially a considerable range of other NSWPF officers both inside and outside of the Homicide Squad.⁹⁰³ Mr Willing accepted that whoever did have access to the Neiwand Summaries via e@gle.i would have been able to read the criticisms of Mr Page and Operation Taradale.⁹⁰⁴

759. However, at no point were the Neiwand Summaries or the general tenor of the stringent criticisms they contained about Operation Taradale, provided to Mr Page. Nor was he given a chance to respond.⁹⁰⁵

760. Mr Page’s evidence was that he felt his reputation was “*professionally destroyed*” in the Neiwand Summaries.⁹⁰⁶

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.

⁸⁹⁸ Transcript, T1833.36.

⁸⁹⁹ Transcript, T1819.40-1820.19.

⁹⁰⁰ Transcript, T1823.14-24, T1828.13-19, T2144.24-47.

⁹⁰¹ Transcript, T1833.41-47.

⁹⁰² Transcript, T1834.23, T1835.30, T1835.45

⁹⁰³ Transcript, T1834.2-18, T1834.23, 1834.34-36, 1835.47-1836.31. See also Transcript, T2144.16.

⁹⁰⁴ Transcript, T1834.25-34.

⁹⁰⁵ Exhibit 6, Tab 253, (n 370), [47].

⁹⁰⁶ Transcript, T2346.38-39.

- So much was conceded by both Mr Willing and DS Morgan.⁹⁰⁷ 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.
762. Remarkably, the distribution of the findings of SF Neiwand to key actors outside of the NSWPF was a completely different story.
763. Mr Willing was not aware of the findings being provided to Coroner Milledge or the Coroners Court, despite the fact that her Honour's findings had, in effect, been reversed and the fact that SF Neiwand had made allegations of then-DS Page misleading the Coroner.⁹⁰⁸
764. He agreed that it was "*breathtaking*" for SF Neiwand to reverse the decision of the Coroner and said that he had never seen the like of it before.⁹⁰⁹
765. DS Morgan was not aware whether the State Coroner was ever made aware that a reclassification was recommended or carried out, but conceded that "*on reflection*", that should have happened.⁹¹⁰
766. In email correspondence between DI Leggat and DAS Dickinson in November 2017, it was suggested that the NSWPF contact the Coroners Court "*to allow for informed consideration as to whether a further Inquest should be held in relation to the Mattaini, Warren and Russell deaths*", but it was then determined that this contact be postponed pending the retirement of State Coroner Barnes and appointment of his successor.⁹¹¹ Ultimately, the contact never occurred.
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,⁹¹² as is plainly the case.
768. The families of the deceased men were never informed of SF Neiwand's findings. Mr Willing accepted that they should have been told in the circumstances.⁹¹³

⁹⁰⁷ Transcript, T1819.38, T2035.16-34, T2145.3-4.

⁹⁰⁸ Transcript, T1814.46, T1816.47.

⁹⁰⁹ Transcript, T1815.2-31.

⁹¹⁰ Transcript, T2034.18.

⁹¹¹ Exhibit 6, Tab 304, Email correspondence from Stewart Leggat to Jason Dickinson and Christopher Olen re: uht 9 10 11 summary [UHT Summary for Teams 9-11], 9 November 2017 (NPL.0115.0002.7430).

⁹¹² Transcript, T1862.11.

⁹¹³ Transcript, T1816.20, T1817.8-10.

769. Mr Page's evidence was that, in his experience and understanding, it was highly unusual for SF Neiwand not to have communicated its contradictory conclusions either to the Coroner or to the families of the deceased.⁹¹⁴
770. Moreover, neither the findings of SF Neiwand, nor the very existence of Strike Force Neiwand itself,⁹¹⁵ were ever mentioned in public by NSWPF, including at the Parliamentary Inquiry.⁹¹⁶
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.

The Post Operational Assessment

772. The POA was prepared at the conclusion of SF Neiwand.⁹¹⁷ The POA itself had no publication date, but it recorded the final date of SF Neiwand as 30 November 2017.⁹¹⁸ According to DS Morgan, a POA is compiled following the conclusion of an investigation and provides an overview of the investigation, strategies undertaken, recommendations and conclusions reached by the investigative team.⁹¹⁹ The SF Neiwand POA comprised three sections. The first two sections, '*Terms of Reference*' and '*Investigation Summary*', were written and signed by DSC Chebl and endorsed by DS Morgan at the time.⁹²⁰ The third section '*Key Findings*' was composed and signed by DI Leggat.⁹²¹
773. It is submitted that the contents of the POA demonstrate that SF Neiwand was, in effect, a review, and not a reinvestigation. This was conceded by Mr Willing⁹²² and DS Morgan⁹²³ in evidence.
774. In fact, at one point, while being taken to the SF Neiwand Progress Report for March 2017⁹²⁴ – that is, over a year after the SF Neiwand investigation commenced – Mr Willing stated, "*It seems to me that they've been reviewing material the entire time*".⁹²⁵

⁹¹⁴ Exhibit 6, Tab 252, (n 113), [68].

⁹¹⁵ Outside, it appears, of an article in the *Sydney Morning Herald* in May 2016 where Mr Willing was quoted as saying "*Flowing on from the UHT's ongoing investigation into the death of Scott Johnson, the investigations into the deaths of Gilles Mattaini, John Russell and Ross Warren have been recommenced*": Exhibit 6, Tab 222, (n 728).

⁹¹⁶ Transcript, T1856.4-12.

⁹¹⁷ Exhibit 6, Tab 176, (n 750).

⁹¹⁸ *Ibid*, 3.

⁹¹⁹ Exhibit 6, Tab 5, (n 428), [32].

⁹²⁰ Transcript, T2015.29.

⁹²¹ Transcript, T1807.46-1808.21, T2015.40.

⁹²² Transcript, T1805.38, T1807.14, T1807.33-37.

⁹²³ Transcript, T2012.24-39.

⁹²⁴ Exhibit 6, Tab 164E, (n 767).

⁹²⁵ Transcript, T1784.19-20.

775. This was also supported by other evidence, including the SF Neiwand Progress Report for the period ending 18 September 2017, where DAS Dickinson described SF Neiwand as [REDACTED] [REDACTED]⁹²⁶
776. Further, AC Crandell gave evidence that the first time that he heard that SF Neiwand was a “*reinvestigation*” of the three deaths (as opposed to SF Neiwand “*reviewing*” them), may have been in the course of this Inquiry.⁹²⁷
777. Both Mr Willing and DS Morgan agreed that the ‘*Investigation Summary*’ section of the POA contained multiple factual inaccuracies,⁹²⁸ some of which were repeated in the ‘*Key Findings*’ section.⁹²⁹ Mr Willing found these errors troubling and “*not right*”.⁹³⁰
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*”.⁹³¹ 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,⁹³² 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.⁹³³
779. Mr Willing agreed that the conclusions of SF Neiwand in relation to Mr Warren and Mr Russell were “*completely without foundation*”,⁹³⁴ and that SF Neiwand had directly contradicted the findings of Coroner Milledge, without having made any attempt to explore the question of POIs.⁹³⁵ He also thought it could be construed that the conclusion reached in Mr Mattaini’s matter was “*hopeless*” in light of the fact that SF Neiwand did not, in fact, make any attempt to obtain forensic evidence, to identify a suspect or to approach any witnesses.⁹³⁶
780. As to the next steps regarding these matters, Mr Willing’s evidence was that the UHT would act on DI Leggat’s recommendation that the investigations be listed “*as inactive*”, and that the cases would sit on the UHT database with that classification but nothing further.⁹³⁷

⁹²⁶ Exhibit 6, Tab 164H, Progress Report, 18 September 2017, 6 (SCOI.82052).

⁹²⁷ Transcript, T674.3-675.10.

⁹²⁸ Transcript, T1805.13-26, T2161.

⁹²⁹ Transcript, T2161.47-15.

⁹³⁰ Transcript, T1805.13-26

⁹³¹ Exhibit 6, Tab 176, (n 750), 13.

⁹³² Transcript, T1808.40, T2016.13.

⁹³³ Transcript, 1808.44-1809.1, T2016.17.

⁹³⁴ Transcript, T1811.43.

⁹³⁵ Transcript, T1811.10-16.

⁹³⁶ Transcript, T1809.7, T1810.27.

⁹³⁷ Transcript, T1813.15-44.

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.⁹³⁸
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 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.

⁹³⁸ Transcript, T1814.15-41.

PART E: SF PARRABELL – ORIGINS AND BEGINNINGS 2015/2016

2012-2013: the Scott Johnson case, the media, and Operation Parrabell

783. Briefly to recapitulate:

- a. In June 2012, a second inquest was held into the death of Scott Johnson at North Head in 1988. In her findings, Coroner Forbes departed from the 1989 suicide finding, and instead made an open finding.
- b. On 11 February 2013, the *Australian Story* programme about Scott Johnson's life and death (also referred to in Part A) aired on the ABC, and on or about the same day, SF Macnamir was established to review and re-investigate the circumstances of Scott Johnson's death.
- c. In March 2013, and again in July and August 2013, a series of articles about "gay hate deaths", by Paul Sheehan and Rick Feneley, were published in *The Sydney Morning Herald* and *The Sun Herald*.

784. As outlined in Part A, this succession of articles in the mainstream media, including their references to a "list" of 80 or more such deaths, 30 of which were said to be unsolved, provoked a number of responses by the NSWPF.

785. One of those responses was the "assessment" by DCI Lehmann and DCI Young, set out in the Lehmann/Young Issue Paper of 25 September 2013,⁹³⁹ and endorsed by Mr Willing, then Homicide Commander, in his Issue Paper of 10 January 2014.⁹⁴⁰

786. Another was the instigation by Sergeant Steer, as Bias Crimes Coordinator, of Operation Parrabell in about August 2013.

787. Sergeant Steer emphasised, in both his 'Project Proposal Development Form'⁹⁴¹ and his 'Bias Crimes Investigation Agreement'⁹⁴² for Operation Parrabell, the negative impact of the media articles and the need to generate a "*positive media story*" and "*stop further negative media coverage on this issue.*"

788. Sergeant Steer intended Operation Parrabell to be a "*comprehensive hate crime assessment of the identified homicides to address concerns from the LGBTIQ+ community and attempt to make*

⁹³⁹ Exhibit 6, Tab 47, (n 110).

⁹⁴⁰ Exhibit 6, Tab 48, (n 101).

⁹⁴¹ Exhibit 6, Tab 10, (n 116).

⁹⁴² Exhibit 6, Tab 12, (n 117).

- a final determination as to whether these crimes were hate crimes*".⁹⁴³ The "comprehensive" approach would involve interviewing offenders and witnesses, geographic profiling, scene visits, offender profiling, reviewing NSWPF holdings, and inviting community feedback.⁹⁴⁴
789. As Sergeant Steer appreciated, the operation was approved "with the proviso" that it would focus on hate crime assessment only and would not be a review of the "criminal component (homicide)".⁹⁴⁵
790. By contrast, AC Crandell's understanding seems to have been that Operation Parrabell was actually "seeking to re-investigate several historical suspected gay-hate homicides", including the death of Scott Johnson.⁹⁴⁶ It was partly for that reason that AC Crandell also considered that the scope of the task was beyond the capacity of Operation Parrabell.⁹⁴⁷
791. In any event, Operation Parrabell sought the "archived briefs of evidence for the identified homicides ... from State Archives".⁹⁴⁸ At this point, the scale of the undertaking and the lack of resources of Operation Parrabell became apparent to Sergeant Steer. The only resources allocated to the operation were himself and Senior Sergeant Kenworthy, who was on secondment for a limited time. With only those resources, Sergeant Steer estimated it would take at least three, and up to five, years to complete the review of the identified homicides.⁹⁴⁹
792. Ms Sharma, the leader of the team (within Operational Programs) which included Sergeant Steer's role as Bias Crimes Coordinator, agreed that Operation Parrabell was under-resourced,⁹⁵⁰ and that Operation Parrabell was "too big a job" for two people.⁹⁵¹
793. In mid-late 2014, Sergeant Steer made the decision to suspend Operation Parrabell, due to insufficient resources.⁹⁵²
794. There is also evidence that there was another reason for Operation Parrabell being put on hold, namely "competing priorities".⁹⁵³

⁹⁴³ Exhibit 6, Tab 6, (n 84), [34].

⁹⁴⁴ Ibid.

⁹⁴⁵ Ibid.

⁹⁴⁶ Exhibit 6, Tab 4, (n 128), [27].

⁹⁴⁷ Ibid, [26]-[28].

⁹⁴⁸ Exhibit 6, Tab 6, (n 84), [39].

⁹⁴⁹ Ibid.

⁹⁵⁰ Transcript, T1187.3-6.

⁹⁵¹ Transcript, T1187.3-13.

⁹⁵² Exhibit 6, Tab 6, (n 84), [39]. See also Exhibit 6, Tab 51, (n 124).

⁹⁵³ Exhibit 6, Tab 52, Issue Paper of Shobha Sharma re: Correspondence from Mr Alex Greenwich MP re 'Police Investigation of Gay Hate Crime', 25 February 2015, 1 (SCOI.74083).

795. In October 2014, Sergeant Steer made it clear that even had more staff been available, Operation Parrabell would have remained on hold as *“anti-Muslim OHG [organised hate groups], Skin crews, Squadron 88 and the o/s intel for review will be the priority”*.⁹⁵⁴
796. To the same effect, Ms Sharma, in an Issue Paper of 25 February 2015, said there had been a shift in *“operational focus”* to *“the current threats posed by organised hate groups and their activities”*.⁹⁵⁵ In her oral evidence, Ms Sharma agreed that Operation Parrabell was suspended due to both *“resourcing issues”* and *“competing priorities”*, namely such a shift in focus to the activities of organisations such as Reclaim Australia and race-based terrorism.⁹⁵⁶

2014-2015: Rationale and objectives of SF Parrabell

797. AC Crandell emphasised, both in his statement and in his oral evidence, his contention that the rationale for the establishment of SF Parrabell was *“a way of attempting to offer some form of resolution to or otherwise give support to the community concerns, which I considered to be valid”*.⁹⁵⁷
798. He said that the *“ultimate objective”* of SF Parrabell was, as expressed in the Parrabell Report, *“[t]o bring the NSW Police Force and the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer community closer together by doing all that is possible from this point in history”*.⁹⁵⁸
799. At the end of his oral evidence, in answer to questions from senior counsel for the Commissioner of Police, AC Crandell said:

*I was actually most interested in the families of the deceased people, particularly those families that I believed had been let down by the police in the past, and I also had regard to the community. I genuinely wanted to bring the community closer to the police.*⁹⁵⁹

...

*I thought that I could give peace of mind to family members, surviving family members. That wasn't always the case, but that was the intention. I thought that it would be good for the Police Force to be seen to have changed, in terms of a different era and a different period of time, and I thought that by making acknowledgments of truth, that that would bring both the police and the community, LGBTIQ community, closer together, and also increase that reporting standard.*⁹⁶⁰

⁹⁵⁴ Exhibit 6, Tab 51, (n 124).

⁹⁵⁵ Exhibit 6, Tab 52, (n 953).

⁹⁵⁶ Transcript, T1187-8. See also Exhibit 6, Tab 53, Issue Paper of Nathan Corbett re: Operational Programs response to correspondence received from Mr Alex Greenwich MP re 'Police Investigation of Gay Hate Crime', 25 February 2015 (SCOI.74082).

⁹⁵⁷ Exhibit 6, Tab 4, (n 128), [38].

⁹⁵⁸ Exhibit 6, Tab 4, (n 128), [45].

⁹⁵⁹ Transcript, T1016.7-12.

⁹⁶⁰ Transcript, T1016.33-41.

800. It is not suggested that AC Crandell's evidence in this regard was other than genuine. AC Crandell may well have hoped or expected, as he said he did, that the SF Parrabell exercise could improve the relationship between the NSWPF and the LGBTIQ community – although such a hope or expectation might be regarded as somewhat unrealistic given that one of the aims of the Strike Force was to “counter” the views held and expressed by members and supporters of that very community, such as Ms Thompson and Professor Tomsen.⁹⁶¹
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.
802. In September 2013, as outlined in Part A, following the series of media articles between March and August that year, DCI Lehmann and DCI Young had produced their “assessment” in relation to the 30 cases referred to as “unsolved” by Ms Thompson.⁹⁶²
803. In about late 2013, Alex Greenwich MP wrote to the Premier seeking “advice” and “additional investigation into” a number of alleged “gay hate killings” in Sydney since the 1980s.⁹⁶³ The Department of Premier and Cabinet, it appears, forwarded that letter to the Ministry for Police and Emergency Services for a response.
804. The Issue Paper of 10 January 2014, by then Superintendent Willing, evidently was prepared by way of providing the response sought. In that Issue Paper, as noted in Part A, Mr Willing endorsed the views expressed in the Lehmann/Young Issue Paper, including that only eight cases from those 30 were “probable” or even “possible” gay hate-motivated murders, that the death of Scott Johnson was not one of those, and that the suggestion of 30 unsolved ‘gay hate’ related murders was a “gross exaggeration”.⁹⁶⁴
805. On 22 April 2015, prior to the instigation of SF Parrabell, Ms Sharma sent a number of documents to AC Crandell, one of which was the Lehmann/Young Issue Paper of 25 September 2013.⁹⁶⁵
806. AC Crandell agreed that, having regard to the views of DCI Lehmann and DCI Young in September 2013, and the views of Superintendent Willing in January 2014, there was as at 2014:

a widely-held view at senior levels of the police that claims relating to the numbers of gay hate-related murders and bashings, especially in the 80s and 90s, were exaggerated and unfounded

⁹⁶¹ Exhibit 6, Tab 36, Email correspondence between Dr Christopher Devery and Anthony Crandell re: SF Parrabell, 12 February-7 March 2016 (SCOI.74172).

⁹⁶² Exhibit 6, Tab 47, (n 110).

⁹⁶³ Exhibit 6, Tab 48, (n 101).

⁹⁶⁴ Ibid.

⁹⁶⁵ Exhibit 6, Tab 54, (n 453); Transcript, T654.22-655.10.

and that such claims

*needed to be publicly refuted.*⁹⁶⁶

807. On 22 October 2014, Mr Greenwich MP submitted a Question without Notice to the Minister for Police and Emergency Services. The question was in four parts, including:

a. How many of the NSWPF's UHT cases relating to gay hate crimes from the 1980s and 1990s will be reinvestigated?

b. How will the Government ensure a full review of possible gay hate crimes?⁹⁶⁷

808. According to the Issue Paper by Ms Sharma dated 25 February 2015, Operational Programs had responded "*at that time*" (i.e. some time after 22 October 2014) with the advice that "*Operation Parrabell ... was ongoing and would take in excess of three years to complete*".⁹⁶⁸

809. That answer, as at that time, on the evidence referred to above, would appear to have been inaccurate.

810. In her Issue Paper of 25 February 2015, Ms Sharma stated (accurately, in the light of that same evidence) that Operation Parrabell "*has currently been put on hold due to resourcing issues and competing priorities*".⁹⁶⁹ The concluding paragraph of the Issue Paper was as follows:

*LGBTI community and media sensitivities are likely to be heightened at present, particularly with Mardi Gras approaching in under a week. Therefore, any suggestion that Operation Parrabell is not a current priority will undoubtedly receive adverse reactions. Making any public statement about police investigation of gay hate crimes at the present time raises the risk of managing negative media commentary.*⁹⁷⁰

811. On 13 April 2015, as also outlined earlier in these submissions, State Coroner Barnes decided to hold a third inquest into the death of Scott Johnson, and on that evening the *Lateline* program was broadcast, which led to the removal of DCI Young from the Scott Johnson investigation.

812. AC Crandell agreed in his oral evidence that following the events of 13 April 2015 (including the *Lateline* interview), there was another wave of publicity about gay hate murders and related matters. As to whether such publicity was a factor in the establishment of SF Parrabell, he said:

my recollection was that Parrabell wasn't necessarily just because of that, it wasn't motivated by that Lateline interview, because when I think back now, I think of - there were questions being asked in parliament by Alex Greenwich. There was a lot of political

⁹⁶⁶ Transcript, T663.33-47.

⁹⁶⁷ Exhibit 6, Tab 50, Memorandum to Commissioner of Police re: Questions on Notice No. 6370 in the Legislative Assembly: Gay Hate Crimes (raised by Alex Greenwich MP), 27 October 2014 (SCOI.77313).

⁹⁶⁸ Exhibit 6, Tab 52, (n 953), 1.

⁹⁶⁹ Ibid.

⁹⁷⁰ Ibid, 2.

*interest and the 88 list kept getting referred to, and it just struck me that, as a policing organisation who specialise in investigation, we should be looking at.*⁹⁷¹

813. On 22 April 2015, AC Crandell met with Mr Greenwich MP. In anticipation of this meeting, Ms Sharma wrote to AC Crandell informing him that “[n]othing is happening with Parrabell at present, which is something Alex [Mr Greenwich] will not like to hear”.⁹⁷²
814. With that same email, on 22 April 2015, as noted above, one of the documents which Ms Sharma sent to AC Crandell was the Lehmann/Young Issue Paper of 25 September 2013.⁹⁷³
815. On 12 February 2016, in an email to a police colleague, AC Crandell summarised the genesis of SF Parrabell this way (emphasis added):

Below is some information regarding an investigative review by detectives from the Central Metropolitan Region into 88 alleged gay-hate homicides between the years 2000 and 1979. Publicity surrounding these cases was quite intense on the back of a now pending Coronial hearing into the death of Scott Johnson, who was a gay man that died as a result of falling from a cliff top at a known gay beat. Scott’s family alleged police corruption by not investigating the matter competently and assert that Scott did not take his life as recommended by police to the Coroner.

The publicity impacts negatively on the NSWPF within the gay, lesbian, bisexual, transgender and intersex (LGBTIQ) community.

To counter these allegations..., I activated Strike Force Parrabell to investigate claims that 87 other deaths between 2000 and 1979 were gay-hate crimes, and that police did not investigate these matters competently.

*... In essence, although there is some way to go investigatively, there is clear contrary evidence to earlier published research by Sue Thompson and Stephen Thompsen [sic] (AIC) that assert prevalence of gay-hate crimes and inactivity of the NSWPF.*⁹⁷⁴

Such was the temporal and media context in which AC Crandell turned his mind to embarking on the exercise which became SF Parrabell.⁹⁷⁵

816. AC Crandell acknowledged, in his oral evidence, that “*certainly one driving reason*” for the establishment of SF Parrabell was “*the perceived need for the police to be seen to be responding to the list of the 88 deaths*”, and “*to be responding to all the publicity relating to the list*”, and “*to be seen to be responding to the suggestion that the police had not done enough to solve cases where LGBTIQ people were the victims*”.⁹⁷⁶

⁹⁷¹ Transcript, T632.35-45.

⁹⁷² Exhibit 6, Tab 54, (n 453).

⁹⁷³ Exhibit 6, Tab 54, (n 453); Transcript, T654.22-655.10.

⁹⁷⁴ Exhibit 6, Tab 36, (n 961).

⁹⁷⁵ Transcript, T667.41-668.15.

⁹⁷⁶ Transcript, T795.3-12.

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;
 - 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.

2015-2016: SF Parrabell personnel and resourcing

818. AC Crandell was the Commander of the Surry Hills LAC. For SF Parrabell, he personally chose three officers from his own LAC, namely DCI Craig Middleton, DS Paul Grace, and DSC Cameron Bignell (who was also a GLLO at the time). DCI Middleton was the “Lead Investigator”, while DS Grace and DSC Bignell were “Senior Investigators”.⁹⁷⁷ AC Crandell organised several “planning meetings” with those three officers to discuss the objectives of SF Parrabell.⁹⁷⁸
819. However, resources needed to be drawn from the Central Metropolitan Region generally rather than just the Surry Hills LAC, which had limited resources.⁹⁷⁹ AC Crandell approached the region commander (AC Michael Fuller), who made such personnel resources available without hesitation.⁹⁸⁰
820. AC Crandell had no involvement in the selection of the other personnel allocated to SF Parrabell. They (at various times, ten other officers in all) were selected by the Commanders of various other LACs.⁹⁸¹ AC Crandell’s evidence was that he was not aware whether any particular criteria were used for the selection of those personnel.⁹⁸² He agreed that it was “*really just a matter of accepting whoever was presented to [him] as available*”.⁹⁸³

⁹⁷⁷ Exhibit 6, Tab 4, (n 128), [68].

⁹⁷⁸ Ibid, [41], [42], [66].

⁹⁷⁹ Ibid, [64].

⁹⁸⁰ Ibid, [64]-[65].

⁹⁸¹ Ibid, [66]; Transcript, T746.18-26.

⁹⁸² Exhibit 6, Tab 4, (n 128), [66].

⁹⁸³ Transcript, T747.21-38.

821. AC Crandell agreed that some knowledge of bias crimes would have been a useful or relevant criterion by which to assess the suitability of SF Parrabell personnel, and that knowledge of the LGBTIQ community was also important.⁹⁸⁴ However, he did not recall whether the assigned personnel had such qualities.⁹⁸⁵ He thought that DCI Middleton, DS Grace, and DSC Bignell were likely to have had some experience in that regard.⁹⁸⁶
822. Although some of the personnel selected had experience in criminal investigation, none of the personnel selected for SF Parrabell were from the Homicide Squad or the UHT.⁹⁸⁷ Indeed, AC Crandell considered that experience in homicide investigations was not necessary.⁹⁸⁸

Extent to which Sergeant Steer participated in SF Parrabell

823. In his statement, AC Crandell said that *“during the planning of SF Parrabell”*, he *“approached and obtained general advice from the Bias Crimes Unit (through Sergeant Steer) in relation to the assessment of ‘bias crimes’”*.⁹⁸⁹ He said that Sergeant Steer was *“not involved in the scope of the strike force”*, but was invited to the *“initial planning meetings”*.⁹⁹⁰
824. AC Crandell said that Sergeant Steer *“advised on use and rationale regarding the bias/hate crime indicator tool”*, but that *“aside from a brief advisory role”* he was not involved in the daily operations of SF Parrabell.⁹⁹¹
825. For his part, Sergeant Steer’s recollection was that:⁹⁹²
- a. he had *“minimal”* involvement in SF Parrabell;
 - b. he offered to assist SF Parrabell but was told that the Strike Force would seek his assistance if required;
 - c. no assistance was ever sought from him;
 - d. he was not shown any draft of the BCIF or consulted about its form or content, and saw the BCIF for the first time when he was provided with some completed forms during the course of the *“dip sample”* exercise in December 2016-January 2017;

⁹⁸⁴ Transcript, T747.12-15.

⁹⁸⁵ Transcript, T747.17-19, T749.16-23.

⁹⁸⁶ Transcript, 749.16-23

⁹⁸⁷ Transcript, T748.34-42.

⁹⁸⁸ Transcript, T748.47-749.12.

⁹⁸⁹ Exhibit 6, Tab 4, (n 128), [48].

⁹⁹⁰ Ibid.

⁹⁹¹ Ibid, [49].

⁹⁹² Exhibit 6, Tab 6, (n 84), [40]; Transcript, T1090.34-1098.25, T1103.33-1104.21, T1106.8-46.

- e. he gave a presentation to SF Parrabell in June 2016, which included reference to the indicators being used by the Bias Crimes Unit for its purposes;
 - f. he was not consulted in relation to the cases, except to the extent that, after raising concerns about the lack of consultation, he was allowed to conduct a dip sample of 12 cases; and
 - g. he recalled only three meetings in relation to SF Parrabell at which he was present: an initial meeting in 2015 when AC Crandell spoke of his intention to set up the Strike Force, his presentation in June 2016, and the dip sample meeting in January 2017.
826. He also accepted, in the course of his oral evidence, that he was present at a meeting in December 2016 at which Dr Dalton was present.⁹⁹³
827. The reason for Sergeant Steer's concern about the lack of consultation with him included the fact that under the two-tier model embodied in the Bias Crimes SOPs, the Bias Crimes Unit (and ultimately Sergeant Steer as the Bias Crimes Coordinator) *"was to have the final say as to if incidents were hate motivated, due to the expertise held within the unit"*.⁹⁹⁴
828. Indeed, on 16 June 2016, in a meeting between "the Parrabell team" and Ms Sharma's Operational Programs team, it had been agreed that, after the Parrabell team had assessed and classified the cases, those reviewed cases would be sent to the Bias Crimes Unit for review, prior to being sent to the academic team.⁹⁹⁵
829. Such a procedure was duly spelt out in the Request for Quotation (**RFQ**) sent to the academics in July 2016.⁹⁹⁶
830. In November 2016, Sergeant Steer's Team Leader, Ms Sharma, pointed out that the Bias Crimes Unit should by then have been consulted, having regard to the agreement to do so.⁹⁹⁷
831. DCI Middleton replied to Ms Sharma that he did not understand the reasoning behind such a procedure but would be happy to send the completed review forms *"for your information"*.⁹⁹⁸
832. However, on the evidence, apart from the dip sample of 12 cases in December 2016-January 2017, even that did not happen.⁹⁹⁹

⁹⁹³ Transcript, T962.1-963.37, T980.40-981.1.

⁹⁹⁴ Exhibit 6, Tab 6, (n 84), [40].

⁹⁹⁵ Exhibit 6, Tab 76, Email correspondence between Craig Middleton, Shoba Sharma and others re: SF Parrabell review processes, 10-16 November 2016 (SCOI.74377).

⁹⁹⁶ Exhibit 6, Tab 23, Request for Quotation: Strike Force Parrabell Project – RFQ Number: 001286, 22 July 2016, [3.3] (SCOI.76961.00007).

⁹⁹⁷ Exhibit 6, Tab 76, (n 995).

⁹⁹⁸ Exhibit 6, Tab 76, (n 995). Ibid.

⁹⁹⁹ See, e.g., Transcript, T740.

833. Rather, AC Crandell proposed (and DCI Middleton agreed with) a different arrangement, as set out in an email of 12 December 2016, which included (as two points among six):¹⁰⁰⁰
- a. that Sergeant Steer review certain “*specific*” cases (evidently a reference to the “*dip sample*” of 12 cases) [point 2]; and
 - b. that Sergeant Steer would also (in future) review “*specific*” cases “*where agreement cannot be reached between Operation Parrabell investigators and the Research Team to enhance further discussion around appropriate classifications*” [point 4].
834. However, again, on the evidence, the arrangement set out in (b) above was not implemented either.
835. Dr Dalton of Flinders University, the selected tenderer, considered that “*having the Bias Crime team make determinations about the cases strikes me as really important*”.¹⁰⁰¹ AC Crandell said that although it had struck Dr Dalton as “*really important*”, it had not struck him that way.¹⁰⁰²
836. In his oral evidence, AC Crandell gave various responses to questions about why Sergeant Steer was not utilised more than he was, including that:
- a. Sergeant Steer had too much to do;
 - b. he had access to all the completed forms, and indeed all the thousands of documents comprising the SF Parrabell material, on e@gle.i;
 - c. “consultation” with Sergeant Steer was constituted by his presence at one stakeholder meeting in late 2015 and by the one dip sample meeting more than a year later; and
 - d. the SF Parrabell officers had sufficient expertise to do the job themselves.¹⁰⁰³
837. It is submitted that none of these reasons is persuasive.
838. AC Crandell said that the choice not to utilise Sergeant Steer more was not because Sergeant Steer might have expressed views or made assessments that AC Crandell preferred not to receive.¹⁰⁰⁴

¹⁰⁰⁰ Exhibit 6, Tab 79, Email correspondence between Anthony Crandell and Craig Middleton re: Process for case reviews, 12-13 December 2016 (SCOI.74394).

¹⁰⁰¹ Exhibit 6, Tab 246, Email from Derek Dalton and Geoffrey Steer re: Catch up on progress of Parrabell review, 12 December 2016 (SCOI.79856).

¹⁰⁰² Transcript, T741.

¹⁰⁰³ Transcript, T730.21-745.31.

¹⁰⁰⁴ Transcript, T742.18-36.

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.
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).
841. Whether greater involvement for Sergeant Steer would have made a difference to the fundamental validity and reliability of the SF Parrabell exercise is another question. Given his views that the Strike Force used the bias crimes indicators inappropriately, perhaps one result of greater involvement on his part might have been a realisation of some of the deficiencies of the BCIF. However, that is a matter of speculation.

SF Parrabell: Constituent documents

842. Four documents were created, at various different times, which stated, in similar but different ways, the objectives and approach of SF Parrabell. Those four documents were:
- a. Terms of Reference;¹⁰⁰⁵
 - b. Investigation Plan;¹⁰⁰⁶
 - c. Coordinating Instructions;¹⁰⁰⁷ and
 - d. Induction Package.¹⁰⁰⁸

¹⁰⁰⁵ See Exhibit 1, Tab 2, (n 6), 20.

¹⁰⁰⁶ Exhibit 6, Tab 14, (n 132).

¹⁰⁰⁷ Exhibit 6, Tab 15, (n 134).

¹⁰⁰⁸ Exhibit 6, Tab 59, (n 133).

843. No document constituting the Terms of Reference was produced to the Inquiry. AC Crandell confirmed that he had not been able to find any document recording the Strike Force's Terms of Reference, although he "knew" that there was one.¹⁰⁰⁹
844. The Parrabell Report itself sets out, at pages 20-21, what is said to have been the content of the Terms of Reference. That content is quite brief, consisting of six short paragraphs.¹⁰¹⁰
845. There are many differences of expression in each of the other three constituent documents. Some of those are significant, as outlined later in these submissions. However, in general terms what was conveyed by each of them may be summarised as follows:
- a. the Strike Force was to be a purely paper review of 88 matters that had already been investigated by the NSWPF in the past;
 - b. there was to be no re-investigation of any of those cases;
 - c. rather, the Strike Force was simply to look at whatever material was available from previous investigations, and, from that material only, form an opinion as to whether a "*sexuality or gender bias*", or "*anti-gay bias*", or "*gay hate bias*", or "*bias crime*", or "*gay hate crime*", had been involved in any of the deaths at the times they had occurred, many years earlier. (All of those italicised expressions were used in various parts of the various documents);
 - d. the method to be adopted was that the officers would review whatever historical material was available in each particular case, and then fill out a BCIF in respect of that case, by:
 - i. providing responses to various "prompts", in respect of ten "indicators", as set out in the Form; and
 - ii. answering 'Yes' or 'No', to several possible options, in respect of each "indicator"; and
 - e. In the version of the BCIF which ultimately appeared in the Parrabell Report,¹⁰¹¹ there were four options, expressed in the following terms (each of which was accompanied by a short description of what that option entailed):
 - i. "Evidence of bias crime"; or
 - ii. "Suspected bias crime"; or

¹⁰⁰⁹ Transcript, T602.18-36. See also T682.40-43.

¹⁰¹⁰ Exhibit 1, Tab 2, (n 6), 20-21.

¹⁰¹¹ Exhibit 1, Tab 2, (n 6), 121 ff.

- iii. “No evidence of bias crime”; or
- iv. “Insufficient information to establish a bias crime”.

846. As the evidence revealed in due course, there were several other (earlier and different) versions of the BCIF; and, in addition, each of the Investigation Plan, the Coordinating Instructions and the Induction Package was expressed differently in relation to the options, or the accompanying explanation, or both.

847. AC Crandell thought that he would have had some input into the Terms of Reference,¹⁰¹² but that the Investigation Plan, the Coordinating Instructions and the Induction Package would have been prepared by a combination of DCI Middleton, DS Grace, and/or DSC Bignell.¹⁰¹³ He accepted that the content of these documents would have “ultimately [been] my decision”,¹⁰¹⁴ but noted that since his signature was not present on them, the senior detectives who authored the documents may have decided it was appropriate to publish them prior to receiving his approval.¹⁰¹⁵

848. AC Crandell said that he thought that:

- a. the Coordinating Instructions were provided to various SF Parrabell officers when they started, probably to all of them rather than just the three senior investigators;
- b. he did not know if the Investigation Plan was provided to all investigators or only a few; and
- c. the Induction Package was given to SF Parrabell officers.¹⁰¹⁶

849. The ten “indicators” were:

- a. Differences;
- b. Comments, Written Statements, Gestures;
- c. Drawings, Markings, Symbols, Tattoos, Graffiti;
- d. Organised Hate Groups;
- e. Previous existence of Bias Crime Incidents;
- f. Victim/Witness Perception;
- g. Motive of Offender/s;
- h. Location of Incident;

¹⁰¹² Transcript, T700.45-47.

¹⁰¹³ Transcript, T700.47-701.2, T786.34-38.

¹⁰¹⁴ Transcript, T705.7-8.

¹⁰¹⁵ Transcript, T705.26-30.

¹⁰¹⁶ Transcript, T669.43, T776.13-14, T776.29, T786.31.

- i. Lack of Motive; and
- j. Level of Violence.

850. The SF Parrabell officers derived these indicators from documents which Sergeant Steer had prepared, for other purposes, within the Bias Crimes Unit. The first nine had been drawn by Sergeant Steer from a curriculum document produced in Massachusetts, while the tenth had been added by Sergeant Steer.¹⁰¹⁷

851. As to two of the available four options, the criminal standard (beyond reasonable doubt) was embedded in the final version of the BCIF. However, according to the Coordinating Instructions, SF Parrabell officers were also required to arrive at an overall conclusion, and that conclusion was to be drawn by reference to the balance of probabilities (the civil standard).

852. In his statement, AC Crandell said that the BCIF was a tool used by the Bias Crimes Unit.¹⁰¹⁸ However, in his oral evidence he accepted that that was not so, and that in fact, as Sergeant Steer testified,¹⁰¹⁹ the BCIF had never been used by the Bias Crimes Unit, and had been created by SF Parrabell officers.¹⁰²⁰

Comparing the constituent documents, and the various versions of the BCIF

853. The Parrabell Report asserts¹⁰²¹ that the BCIF used by the SF Parrabell officers was the document being Appendix B to the Parrabell Report (at pages 121-131 thereof). AC Crandell initially confirmed this assertion in his written statement to the Inquiry.¹⁰²²

854. However, as the evidence gradually emerged, it became apparent that the position was more complex than that. By letter to the OGC, dated 10 May 2023,¹⁰²³ the Inquiry indicated its understanding of the evidence in that regard, as summarised below at [864] ff.

855. By its letter dated 19 May 2023,¹⁰²⁴ the OGC provided a response to that letter, as noted below at [872] ff.

¹⁰¹⁷ Exhibit 6, Tab 6, (n 84), [21]

¹⁰¹⁸ Exhibit 6, Tab 4, (n 128), [59].

¹⁰¹⁹ Exhibit 6, Tab 6, (n 84), [21]

¹⁰²⁰ Transcript, T698-9.

¹⁰²¹ Exhibit 1, Tab 2, (n 6), 67.

¹⁰²² Exhibit 6, Tab 4, (n 128), [62].

¹⁰²³ Exhibit 6, Tab 385, Letter from Solicitor Assisting the Inquiry to the Office of the General Counsel, NSW Police Force re: Changes to the Bias Crime Indicators Review Forms, 10 May 2023 (SCOI.83387).

¹⁰²⁴ Exhibit 6, Tab 386, Letter from the Office of the General Counsel, NSW Police Force to the Solicitor Assisting the Inquiry re: Changes to the Bias Crime Indicators Review Forms, 19 May 2023 (SCOI.83388).

856. The version of the BCIF, being Appendix B to the Parrabell Report, required the SF Parrabell officers to assess each of the ten indicators as falling within one or other of four possible categories or “findings”, expressed as follows (underline emphasis added):

1. **Evidence of Bias Crime** – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.
2. **Suspected Bias Crime** – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.
3. **No Evidence of Bias Crime** – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.
4. **Insufficient Information** – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victims and/or witnesses.

857. The Coordinating Instructions contained, embedded within that document, a slightly different version of the BCIFs.¹⁰²⁵ As to the four options for “findings” in respect of the presence or absence of bias, that version was the same as the version at Appendix B set out above, but with two exceptions:

- a. The first category was described as “Bias Crime” rather than “Evidence of Bias Crime”.
- b. The third category was described as “Not Bias Crime” rather than “No Evidence of Bias Crime”.

858. The Investigation Plan did not contain or annex a version of the BCIF in full, but it did assert that the four available “findings” were in the following, different, terms (emphasis added):

- There is evidence that sexuality or other bias was involved in the death
- It appears likely that sexuality or other bias was involved in the death
- It appears unlikely that sexuality or other bias was involved in the death
- There is no evidence that sexuality or other bias was involved in the death¹⁰²⁶

859. The Induction Package¹⁰²⁷ – which bore a notation “Published 2016” – was different again, in two significant respects.

- a. First, in the body of the document, at the foot of page 2, it was stated that: “For each indicator, the following 4 findings are available”. The four “findings” then set out were

¹⁰²⁵ Exhibit 6, Tab 15, (n 134), 4 ff.

¹⁰²⁶ Exhibit 6, Tab 14, (n 132), 3.

¹⁰²⁷ Exhibit 6, Tab 59, (n 133), 3.

in the same terms as in the Investigation Plan noted above – being different both from Appendix B of the Parrabell Report, and from the Coordinating Instructions;

- b. Second, however, the Induction Package also contained, embedded within it at pages 4-10, another, different, version of the BCIF itself. In that version, only three categories, not four, were listed, namely:
- *There is evidence that sexuality or other bias was involved in the death*
 - *It appears likely that sexuality or other bias was involved in the death*
 - *There is no evidence that sexuality or other bias was involved in the death*

860. The “*It appears unlikely ...*” category, as found both in the Investigation Plan and in the body of the Induction Package itself, was omitted.

861. In his oral evidence,¹⁰²⁸ AC Crandell accepted, *inter alia*, that:

- a. The Investigation Plan was in existence by some time prior to 30 August 2015;
- b. Up to at least 9 June 2016, the SFP officers were using the four categories as found within the Investigation Plan;¹⁰²⁹
- c. Then in June 2016, Sergeant Steer had given a presentation in relation to bias crime, which included the terms of five possible findings as to the presence or otherwise of bias crime;¹⁰³⁰
- d. On 29 June 2016, DSC Bignell informed DI Middleton that SF Parrabell was henceforth going to use four (out of the five) categories from Sergeant Steer’s presentation – instead of those found in the version embedded within the Investigation Plan;¹⁰³¹
- e. Thus, the version of the BCIF as found in the Coordinating Instructions (which adopted those four categories) did not come into existence until at least 29 June 2016;
- f. Prior to 29 June 2016, the SF Parrabell officers had been using a different version of the BCIF, containing the four (differently expressed) categories as found in the version embedded within the Investigation Plan;¹⁰³² and

¹⁰²⁸ Transcript, T838-845.

¹⁰²⁹ Transcript, T844; Exhibit 6, Tab 63, Email correspondence between Shoba Sharma, Anthony Crandell and Craig Middleton re Status update on SF Parrabell, 8-10 June 2016 (SCOI.74237).

¹⁰³⁰ Exhibit 6, Tab 64, Email correspondence between Craig Middleton, Geoffrey Steer and others re: Bias Crime Classifications, including attachment, 28-29 June 2016 (SCOI.74246); Tab 64A, Powerpoint presentation by Sergeant Geoffrey Steer – ‘Bias Crimes: Op Parrabell’, undated (SCOI.77319).

¹⁰³¹ *Ibid.*

¹⁰³² Transcript, T843-4.

- g. The SF Parrabell officers had by that time used that earlier version of the BCIF to review at least 28 of the 88 cases.¹⁰³³
862. AC Crandell also accepted¹⁰³⁴ that on or about 19 January 2017, there had been further changes to two of the four categories in the BCIF,¹⁰³⁵ namely:
- a. From 'Bias Crime' to 'Evidence of a bias crime'
 - b. From 'Not Bias Crime' to 'No evidence of a bias crime'
863. Those two changes constituted the differences between the categories as they appear in the Coordinating Instructions, and the categories as they appear in Appendix B to the Parrabell Report.
864. The evidence also indicates that at least four successive versions of the BCIF were used between mid-2015 and mid-2018 (when the Parrabell Report was published), as summarised in the following paragraphs.

Original version of BCIF: From 2015 to at least February 2016 (Form 1)

865. In an email of 12 February 2016 to AC Crandell and others, DCI Middleton provided an "update" as to SF Parrabell.¹⁰³⁶ The full content of the BCIF then in use is not set out in, or attached to, that email. However, in describing the "2nd review" of 2 February 2016, DCI Middleton reported that 15 reviews of cases had been completed, with the results being (emphasis added):

1 x case identified as involving a Gender or other Bias in the Crime
9 x cases identified as Likely to involve a Gender or other Bias in the Crime
3 x cases identified as Unlikely to involve a Gender or other Bias in the Crime
2 x cases identified as Not involving a Gender or other Bias in the Crime

866. Thus, until at least February 2016, it would appear from that evidence that the four categories from which the SF Parrabell officers were being asked to choose were those set out above (as underlined), and that a version of the BCIF, incorporating such categories, was in use at that time (Form 1).
867. Those four categories are in different terms from those found in any of the Investigation Plan, the Induction Package, the Coordinating Instructions, or Appendix B to the Parrabell Report. In

¹⁰³³ Ibid; Exhibit 6, Tab 63, (n 1029).

¹⁰³⁴ Transcript, T845-6.

¹⁰³⁵ Exhibit 6 Tab 83, Minutes from Strike Force Parrabell/Bias Crimes Unit meeting, 19 January 2017 (SCOI.74429).

¹⁰³⁶ Exhibit 6, Tab 58, Email from Craig Middleton to Daniel Doherty and Anthony Crandell re: SF Parrabell Status Update, 12 February 2016 (SCOI.74152).

particular, the word “gender” does not appear in any of the categories found in any of those documents.

Second version of BCIF: From about February 2016 to late June 2016 (Form 2)

868. On 9 June 2016, as noted above, DCI Middleton informed AC Crandell and others by email that 28 cases had been reviewed, by reference to four categories which he set out in that email.¹⁰³⁷ Those four categories correspond to the four in the Investigation Plan.
869. Evidently a version of the BCIF, as found in the Investigation Plan, was in use by that time (Form 2).
870. Further, as noted above, AC Crandell said in his oral evidence that the Investigation Plan had come into existence by some time prior to 30 August 2015. Yet, as also noted above, DCI Middleton’s email of 12 February 2016 stated that 15 reviews of cases had been completed, by 12 February 2016, using the four categories found in Form 1 (not the four categories in the Investigation Plan).¹⁰³⁸
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.
872. However, in the OGC letter of 19 May 2023, it is asserted on behalf of the NSWPF that:
- a. the categories used by DCI Middleton in his email on 12 February 2016 were different from those which appeared in “*the BCIF used by SF Parrabell members at the outset*”;
 - b. the BCIF used at the commencement of SF Parrabell was attached to the Investigation Plan (i.e. Form 2); and
 - c. DCI Middleton cannot now recall why his email of 12 February 2016 did not adopt the categories set out in Form 2, nor in particular why he used the word “*gender*”.
873. The upshot of the OGC’s letter would therefore appear to be that according to the NSWPF there was in fact no Form 1, and that DCI Middleton’s reference (in his email of 16 February 2016) to the categories set out at [865] above was simply in error.
874. As to Form 2, the OGC letter agreed with the Inquiry’s understanding that Form 2 was in use by 9 June 2016. However, it stated that it had not been possible for the NSWPF to “*confirm definitively*” that Form 2 was used in the “*specified timeframe suggested by the Inquiry*”, nor as to precisely how many cases were reviewed in accordance with Form 2.

¹⁰³⁷ Exhibit 6, Tab 63, (n 1029).

¹⁰³⁸ Exhibit 6, Tab 58, (n 1036).

Third version of BCIF: Late June 2016 to December 2016 / January 2017 (Form 3)

875. The third version of the BCIF, corresponding to the one set out in the Coordinating Instructions, appears to have been implemented from on or after 29 June 2016.¹⁰³⁹
876. The OGC letter confirmed that Form 3 came into use from around 29 June 2016; and that it contained four of the five bias crimes indicator classifications which had been proposed in the presentation given by Sergeant Steer to senior officers of SF Parrabell on or around 28 June 2016. However, the NSWPF said that it was unable to confirm the precise time period during which Form 3 was used, or whether (as the Inquiry's own review had suggested) 21 cases were reviewed for the first time using Form 3.
877. As to why Form 3 was adopted, the OGC letter stated:

We understand that senior officers considered the indicators as drafted for Form 2 to be too broad and that they did not adequately align with SF Parrabell's Terms of Reference. Specifically, the words "other bias" went beyond the scope of SF Parrabell, which was tasked with identifying the existence of an anti-gay bias crime. The transition to Form 3 was considered necessary to assist SF Parrabell to properly discharge its objectives.

878. The OGC letter asserted that SF Parrabell officers "re-reviewed" all cases that had been previously assessed using an earlier form, so that "all matters assessed up until December 2016 were assessed using Form 3".

Fourth version of BCIF: 19 January 2017 onwards (Form 4)

879. The fourth version of the BCIF is the one which appears as Appendix B in the Parrabell Report. On the evidence, it was implemented following a meeting between the SF Parrabell team and the Bias Crimes Unit on 19 January 2017.¹⁰⁴⁰ The OGC letter confirmed that that was so.
880. The OGC letter asserted that the amendments from Form 3 to Form 4 "did not change the underlying definition and, in turn, did not materially affect the outcome of the reviews". The amendment was explained as having been necessary "to reflect the fact that the absence of evidence that a case was, in fact, a bias crime might not conclusively rule out the possibility". It continued:

In particular, the amendments sought to recognise the possibility:

- a) *first, that a modern investigation of the same case may have involved a different approach being taken such that further evidence relevant to the possibility of bias might have been uncovered; and*

¹⁰³⁹ Exhibit 6, Tab 64, (n 1030).

¹⁰⁴⁰ Exhibit 6, Tab 83, (n 1035), 3.

b) *second, that new evidence may be provided to the NSWPF (or otherwise identified via further investigations), such that a different conclusion would be reached.*

881. These assertions now made by the OGC, on behalf of the NSWPF, including as to “*transitions*” and “*re-assessments*” and the like, by SF Parrabell officers in connection with the various successive changes to the BCIF, formed no part of the evidence of AC Crandell, nor are they to be found in any document produced to the Inquiry by the NSWPF. They cannot now be tested, at this late stage of the Inquiry. These submissions therefore necessarily proceed on the footing that those assertions are correct.
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*”,¹⁰⁴¹ was somewhat less than comprehensive.
883. The OGC letter of 19 May 2023 contended that AC Crandell’s assertion was not incorrect. It suggested that to regard it as such: “*unfairly ignores the relevant context in which the BCIFs were prepared and used by SF Parrabell personnel*”. That context was said to include that “*AC Crandell and other senior officers looked for and acted on opportunities to improve the BCIF over the three-year period during which SF Parrabell was conducted*”; and that “*at all material times, members of SF Parrabell used a BCIF in a substantively similar way, notwithstanding the form itself was adapted and improved over the life of SF Parrabell*”.
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*”.
885. AC Crandell accepted that having documents that were inconsistent could be confusing for the investigators, particularly if they were given both the Investigation Plan and the Coordinating Instructions.¹⁰⁴² However, to AC Crandell’s mind, “*it would be clear*” that they ought to follow the Coordinating Instructions.¹⁰⁴³

¹⁰⁴¹ Transcript, T1035.20.

¹⁰⁴² Transcript, T784.41.

¹⁰⁴³ Transcript, T784.7-8.

886. Similarly, although AC Crandell accepted that the senior leadership team of SF Parrabell should have produced a consistent set of documents,¹⁰⁴⁴ he did not accept that any confusion had been created by the different versions of the “findings” categories as set out in the different documents.¹⁰⁴⁵ AC Crandell considered that any uncertainty as to approach would have been “corrected in any instructions given to them...”¹⁰⁴⁶ although he said that he had personally never had a conversation with any of the investigators about the differences among the documents.¹⁰⁴⁷
887. AC Crandell did not accept that the inconsistencies between the Induction Package and the Coordinating Instructions would mean that it is now impossible to know how the SF Parrabell officers went about their task.¹⁰⁴⁸ In his view, it was possible for an objective observer to check whether each SF Parrabell officer had carried out the review process in the same way by looking at the finalised BCIFs completed by the SF Parrabell team.¹⁰⁴⁹
888. It is submitted that this is simply not so.
889. AC Crandell agreed that the standard of “beyond reasonable doubt” was high, and a difficult standard to reach.¹⁰⁵⁰ However, he maintained that it was an appropriate standard for the purposes of considering whether the incident was wholly or partially motivated by bias (even for a review “on the papers” where it was known that the documentary material available could well be an incomplete or imperfect record of each incident).¹⁰⁵¹ He said that it “*showed an almost certainty that bias was involved in that crime, and that’s what I was looking for.*”¹⁰⁵²
890. AC Crandell conceded that the standard of proof as found in different versions of the BCIF appeared to be conceptually different. However, he maintained that the tenet of what investigators were required to do was the same, because they were looking for evidence of a bias crime.¹⁰⁵³ The criminal standard of proof was used because it was understood by criminal investigators.¹⁰⁵⁴

¹⁰⁴⁴ Transcript, T788.39.

¹⁰⁴⁵ Transcript, T788.11.

¹⁰⁴⁶ Transcript, T784.45-46.

¹⁰⁴⁷ Transcript, T793.30.

¹⁰⁴⁸ Transcript, T785.26-30.

¹⁰⁴⁹ Transcript, T794.4-36.

¹⁰⁵⁰ Transcript, T816.37.

¹⁰⁵¹ Transcript, T816.37.

¹⁰⁵² Transcript, T816.37-41.

¹⁰⁵³ Transcript, T791.17-T792.17.

¹⁰⁵⁴ Transcript, T829.45-47.

891. He did not consider that the standard of beyond reasonable doubt would increase the likelihood that the review process may underestimate the presence of bias across the cases.¹⁰⁵⁵ He conceded that using different standards over time may lead to different answers, but stated that he thought *“in the fullness of time that that gets teased out. So whilst that might be an initial inquiry as to whether there is material or evidence of a bias crime, I think as you move through, then the different classifications become more clear”*.¹⁰⁵⁶
892. As to the presence in the Coordinating Instructions of the lower, civil, standard of proof for the “overall conclusion”, after the higher (criminal) standard has had to be applied at the earlier “findings” stage, AC Crandell could not say whether the investigators were provided with any guidance.¹⁰⁵⁷ He accepted that the attempted explanation which he gave, in his oral evidence, looked like *“putting the cart before the horse”*.¹⁰⁵⁸
893. As to the use of the term “evidence/information”, in each of the first two available “findings”, AC Crandell said this was an *“all-encompassing term.”*¹⁰⁵⁹ He regarded the terms “evidence” and “information” as synonyms.¹⁰⁶⁰ He said he had not given *“thought to those particular words and the differences between them”*.¹⁰⁶¹ The language was *“general guidance”* to the SF Parrabell officers.¹⁰⁶²
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.
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.
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”

¹⁰⁵⁵ Transcript, T829.31-32, 45.

¹⁰⁵⁶ Transcript, T830.19-23.

¹⁰⁵⁷ Transcript, T831.12.

¹⁰⁵⁸ Transcript, T832.20-25.

¹⁰⁵⁹ Transcript, T812.35-39.

¹⁰⁶⁰ Transcript, T813.33-41.

¹⁰⁶¹ Transcript, T815.13-15.

¹⁰⁶² Transcript, T814.10-17.

than it would have found if it had applied the lower, civil standard of proof: see in that regard the evidence of Mr Willing and the expert evidence of Associate Professor Lovegrove, cited elsewhere in these submissions.

SF Parrabell and ACON

898. On 17 November 2015, AC Crandell wrote to Nicolas Parkhill, the CEO of ACON, to inform him that SF Parrabell had commenced and to invite him, along with “*prominent community members*”, to a presentation during which results of the first eight cases reviewed would be presented. Mr Parkhill was unable to attend, but another ACON representative did so.¹⁰⁶³
899. Another “stakeholder” meeting was held a year later, on 19 December 2016, at which an ACON representative was present.¹⁰⁶⁴
900. From 2016, AC Crandell and SF Parrabell were aware that ACON was also preparing a report, and thus that the two reports were being prepared “*in tandem, as it were*”.¹⁰⁶⁵
901. However, SF Parrabell did not provide to ACON any of the documents which showed the methodology that the Strike Force proposed to use. In particular, ACON was not shown or provided with any of
- a. the Coordinating Instructions;¹⁰⁶⁶ or
 - b. the BCIF;¹⁰⁶⁷ or
 - c. the RFQ.¹⁰⁶⁸
902. AC Crandell’s recollection was that the Strike Force did not tell ACON what its methodology was, or that it was using ten indicators and various prompts.¹⁰⁶⁹ He accepted that “*perhaps*” ACON could have offered some insights as to whether the indicators being used were suitable, but said that that did not occur to him.¹⁰⁷⁰
903. As to the RFQ, AC Crandell said he did not know if it had been shown to ACON, and Ms Sharma “suspected” that it had not. There is no evidence that it was. Ms Sharma acknowledged that if

¹⁰⁶³ Exhibit 6, Tab 141, Email correspondence between Superintendent Anthony Crandell and Nicolas Parkhill re: Invitation to Operation Parrabell presentation at Surry Hills Police Station on 1 December 2015, 17-18 November 2015 (SCOI.77744).

¹⁰⁶⁴ Exhibit 6, Tab 143A, Draft minutes of LGBTI Stakeholder meeting held on 19 December 2016, 19 December 2016 (SCOI.77844).

¹⁰⁶⁵ Transcript, T878.

¹⁰⁶⁶ Transcript, T878.

¹⁰⁶⁷ Transcript, T879.

¹⁰⁶⁸ Transcript, T934.14, T1221.18-20.

¹⁰⁶⁹ Transcript, T878.38-T879.3.

¹⁰⁷⁰ Transcript, T881.39.

it had, ACON could “possibly” have been forgiven for thinking (given the statement in the RFQ that “researchers connected to the gay community may not be as independent as desirable”) that researchers who knew a lot about gay hate and had connections to the LGBTIQ world were not likely to find favour in the tender process.¹⁰⁷¹

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.
905. ACON also provided SF Parrabell with the “dossiers” it had assembled in relation to all the cases.¹⁰⁷²

¹⁰⁷¹ Transcript, T1221.18-20.

¹⁰⁷² Exhibit 6, Tab 144, Email from Jacqueline Braw to Michael Atkinson re: Consulting with ACON on Parrabell, 8 February 2017 (SCOI.77875).

PART F: SF PARRABELL – POLICE METHODOLOGY

Overview of methodology

906. The methodology of SF Parrabell is outlined in Part A of these submissions at [103]-[113]. The various constituent documents, and the changes to the BCIF, are discussed in Part D. Those matters are recapitulated only briefly here.
907. SF Parrabell had a number of constituent documents, including an Investigation Plan, an Induction Package and Coordinating Instructions. The objectives of SF Parrabell were described in slightly different terms in each of those.
908. In the Investigation Plan, the objective of SF Parrabell was said to be to:

*conduct a review of current NSWPF holdings of the cases, previously identified by the [sic] Ms Sue Thompson and Bias Crime Unit, to determine if there is any evidence of sexuality or gender bias involvement which may have contributed to the death. This review will relate to police investigations conducted between 1976 and 2000. The purpose of the review is to determine if any sexuality or gender bias was involved in any of the deaths.*¹⁰⁷³

909. The Coordinating Instructions made it clear that SF Parrabell was to be a purely paper review. There was to be no re-investigation of any of the 88 cases.¹⁰⁷⁴ The objective of SF Parrabell was simply to look at the available material and, in that way, to form an opinion, as at 2015-2016, as to whether a “sexuality or gender bias”, or “anti-gay bias”, or “gay hate”, had been involved in any of the deaths when they had occurred.¹⁰⁷⁵ As both AC Crandell and Dr Dalton acknowledged, the restriction to reliance on the available historical material was a serious limitation on SF Parrabell.¹⁰⁷⁶
910. After reviewing whatever historical material was available in each particular case (in some cases a great deal, in other cases hardly any), SF Parrabell officers were to fill out a BCIF in respect of that case, by:
- a. providing responses to various “prompts”, in respect of ten “indicators”, as set out in the Form; and
 - b. answering ‘Yes’ or ‘No’ to four possible options in respect of each “indicator”, namely (in the final version of the BCIF):
 - i. “Evidence of bias crime”; or

¹⁰⁷³ Exhibit 6, Tab 14, (n 132), 2.

¹⁰⁷⁴ Exhibit 6, Tab 15, (n 134), 3.

¹⁰⁷⁵ *Ibid*, 2-3.

¹⁰⁷⁶ Transcript, T707.12, T2399.29-2400.10.

- ii. “Suspected bias crime”; or
- iii. “No evidence of bias crime”; or
- iv. “Insufficient information to establish a bias crime”.

Constituent documents, and the BCIF: changes and inconsistencies

911. The constituent documents for SF Parrabell are considered in some detail in Part D of these submissions. It is unnecessary to repeat what is said there, except by way of summary.
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.
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;
 - 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.
915. Fourthly, in its letter of 19 May 2023, the NSWPF stated:
- a. *“the changes in the BCIF templates (and constituent documents) were the result of an evolutionary process where the senior officers of SF Parrabell assessed the adequacy of the tools being used by the investigation team with the result that the BCIF template and the strike force’s constituent documents were subject to change to reflect improvements in review methodology.”*¹⁰⁷⁷

¹⁰⁷⁷ Exhibit 6, Tab 386, (n 1024), 2.

- b. *“When there were material amendments to the BCIF, cases were revisited by the investigation team...and reassessed to ensure SF Parrabell had properly executed its objectives.”*¹⁰⁷⁸
- c. *“AC Crandell and other senior officers looked for and acted on opportunities to improve the BCIF over the three-year period during which SF Parrabell was conducted.”*¹⁰⁷⁹

916. If all these assertions are correct, then that might allay at least some of the concerns which otherwise arise from the inconsistencies in the constituent documents and the changes to the BCIF over time. There may have been good reasons to amend the constituent documents and the BCIF, and certainly revisiting cases which had already been reviewed would be essential in circumstances where the constituent documents or the BCIF had subsequently been amended, to ensure a consistency in the *final* approach to each case.

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;¹⁰⁸⁰ 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.

Timeframes

918. At the inception of SF Parrabell, it was anticipated that it would complete its work in a relatively short period of time.

¹⁰⁷⁸ Ibid.

¹⁰⁷⁹ Ibid, 3.

¹⁰⁸⁰ Transcript, T2377.26-2378.8.

919. On 12 August 2015, DCI Middleton sent an email to various officers of the NSWPF, including AC Crandell, which explained the task before SF Parrabell. At that point, DCI Middleton was “hoping that the review ... [could] be completed within a 3 month time frame”.¹⁰⁸¹
920. By 7 May 2016, (well after three months had passed), AC Crandell sent an email to Ainslee Blackstone and others within the NSWPF in which he anticipated that SF Parrabell would be completed in “approximately 4 months”.¹⁰⁸²
921. Plainly, it took longer than either DCI Middleton or AC Crandell anticipated to complete SF Parrabell. This is not said by way of criticism of SF Parrabell. If the exercise was worth doing (a question which will be revisited in these submissions), it was worth taking the time to do it thoroughly.

Implementation of methodology

922. In his statement, AC Crandell stated that the general methodology employed by SF Parrabell was that the officers would obtain all available documents (both internal to NSWPF and external, such as from the State Archives) in relation to each death, allocate an examination of each case to one or more officers, form a view as to whether each case had any evidence of “bias”, complete a BCIF, and ensure that all material was uploaded to e@gle.i.¹⁰⁸³

How many officers reviewed each case?

923. There was no clear protocol for which, or how many, officers reviewed each case. AC Crandell was unable to say how many cases were allocated to one officer and how many were allocated to more than one officer.¹⁰⁸⁴ He stated that this would have been a decision for DCI Middleton or DS Grace.¹⁰⁸⁵ He thought that there “*may well have been*” some cases which were reviewed by two, three or even more officers due to the volume of material.¹⁰⁸⁶

If multiple officers disagreed, how were conflicts resolved?

924. When asked about a situation whereby two or more officers were assigned to a case and arrived at different views as to the filling out of the BCIF, and how that would be resolved, AC Crandell stated that the following “governance structures” would apply:¹⁰⁸⁷

¹⁰⁸¹ Exhibit 6, Tab 57, Email from Craig Middleton to Michael Fitzgerald and Damian Henry re: SF Parrabell Investigation Plan, 12 August 2015 (SCOI.74131).

¹⁰⁸² Exhibit 6, Tab 60, (n 726).

¹⁰⁸³ Exhibit 6, Tab 4, (n 128), [85].

¹⁰⁸⁴ Transcript, T752.39

¹⁰⁸⁵ Transcript, T752.44-45.

¹⁰⁸⁶ Transcript, T753.3-14.

¹⁰⁸⁷ Transcript, T758.5-8.

- a. A weekly review conducted of the active investigations by DS Grace;¹⁰⁸⁸
- b. A monthly review of all active investigations by DCI Middleton and DS Grace;¹⁰⁸⁹
- c. Guidance to teams as they went through the task of identifying whether or not bias was a factor;¹⁰⁹⁰ and
- d. A discussion with senior investigators as to whether or not it was appropriate to assign that particular bias or not.¹⁰⁹¹

925. The Parrabell Report also outlined that a *“reviewing detective”* assessed each case and shared their findings with the *“head detective”*. The head detective would then finalise the review in light of the feedback process undertaken.¹⁰⁹²

926. However, AC Crandell ultimately considered that the senior investigators would have a *“power of veto”* in determining whether or not they thought bias was present.¹⁰⁹³

Other unknowns

927. In terms of the accuracy of the narratives written in the BCIFs, AC Crandell stated that a *“governance system”* was used, whereby officers received input from DSC Bignell and DS Grace and a weekly meeting was held to ensure that *“there was consistency across the different views and that there was open discussion about those points.”*¹⁰⁹⁴

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.¹⁰⁹⁵
- 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.¹⁰⁹⁶

¹⁰⁸⁸ Transcript, T753.20-22.

¹⁰⁸⁹ Transcript, T753.22-25.

¹⁰⁹⁰ Transcript, T753.25-27.

¹⁰⁹¹ Transcript, T754.5-8.

¹⁰⁹² Exhibit 1, Tab 2, (n 6), 67.

¹⁰⁹³ Transcript, T754.16-20.

¹⁰⁹⁴ Transcript, T1030.2-7.

¹⁰⁹⁵ Transcript, T1031.15-16.

¹⁰⁹⁶ See Exhibit 8, Tab 22, Strike Force Parrabell Bias Crimes Indicators Review Form – Graham Paynter, undated (SCOI.74992).

Subjectivity and intuition

929. The methodology adopted by SF Parrabell was, ultimately, a subjective one. The classification of each case came down to the opinions of whichever officer or officers happened to be assigned to it, and the supervising officers. AC Crandell ultimately agreed with the proposition that the process was subjective.¹⁰⁹⁷

930. The subjective nature of the exercise conducted by SF Parrabell was acknowledged in various ways by SF Parrabell officers, by AC Crandell, by Dr Dalton, and in the Parrabell Report, including in the examples set out below.

931. In an email to Dr Dalton on 28 July 2017, DCI Middleton wrote (emphasis added):

*Even within the review team itself we had differences of opinion on cases and which category it was placed. In some respects, some of these matters could almost sit in 2 categories. But ultimately we had to make a choice, of which opinion played a part. If the truth be known alot [sic] of these matters were placed in their category based on our 'collective opinion'. You already know this, hence why your results differ from ours, essentially those differences are based on your opinion as opposed to our opinion. Whose opinion is right? I would suggest both are.*¹⁰⁹⁸

932. In his oral evidence, AC Crandell accepted that, in DCI Middleton's mind, these were ultimately questions of opinion.¹⁰⁹⁹ He initially asserted that it was not necessarily individual officers who were making "those final determinations", but he then accepted that the individual officers did make the initial calls of judgements based on their own opinion, and that the governance or review process resulted in a "collective opinion" being arrived at.¹¹⁰⁰ He further accepted that this "collective opinion" was still an opinion and thus still subjective.¹¹⁰¹

933. In the Flinders Report, at page 69, the academic team described their understanding, of how the SF Parrabell officers reached their "finding" in each case (an understanding evidently based on what they were told by those officers), as follows (emphasis added):

*... the process was described as intuitive and relied on qualitative data in the form of contextual information derived from analysing each case.*¹¹⁰²

¹⁰⁹⁷ Transcript, T802.17, T805.6-7, T807.16-29, T996.13-18.

¹⁰⁹⁸ Exhibit 6, Tab 112, Email correspondence between Derek Dalton and Craig Middleton re: Publishing case classifications, 27-28 July 2017, 1 (SCOI.74554).

¹⁰⁹⁹ Transcript, T804.29-30.

¹¹⁰⁰ Transcript, T804.35-805.2.

¹¹⁰¹ Transcript, T805.6-7.

¹¹⁰² Exhibit 1, Tab 2, (n 6), 69.

934. In his oral evidence, AC Crandell agreed that the process was intuitive rather than objective, although he suggested that the relevant intuition might be that of the *“experienced investigators”* (as distinct from *“each individual investigator”*).¹¹⁰³
935. For his part, Dr Dalton said that, having read the case material that they had, the SF Parrabell officers would *“arrive at a view”*.¹¹⁰⁴ They would do so *“intuitively”*, as referred to on page 69 of the Flinders Report.¹¹⁰⁵ He agreed that this meant that ultimately what emerged was the *“subjective”* view of the relevant officer or officers, expressed as *“a matter of opinion”*.¹¹⁰⁶
936. AC Crandell’s evidence was that there was a *“weighting process”* that was carried out, in respect of the ten indicators in the BCIF.¹¹⁰⁷ He said that this *“weighting”* would be done *“collaboratively”* by the three senior SF Parrabell officers.¹¹⁰⁸ AC Crandell agreed that such a weighting process turned inevitably on the officers’ personal views about how much significance or emphasis ought to be placed on one factor as opposed to another.¹¹⁰⁹ He further accepted that the process, at that level, was *“entirely opaque”*, and that it would be impossible to penetrate or replicate the process unless one were to interrogate those officers who participated in the ultimate discussion.¹¹¹⁰
937. The BCIF was said to be a tool which would give an objectivity and discipline (*“systemic validity”*, as AC Crandell put it)¹¹¹¹ to the process which was being undertaken by SF Parrabell (namely a review, on the papers, aimed at forming a view as to whether or not bias was present in the 88 cases).
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, as Dr Dalton agreed in his oral evidence, *“the elaborate apparatus of the form was apt to conceal the near impossibility of the task”*.¹¹¹² Associate Professor Lovegrove called it *“faux science”*,¹¹¹³ and Ms Coakley expressed a similar view.¹¹¹⁴

¹¹⁰³ Transcript, T805.31-806.32.

¹¹⁰⁴ Transcript, T2384.4-19, T2385.26-31.

¹¹⁰⁵ Transcript, T2384.21-2386.17.

¹¹⁰⁶ Transcript, T2385.32-2386.17.

¹¹⁰⁷ Transcript, T860.8-862.7.

¹¹⁰⁸ Transcript, T862.8-863.18.

¹¹⁰⁹ Transcript, T863.24.

¹¹¹⁰ Transcript, T863.27-47.

¹¹¹¹ Exhibit 6, Tab 4, (n 128), [70].

¹¹¹² Transcript, T2399.20-2400.10.

¹¹¹³ Exhibit 6, Tab 256, (n 170), [110].

¹¹¹⁴ Exhibit 6, Tab 257, (n 171), [38].

Collaboration, consensus and independence

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.
940. The importance of “collaboration” had been stressed in the RFQ for the academic review, as noted above, and had been stressed even more heavily in the academic team’s tender, as also noted above.
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.

Email correspondence

942. In an email to Shannon Wright of ACON on 18 July 2016 (four days before the RFQ was sent to the three tendering groups), Ms Braw wrote:

*We have changed our thinking a little and now want the researcher/s to be involved prior to completing the Parrabell review and conduct the last stage as a collaborative process if that makes sense. Not sure exactly how it will work but we thought we should have them start looking at cases and determinations, provide comments which may influence our final conclusions.*¹¹¹⁵

943. AC Crandell’s evidence was that he did not necessarily know what Ms Braw meant by “collaborative”.¹¹¹⁶ His view was that the academic and SFP teams could “collaborate and discuss different cases and different outcomes”. However, he still wanted them to provide objectivity in relation to their findings. He did not want to come up with exactly the same findings unless that was the case.¹¹¹⁷ AC Crandell accepted that “collaborative” suggested something different from “independent”, but stated that “that’s not my word”.¹¹¹⁸ He then denied that he was trying to distance himself from the word or saying that it is wrong in some way.¹¹¹⁹
944. Dr Dalton gave evidence that, for his part, he certainly understood the RFQ as emphasising collaboration, and responded accordingly: see Part G.

¹¹¹⁵ Exhibit 6, Tab 142, Email correspondence between Shannon Wright and Jacqueline Braw re: Seeking advice on Parrabell Parameters, 19 July 2016 (SCOl.78619).

¹¹¹⁶ Transcript, T922.16-17.

¹¹¹⁷ Transcript, T922.16-23.

¹¹¹⁸ Transcript, T922.27-33.

¹¹¹⁹ Transcript T924.24-25, T924.34-35.

945. In an email to DCI Middleton on 12 December 2016 Dr Dalton said (emphasis added):

Superintendent Crandell mooted that in the future we will no doubt engage in a sharing process - one where we all get to argue [deliberate might be nicer term] about the final or ultimate classification and reach a consensus [if indeed that is possible in terms of the true meaning of that word]. I look forward to hearing your views when that day comes.¹¹²⁰

946. In his oral evidence, Dr Dalton said that he was “quite comfortable to say we were seeking consensus”.¹¹²¹ He gave evidence that the objective of the academic and police teams was, if at all possible, “to reach a consensus” in the sense of arriving at “almost the same” views about the cases.¹¹²²

947. It is submitted that Dr Dalton’s evidence in this regard is palpably correct and should be accepted.

948. On 12 December 2016, AC Crandell emailed DCI Middleton with a proposed set of guidelines for the process of case reviews, as follows (emphasis added):

- 1. The position of Operation Parrabell investigators regarding all cases reviewed has been indicated*
- 2. The Bias Crimes Coordinator has also conducted a review of specific cases which require further discussion with Operation Parrabell investigators to determine a NSW Police Force position*
- 3. Any position taken on any case by the NSWPF will be subject to further discussions with the research team*
- 4. The Bias Crimes Coordinator will review specific cases where agreement cannot be reached between Operation Parrabell investigators and the Research Team to enhance further discussion around appropriate classifications*
- 5. The Research Team will bring their position on all cases to a meeting between Operation Parrabell investigators and the Bias Crimes Coordinator for further discussion prior to final positions being taken*
- 6. Prior to final reports being submitted it is important that each entity (NSWPF and Flinder’s University) are aware of positions on each case together with reasons for the positions taken so that if divergent findings are made, they can be reported upon with complete understanding.¹¹²³*

¹¹²⁰ Exhibit 6, Tab 247, Email chain between Derek Dalton and Craig Middleton re: A very brief update and a question, 12 December 2016 (SCOI.79694).

¹¹²¹ Transcript, T2472.6-9.

¹¹²² Transcript, T2472.16.

¹¹²³ Exhibit 6, Tab 80, Email correspondence between Anthony Crandell and Derek Dalton re: ‘Proposed way forward for Operation Parrabell’, 13 December 2016 (SCOI.74401).

949. As noted elsewhere in these submissions, the arrangements envisaged in points 4 and 5 did not eventuate. The Bias Crime Coordinator (Sergeant Steer) was not deployed in these ways.
950. However, in this email AC Crandell seems clearly to have been saying that the position taken by the police on any case would be *“subject to”* what the academics would say, and that the academics would then say whether they agreed with police, with the object being that agreement would in fact be reached.
951. Point 6, consistently with this, seems to envisage, by its use of the word *“if”*, that *“divergent findings”* were expected to be the exception to the rule.
952. Once again, however, AC Crandell disagreed.¹¹²⁴ He stated that it was not in his mind to have a complete agreement between police and the researchers, or to minimise disagreement. What was in his mind was to learn as much as he could about classifications of bias crimes so that he could then improve the way that they did that in NSWPF moving forward.¹¹²⁵
953. However, Dr Dalton’s understanding of this email was very different. He agreed that AC Crandell’s expectation seemed to be that, in number 3, any classifications that police arrived at would be discussed with the academic team with a view towards consensus if possible (as Dr Dalton himself had written in his email to DCI Middleton on 12 December).¹¹²⁶ Dr Dalton also agreed that number 5 indicated that the objective was consensus if possible, although *“not consensus as in an identical match, so to speak”*.¹¹²⁷
954. Dr Dalton agreed that the conflict that AC Crandell seemed to be expecting, if any, was between SF Parrabell and Sergeant Steer, rather than between SF Parrabell and the academic team.¹¹²⁸ AC Crandell also agreed that he was not expecting robust discussion between SF Parrabell and Dr Dalton but, rather, between SF Parrabell and Sergeant Steer.¹¹²⁹
955. Dr Dalton further agreed that it was a fair inference from what AC Crandell wrote that the *“desired outcome”* was a consensus view.¹¹³⁰ AC Crandell again disagreed.¹¹³¹
956. On the next day, 13 December 2016, DCI Middleton replied to AC Crandell’s email extracted above. In that response, after saying that he was “happy with” AC Crandell’s (six point) proposal, DCI Middleton stated (emphasis added):

¹¹²⁴ Transcript, T969.19.

¹¹²⁵ Transcript, T969.25-35.

¹¹²⁶ Transcript, T2472.46-2473.4, T2473.27.

¹¹²⁷ Transcript, T2474.4-5.

¹¹²⁸ Transcript, T2475.44.

¹¹²⁹ Transcript, T982.19.

¹¹³⁰ Transcript, T2476.2-3.

¹¹³¹ Transcript, T982.3.

I dont think that we will be that far apart from the academic review. I am sure that once we sit down and discuss with Derek those matters can be resolved through discussion. I gather from below if for some reason we cant reach agreement then the disputed matters will be reviewed by the Bias Crimes Coordinator to adjudicate/resolve ?

...

*In reality I dont think that we will be all that far apart between the 3 teams (Parrabell, Bias Crimes, Academic) and the majority if not all of those discrepancies can be resolved easily. After all, now matter how hard we try and be impartial when it comes to placing matters in categories alot of it comes down to opinions. Thats just the way it works. I expected that differences of opinion would cause different results. But I have faith that a round table discussion can resolve all if not most of those opinions to provide one consistent set of results.*¹¹³² (errors in original)

957. When taken to this email, AC Crandell did not accept that it appeared that DCI Middleton was aiming to achieve agreement and consensus with Dr Dalton.¹¹³³ He said, “*we never wanted agreement on all the cases*”.¹¹³⁴ He said that the expression “*those matters can be resolved*” meant “*the process that was taken as to how they’ve come to that finding. Because if you’ve got completely different findings, you want to know how they arrived at that one as opposed to the way we arrived at ours.*”¹¹³⁵
958. In relation to the final paragraph of DCI Middleton’s email above, AC Crandell again emphatically disagreed that DCI Middleton had in mind that Parrabell, Bias Crimes and the academic team would come to a consensus view.¹¹³⁶
959. As to the last sentence of the email, AC Crandell agreed that DCI Middleton’s stated position “*looked like*” the aim was consensus, but insisted that in fact “*it wasn’t*”. He maintained this stance even though he had responded to the email by saying “*I agree on all matters*”.¹¹³⁷
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.
961. In an email to Dr Dalton on 13 February 2017, responding to an email from Dr Dalton (attaching a spreadsheet) which said, “*I think we agree on 57 and disagree on 21*”, DCI Middleton wrote:

The matters that you [the academic team] have disagreed on with us also dont [sic] really surprise me. The SBC [Suspected Bias Crime] and II [Insufficient Information] are fluid

¹¹³² Exhibit 6, Tab 79, (n 1000).

¹¹³³ Transcript, T973.21-975.40.

¹¹³⁴ Transcript, T973.23-24.

¹¹³⁵ Transcript, T973.27-31.

¹¹³⁶ Transcript, T978.21-32.

¹¹³⁷ Transcript, T979.4-980.10.

*categories that we found matters could move between and quite easily sit in either or both.*¹¹³⁸

962. In the same email, DCI Middleton set out some of the SF Parrabell team’s reasons for their approach. At the conclusion of the email, he wrote (emphasis added):

*I hope this assists. I am really looking forward to meeting with you and your team in a couple weeks to discuss. I really dont [sic] think we are two far apart in alot [sic] of our views and I am still hopeful that they can be easily resolved.*¹¹³⁹

963. Dr Dalton agreed that DCI Middleton appeared to be saying that he hoped that there would be a convergence of views,¹¹⁴⁰ and that any differences in the results would be “ultimately resolvable”.¹¹⁴¹

964. AC Crandell was also taken to this correspondence. Again, his evidence was that he did not believe that DCI Middleton was aiming at consensus in this email. He stated, “it was never my view that we would get – we would even get consensus. The processes were so difficult to arrive at conclusions in any event”.¹¹⁴² He also stated that he did not think it was ever an expectation of Dr Dalton’s that NSWPF and the academic team would aim for consensus.¹¹⁴³

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).

966. In an email to AC Walton in February 2018 (attaching drafts of the SF Parrabell ‘Executive Summary’ and the Flinders Report), DCI Middleton wrote:

*The academic review was conducted alongside the NSWPF (SF Parrabell) review and essentially supports our codings (findings) and importantly vindicates the methodology we used.*¹¹⁴⁴

967. It is difficult to fathom what DCI Middleton can have meant by this. As outlined elsewhere in these submissions, the academic team, first, used quite different “codings/findings” and, secondly, expressly did not “vindicate the methodology” used by SF Parrabell.

968. The Flinders Report (part of the Parrabell Report) includes the following paragraph:

The academic team worked collaboratively with the NSWPF as findings were being finalised and experienced a strong spirit of cooperation in its interactions. This might

¹¹³⁸ Exhibit 6, Tab 88, Email correspondence between Derek Dalton to Craig Middleton re: Preliminary Parrabell coding, 10-13 February 2016 (SCOI.74447).

¹¹³⁹ Ibid.

¹¹⁴⁰ Transcript, T2477.45.

¹¹⁴¹ Transcript, T2479.21-37.

¹¹⁴² Transcript, T984.40-43.

¹¹⁴³ Transcript, T985.30-33.

¹¹⁴⁴ Exhibit 6, Tab 118, Email correspondence between Assistant Commissioner Mark Walton and Craig Middleton re: SF Parrabell, 14 February 2018 (SCOI.74610).

*strike some observers as irregular (in terms of the logic that a review must be conducted from a perspective of pure objectivity), but the academic team believed it was prudent to engage in open and productive discussions as the work of SFP drew to a close, rather than face the possibility of working on misapprehensions or misinterpretations of processes and methods.*¹¹⁴⁵

969. Dr Dalton agreed that the object of “*collaborative meetings and discussions*” between the academic team and the SF Parrabell officers was for the NSWPF to know what the academic team thought about their findings, whether the academic team thought that their findings needed some alteration, and vice versa.¹¹⁴⁶
970. Dr Dalton frankly acknowledged that while there were legitimate reasons for pursuing a “collaborative” approach (for example, collaboration may assist in avoiding misunderstandings), the close involvement with the NSWPF potentially compromised the objectivity of the academics’ work.
971. The fact that the NSWPF was funding the academic review was also present to his mind, as a factor that may have encouraged the academic team to engage more with the NSWPF than would otherwise be the case. Dr Dalton described a “*huge tension*”, with which he “*struggled ... all the time*”, arising from the fact that the NSWPF were paying the academic team as part of the tender process. He acknowledged that the academic team’s work therefore fell short of “*pure objectivity*” and “*a gold standard of a process*”.¹¹⁴⁷
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.
973. As to the last of these points, Dr de Lint gave evidence that he “*assumed that there was going to be a collaboration on the final text of the entire report*”.¹¹⁴⁸ He believed that it would have been preferable if the academic team had had the opportunity to review the Police Report

¹¹⁴⁵ Exhibit 1, Tab 2, (n 6), 56-57.

¹¹⁴⁶ Transcript, T2460.36.

¹¹⁴⁷ Transcript, T2461.8-32.

¹¹⁴⁸ Transcript, T2758.23-25.

before it was published.¹¹⁴⁹ He said that this would have “*offered more of an opportunity to synthesise at least the narrative*” or “*the guts of the report*”.¹¹⁵⁰

Feedback on draft report

974. In an email to AC Crandell and Ms Braw on 22 March 2017, Dr Dalton wrote that the academic team was working on a draft of their report.¹¹⁵¹ He stated (emphasis added):

*Revising the draft report will be take a lot of time but hopefully in a few months we will be ready to share the draft and start negotiating the final version with your team (a somewhat delicate dance of inclusion and exclusion I imagine, but one that is necessary as part of this process).*¹¹⁵²

975. In his oral evidence, Dr Dalton confirmed that he expected a process of negotiation for the final report.¹¹⁵³ In fact, this is what occurred. The academic team sent drafts to the police, police gave feedback, and the academic team made some changes as a result of this feedback.

976. On 19 July 2017, Ms Braw provided the academic team with a document containing feedback collated from AC Crandell, DCI Middleton, Ms Sharma and herself.¹¹⁵⁴ The attached document was nine pages.¹¹⁵⁵

977. On 30 August 2017, Dr Dalton presented the NSWPF with the final version of the Flinders Report.¹¹⁵⁶ In that email he said:

We imagine you will read this final report with a view to spot anything that you aren't entirely happy with. ... It was ... a delicate balance, but if you are aggrieved by any content (we hope you aren't) - you must feel free to say so and we can discuss the possibility of modifying the text.

978. In his oral evidence, AC Crandell was asked about that language:

Q. Now, does that strike you as the approach of someone whose intention was to be entirely independent?

A. Look, I think it was a - for my perspective he wanted to get particularly the language right, and I know that there had been email correspondence between himself and Jackie Braw for that purpose, given Jackie Braw's connection to the LGBTIQ community. So when I read that, I have that in my mind. I think it would be - he was encouraging us to speak up if we thought that there was some inconsistency or something that needed to be

¹¹⁴⁹ Transcript, T2864.16, 20.

¹¹⁵⁰ Transcript, T2864.31-46.

¹¹⁵¹ Exhibit 6, Tab 97, Email from Derek Dalton to Anthony Crandell re: Draft academic report, 22 March 2017 (SCOI.74471).

¹¹⁵² Ibid.

¹¹⁵³ Transcript, T2483.26.

¹¹⁵⁴ Exhibit 6, Tab 109, Email from Jacqueline Braw to Derek Dalton re: Feedback on academic report, 19 July 2017 (SCOI.74542).

¹¹⁵⁵ Exhibit 6, Tab 109A, Feedback Document attached to Email from Jacqueline Braw to Derek Dalton re: Feedback on academic report, 19 July 2017 (SCOI.74543).

¹¹⁵⁶ Exhibit 6, Tab 115, Email from Derek Dalton to Anthony Crandell re: Final academic report, 30 August 2017 (SCOI.74570).

*changed that we were deeply unhappy about, rather than just saying, "Oh, well", and just accepting whatever, so - that's my interpretation of that.*¹¹⁵⁷

Evidence of AC Crandell overall

979. Overall, AC Crandell did not agree that *"rather than being an independent review of the work of the strike force, the Flinders review was in fact a collaborative exercise"*,¹¹⁵⁸ or that the exercise was *"a search for consensus if at all possible"*.¹¹⁵⁹ Instead, his view was that *"there was collaboration to determine differences in findings and reasoning for those."*¹¹⁶⁰

General submissions in relation to collaboration

980. There is no suggestion in the evidence that the academic team were ever required to make the same classifications as SF Parrabell. To the contrary, Dr Dalton gave evidence that, at some point, AC Crandell said to him words to the effect of: *"You are to - don't fear - don't fear any - any sort of pressure or inducement or whatever. You are to find as many cases in whatever category as you see fit"*.¹¹⁶¹ Dr Dalton said that there was *"a genuine effort, on each side, to reach a genuine opinion about the cases"*.¹¹⁶² It is not suggested that this evidence is other than reliable.

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.

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.

983. The search for consensus, plainly engaged in from the outset or soon afterwards, meant that:

¹¹⁵⁷ Transcript, T988.47-989.12.

¹¹⁵⁸ Transcript, T989.20.

¹¹⁵⁹ Transcript, T989.24.

¹¹⁶⁰ Transcript, T989.31-34.

¹¹⁶¹ Transcript, T2619.22-31.

¹¹⁶² Transcript, T2620.27.

- 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.

Expert evidence: Introduction

984. As noted in Part A of these submissions, the Inquiry has been assisted by the evidence of three expert witnesses: Associate Professor Lovegrove, Professor Asquith and Ms Coakley.¹¹⁶³ Their expertise, and their views on the methodology of SF Parrabell, are outlined below.
985. Where the evidence of Dr Dalton and Dr de Lint relates to an issue raised by the experts, it is referred to below as appropriate.
986. Broadly stated, Associate Professor Lovegrove’s expertise is in criminology and in the design of behavioural and social science research. At [2] of the Lovegrove Report, he makes clear that: “*I have no specialisation in issues connected to gay hate, but I do have significant expertise in the acquisition, analysis and presentation of empirical data in the context of the social and behavioural sciences*”.
987. The opinions expressed by Associate Professor Lovegrove relate to matters that are within his areas of expertise.
988. Broadly stated, Professor Asquith’s expertise is in the area of policing, hate crimes and LGBTIQ hate crimes specifically. At [39] of her report, Professor Asquith says that she is “*one of the leading international experts on hate crime victimisation and policing*”.
989. The opinions expressed by Professor Asquith relate to matters that are within her areas of expertise.
990. Ms Coakley is an experienced lawyer in the US state of Massachusetts, having been an Assistant District Attorney, District Attorney and Attorney General. Her expertise is in the criminal law of Massachusetts, including the policing and prosecution of hate crimes in that context. The BCIF included nine bias crime indicators which originated in Massachusetts.

¹¹⁶³ Each expert’s report includes extensive references and citations. Those citations are generally omitted in these submissions, unless specific reference is made to them.

991. In her oral evidence, Ms Coakley readily accepted, *inter alia*, that:
- a. her professional experience is largely confined to the State of Massachusetts in the US;
 - b. she has limited experience with issues relating to violence against the LGBTIQ community in Australia (outside of work she has done in relation to the death of Scott Johnson);¹¹⁶⁴
 - c. she had not reviewed the completed BCIFs or spoken to the investigators who completed them; and
 - d. she had not spoken to the academic team.¹¹⁶⁵
992. None of those matters affect Ms Coakley's expertise to give evidence about the subjects she addressed, namely:
- a. The bias crime indicators, which originated and are used in Massachusetts;
 - b. The policing and prosecution of hate crimes; or
 - c. The questions she was asked about SF Parrabell and the Parrabell Report.
993. Each expert was asked to comment on the methodology of SF Parrabell. In doing so, the experts did not have access to the completed BCIFs, the investigators who completed them, or the academic team. They were commenting principally on the methodology adopted by the Strike Force, rather than the competence with which the SF Parrabell officers had understood or analysed the historical materials.
994. The experts did have access to the Coordinating Instructions, which were not published with the Parrabell Report. However, they were not asked to comment on the inconsistencies between the different constituent documents, or on the changes to the BCIF, many of which have become apparent only over the course of this Public Hearing (including in some respects after the experts had given both their written and oral evidence).

Key concepts: reliability and validity

995. Before turning to each expert's views on the methodology adopted by SF Parrabell, it is convenient to set out two key concepts that are explained by Associate Professor Lovegrove in his report: reliability and validity (as those terms are used in behavioural and social science research):

¹¹⁶⁴ Transcript, T2722.30-2723.17.

¹¹⁶⁵ Transcript, T2728.2-38.

- [31] *Reliability is a term used in behavioural and social science to describe instruments and assessment tools. An instrument is reliable if two individuals using the instrument would independently reach the same judgments about the thing which is being measured by the instrument.*
- [32] *Validity is a term used in behavioural and social science to describe whether an instrument or assessment tool measures what it purports to measure. In this case, an instrument would be more valid if it were more effective at measuring gay hate and would be less valid if it measured something else."*
- [33] *There are a variety of numerical and mathematical tools used to measure reliability and validity (percent agreement is the measure most readily understood). Poor reliability necessarily reduces validity, but there may be high reliability yet low validity (the individuals' judgements are consistent but erroneously based or based on different criteria).*
- [34] *The Police Parrabell study used a behavioural instrument (the BCIF) to determine whether hate was involved in any of the suspected homicides in any of the of 88 cases. So too the academic study. In fact, the instrument used in the academic study is better described as an instrument comprising two components: a definitional component defining hate and a classificatory component for the purpose of assigning cases to categories according to the circumstances in which the hate was expressed and to the nature of the hate.*
- [35] *In view of each instrument's centrality in the relevant study, the question arises as to its fitness for purpose, having particular regard to its reliability (in this case, whether separate individuals would independently agree that the case involved a hate crime) and its validity (in this case, whether those assessments, even if made reliably, were in fact identifying hate crimes).*

996. Associate Professor Lovegrove goes on to explain the manner in which a reliable and valid instrument may be developed at [38]-[52] of his report.

997. These concepts are important to evaluating both the BCIF and the classificatory framework developed by the academic team (which is considered in Part H). As will become apparent, neither instrument was valid or reliable in the sense explained by Associate Professor Lovegrove.

Common issues

998. Each expert approached the evaluation of SF Parrabell differently, as might be expected given their differing areas of expertise. However, there are a number of issues where two or three of the experts expressed similar views about the methodology adopted by SF Parrabell. Those issues are dealt with first, before the issues which are unique to each expert.

Selection of the bias crime indicators as one of the key components of the BCIF

999. As explained in Part E, nine of the ten indicators in the BCIF were indicators developed in in the US, where they had been designed for the identification of hate crimes generally. Each of the

experts doubted the utility of the bias crime indicators for the exercise undertaken by SF Parrabell. The bases for those doubts included that:

- a. The bias crime indicators were developed in a different context to the deaths under consideration;
- b. The bias crime indicators were developed for a different purpose to the purpose for which they were used by SF Parrabell; and
- c. There was no evidence that the bias crime indicators had been subject to any form of evaluation, let alone the kind of reliability and validity testing described by Associate Professor Lovegrove in his report.

1000. Associate Professor Lovegrove addressed this issue at [64]-[73] of his report:

[64] *Reliability requires, for example, two independent assessors arriving at the same judgements when applying a measure to the same set of data; the measure of reliability is numerical. No such data are offered as justification for the use of the BCIF here.*

[65] *Validity means that the instrument does what it purports to do (in this case classifies) according to an understood and agreed standard. It would be established, in this case, by demonstrating that the BCIF had previously been used to discriminate between cases deemed by (say) an expert panel to: (i) involve; and (ii) not involve gay hate in a manner that was consistent with panel's judgements. Again, no such data are proffered. Even if the BCIF has validity in respect of the purpose for which nine of the ten indicators were developed in the US, there would be good reason to question its validity here. The BCIF appears to be directed at hate crime generally, not specifically to 'gay' hate. Moreover, there might well be significant cultural and sub-cultural differences in the manifestation of 'gay' hate, considered generally for the US and specifically for Sydney, Australia.*

[66] *Questions about validity also arise due to the nature and content of the BCIF. The BCIF includes a set of ten indicators under each of which there are prompts for evidence (i.e. clues) of gay bias in the circumstances of cases. The US source document lists nine indicators. The Strike Force added a tenth indicator, though no explanation was given for its relevance, save that it was based on "research and cases". These ten indicators were taken by the Strike Force team to cover a range of factual aspects of a crime putatively indicative of 'gay' hate as a significant animating factor. Purpose informs validity. Here, as stated above, one of the objectives of the Strike Force's research is to engage and assuage an alienated and agitated 'gay' community. In my view, the community's understanding of 'gay' crime may bear on the appropriateness of the ten indicators and their specific manifestations in a case. I consider that the opinions and understandings of the gay community may have been profitably obtained with a view to improving the validity of the instrument, at least having regard to the context of the present study.*

[67] *In light of the lack of data on the BCIF's reliability, the reader has no idea whether another group of researchers applying it would classify these same cases as they are classified by the Strike Force researchers. (Indeed, the Strike Force researchers' description of the process they adopted to classify each of the 88 cases suggests reliability will be problematic for the reasons stated below.)*

- [68] *Moreover, absent any data on validity, the reader has no idea as to the number of cases classified falsely as involving bias or falsely as not involving bias. The margin of error might well be substantial, even very substantial.*
- [69] *With respect to each of the BCIF's ten constituent elements (indicators), no consideration is given as to how each indicator or the accompanying prompts has the potential to inform the judgement about whether the homicide was motivated by hate.*
- [70] *In fact, on this basis, there is good reason to doubt the reliability and validity of the BCIF as an indicator or measure of hate crime. When developing a scale predicting outcomes or selecting groups according to some criterion, the task is to identify a set of items that individually distinguish between the two groups/outcomes. This is ideally done empirically, here a mere inspection of the items offers sufficient cause to doubt their validity (validity determined by inspection is termed face validity.)*
- [71] *Consider the following components of the BCIF.*
- (1) *Differences': 'Victim is a member of a group which is outnumbered by members of another group ...', 'Incident coincided with a holiday or date of significance ...':*
 - (5) *'Previous existence of bias crime indicators ...', 'Victim was visiting a location ...':*
 - (7) *'Motive of offender/s: 'victim perceived to be breaking from traditional conventions or working non-traditional employment';*
 - (8) *Location of incident: 'victim was in or near an area or place commonly associated with or frequented by members of a particular group', 'location of an incident has specific significance to the victim or POI group';*
 - (9) *'Lack of motive': 'No clear economic or other motive for the incident exists';*
 - (10) *'Level of violence': 'level of violence ... is greater than would be expected for a crime of that type'; 'weapons of opportunity are used ...', 'The number of POI is greater than the number of victims and ...'.*
- [72] *So much is left open in these components to an investigator's personal interpretation as to whether gay hate is involved in the circumstances of a particular case. Are not many homicides not involving gay hate committed under these circumstances; and do not many victims of homicide not involving gay hate satisfy these criteria? It is not clear that each of these components is, in fact, a useful and valid identifier of hate crime. And if any of these are useful and valid identifiers of hate crime, it is also not clear that they have been stated appropriately so that they can be easily and consistently applied by an investigator using the BCIF.*
- [73] *Time may matter too. There appears to be no evidence in the report of the researchers considering how the indicia of hate crime may change over time. The period of 25 years - the time scale of this report - is a long time. Thus, for example, the character of armed robberies changed greatly between 1975 and 2000 due to prevention strategies adopted by potential targets and perhaps the greater role of drug addiction as a motive for offending. The nature of gay hate crimes may similarly have changed over the course of that time period. The criteria by which gay hate crimes are identified may need to change over time as a result.*

1001. The Coakley Report outlined the origins and purposes of the bias crime indicators as tools to assist investigators in investigating hate crimes of all kinds. Ms Coakley concluded that the bias

crimes indicators were not suitable for the exercise of review (as opposed to reinvestigation) undertaken by SF Parrabell:

- [26] *The Massachusetts model protocol for bias crime investigation defines “bias crime indicators” as “objective facts, circumstances, or patterns attending a criminal act, which, standing alone or in conjunction with other facts or circumstances, suggest that the offender’s actions were motivated, in whole or in part, by any form of bias”. These factors are outlined as well in the McLaughlin Training Materials (2005). SFP cited these training materials in preparing the Bias Crime Indicator Forms used in their exercise of reviewing, but not re-investigating, the 88 homicide crimes listed in their Report.*
- [27] *Bias indicators are not required to establish that the predominant motivation for an offender’s actions was hatred or bias. An incident can be classified as a bias crime if the offender was acting out of hatred or bias, together with other motives, or if a bias motive was a contributing factor, in whole or in part, in the commission of a criminal act. But only with a conviction (by trial or by plea) are the indicators useful for the reporting of statistics; unsolved matters might be only reported as incidents which include potential bias crime indicators.*
- ...
- [29] *The Bias Crime Indicators (the basis of the Form created by SFP) were developed in conjunction with other training and investigative multidisciplinary training materials from the Mass. Justice training Council, Department of Justice and the DOJ Office for Victims of Crime. The materials, and the factors, were designed for training police, District Attorneys, Victim Witness Advocates, and community members to recognize, investigate, and identify hate/bias crimes at the time...*
- [30] *They were applicable to the universe of hate/bias crimes, not just LGBTIQ hate/bias crimes, nor just homicides.*
- [31] *They were “clues” that the professionals could look for in determining if a case should be investigated as hate/bias crime and could serve as guidelines to shape that process.*
- [32] *They were meant to help address the totality of the circumstances of the crimes, to allow investigators to follow evidence that could rule in, or rule out, that a crime had been motivated by hate/bias.*
- ...
- [33] *The methodology used by SFP is overinclusive in using the 9 US-derived bias crime indicator factors plus a 10th factor, level of violence, which can be relevant both to non LGBTIQ crimes, and to crimes other than homicides as well. Certain of the factors that might be relevant for race/national origin bias or bias based on religion would not necessarily be helpful in the gay hate/bias crime investigation, at least at the relevant time in NSW.*

1002. Professor Asquith expressed her views on this issue as follows:

- [88] *In my view, there are some obvious limitations to using the BCIF both in an Australian context and in the context of reviewing possible crimes for LGBTIQ bias.*
- [89] *Before considering my specific concerns with the BCIF prompts, I note that SFP—and/or the NSWPF—added the term “immutable” to the first “differences” prompt. This was not in the original set of indicators and prompts as developed by McLaughlin et al, and seems out of place in any discussion about sex, gender, and/or sexuality. While some*

LGBTIQ people believe they are born LGBTIQ, others recognise the fluidity of sex, sexuality, and gender characteristics. Immutability also appears out of place when considering the unique characteristics of men who have sex with men at bars, which can include not only gay and bisexual men, but also men who identify as heterosexual.

- [90] *Furthermore, while Australia is home to a variety of far-right and extremist organisations that target some communities—particularly, Jewish and Muslim communities and their infrastructure such as places of worship—the social and cultural context of the US is somewhat different, especially as it relates to racist hate crime. For example, unlike the US, Australia has not had an organised hate group comparable to the Ku Klux Klan, which has instigated racist violence in the US since its formation in the late nineteenth century.*
- [91] *The work of organisations such as the Southern Poverty Law Centre and the Federal Bureau of Investigation (FBI) in identifying and classifying organised hate groups has set the frame of reference for assessing the characteristics of hate crime, including actions such as cross burnings, which are rare in Australia. While hate crime in the US is regulated largely via Statebased hate crime legislation, the FBI has been responsible for monitoring, tracking, and reporting on hate crimes since the passage of the Hate Crimes Statistics Act 1990 (U.S.), later modified by the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act 2009. Similarly, while the Southern Poverty Law Center was created to monitor, track, and report on racist violence, since its creation in 1971 its remit has expanded to include all forms of hate crime, including heterosexist and cissexist hate crime.*
- [92] *This focus on organised hate groups (OHGs) skews the nature of the understanding of hate crime outside of the US, and directs attention to motivated (or in the terms of Dalton et al, proactive associative) offenders rather than those who aggravate an underlying offence with animus/hate/bias/prejudice, or those who use hate habitually without reference to an ideological framework such as white supremacy.*
- [93] *This US context is plainly obvious in the BCIF prompts and its focus on organised, motivated, and proactive hate offenders. For example, indicator 4 of the BCIF is wholly focused on OHGs, which are rare—if non-existent in Australia—in relation to heterosexist and cissexist hate crime. Similarly, three of the four prompts for indicator 7 of the BCIF, which is focussed on the motive of the offender, point to an organised and motivated offending pattern.*

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.

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.

1005. A number of additional points should also be noted.

1006. First, Professor Asquith’s observations about organised hate groups should not be understood as reflecting a view that there were no LGBTIQ hate crimes perpetrated by groups in NSW during that time. Plainly there were, and such cases are among those considered by each of Operation Taradale, SF Parrabell and SF Neiwand, and by this Inquiry. However, those groups were not “organised hate groups” in the sense in which that term is used by the Southern Poverty Law Centre and the FBI in the US. To the extent that those groups were organised, they appear to have been organised along social lines rather than along ideological lines (see Asquith Report at [77]).
1007. Secondly, Associate Professor Lovegrove’s observations about changes over time are well-founded. Associate Professor Lovegrove is not an expert in matters relating to the LGBTIQ community, as he acknowledged: see above. However, the Inquiry has received evidence of the significant changes in the legal and social treatment of LGBTIQ people in NSW over time. Some of those changes are outlined in Part A. Inevitably, in light of those changes, there were also changes in the manner in which hate was expressed against LGBTIQ people over that time.
1008. The Asquith Report refers to other sets of hate crime indicators, that have been developed, more recently, including by the US-based International Association of Chiefs of Police in 2021 (see [98]), and by Vergani et al in 2022 (see [111]-[112]). Some of those indicators have a timeless quality to them – they appear to be as likely to apply today as at any other time. However, others may be specific to a particular time. For example, the use of a rainbow flag as a symbol of pride (see Asquith Report at [111(b)] and [112(b)]) first occurred in 1978. The presence of a rainbow flag would have little if any relevance to hate crimes committed prior to that time.
1009. Thirdly, the tenth indicator in the BCIF (Level of Violence) had been formulated by Sergeant Steer, in the course of his work as Bias Crimes Coordinator. Putting aside the appropriateness of the BCIF as a whole, as a tool for the SF Parrabell review, such an indicator is a reasonable addition to the other nine when used in the way that Sergeant Steer intended, as Professor Asquith explained:

[100] The tenth indicator or characteristic of hate crime added by NSWPF is appropriate for assessing some hate crimes, especially those involving interpersonal violence. This tenth characteristic is an important factor in many of the “88/85” cases of SFP, and in some reported cases of aggravated bodily harm/grievous bodily harm and sexual assault, but is largely irrelevant to other hate crimes such as those of criminal damage and graffiti.

Concerns about the BCIF itself

1010. The Lovegrove Report and the Asquith Report both criticise the absence of any evidence to support the use of the BCIF for the purposes for which it was used by SF Parrabell.

1011. The Asquith Report notes:

[85] As far as I am aware, and as identified by Dalton et al in their contribution to the SFP Final Report, the BCIF—whilst 9 of the 10 indicators found within it were in wide use across the US as an assessment tool used by police—has not been evaluated either by policing organisations or independent researchers.

1012. As noted above, [38]-[52] of the Lovegrove Report explain how an instrument to measure a phenomenon (such as whether a particular crime was an LGBTIQ hate crime) may be developed, and how that instrument can be tested for reliability and validity.

1013. SF Parrabell did not attempt to undertake any such steps as those described by Associate Professor Lovegrove. Rather, SF Parrabell took existing bias crime indicators (designed for another purpose, namely to assist initial investigators during the early stages of an investigation) and inserted them into a form (the BCIF), created by SF Parrabell, which also included four alternative “findings”, two of which brought in (on the question of whether there was evidence of bias) the requirement of “*beyond reasonable doubt*”. The BCIF, with all these novel and unusual features, was not tested for validity or reliability in any way.

1014. The Lovegrove Report accordingly concludes:

[51] Neither the police, in adopting the BCIF, nor the academic team, in adopting their own framework, appeared to test the reliability and validity of the instruments they applied to identify hate. In my view, neither instrument can be regarded, in view of the absence of appropriate evidence, as fit instruments for identifying gay-hate crimes in the list of 88 cases.

1015. In the Flinders Report, the academic team indicate concern about the lack of evidence to support the BCIF.¹¹⁶⁶ They express that concern, in part, as deriving from uncertainty about aspects of the “scoring” of the ten indicators.¹¹⁶⁷ However, as noted above, Dr Dalton accepted that his understanding was that the SF Parrabell officers did not actually engage in a “scoring” process in the ordinary sense of that word, but rather “*arrived at a view*”, “*intuitively*”, about the responses to the indicators.

1016. The academic team chose to use a footnote, footnote 20 on page 68, to say that they actually do not endorse the BCIF. Footnote 20 reads as follows:

¹¹⁶⁶ Exhibit 1, Tab 2, (n 6), 68-71.

¹¹⁶⁷ Exhibit 1, Tab 2, (n 6), 71.

Whilst the NSWPF placed great faith in this instrument, the academic team were surprised to discover that scarcely any academic literature exists that has evaluated or critiqued this instrument. Indeed, our search efforts could not even locate one academic article. Nor could the NSWPF supply such an article when requested to do so. In the face of an apparent dearth of such literature, the academic team are reluctant to endorse these indicators. The academic team are not decreeing they are wholly deficient and needing to be dropped, but we would have liked to garner independent evidence that they are indeed 'best practice' for law enforcement. We note here that with few choices available (the UK model is over-inclusive because it pivots on victim perceptions), the NSWPF worked with this instrument despite [no]¹¹⁶⁸ empirical evidence for its efficacy.

1017. Dr Dalton gave evidence that he raised his concerns about the BCIF during the course of SF Parrabell, but that he was very conscious of the resources that had already been expended:

A. ... I think I used strong language like, "It's a pretty appalling instrument", that sort of thing. But I think, in the face of, if I could put it politely, the NSW Police Force having got an awful lot of money, having spent an awful lot of detectives' time using this instrument, it's like the process was well in train and I didn't see that I had the power as an academic to sort of tell them to abandon the entire enterprise.

Q. No, that would have been difficult, I suppose. But you could have, couldn't you, said to them, "Look, this methodology that you're using, including this form, is so flawed and so rife with problems, that it's not possible for us to review your work; we're just - this project really can't proceed"?

A. Yeah, in hindsight, perhaps I could have said that, and maybe should have even said that, but it – ¹¹⁶⁹

1018. AC Crandell said that he could not recall whether the academics raised concerns with him about the adequacy of the form (apart from the absence of research data to support it).¹¹⁷⁰ He said that the contents of footnote 20, once he was aware of them, did not cause him to reflect that perhaps his methodology was compromised.¹¹⁷¹

1019. In his statement at [70], AC Crandell said (as noted earlier in these submissions) that one purpose of the academic review was to provide an independent account of SF Parrabell's "systemic validity"; and that by "systemic validity" he meant "the system investigators used to determine whether or not a crime was bias or gay hate related, using the [BCIF] and following the procedures set out in SF Parrabell documentation (Terms of Reference, Investigation Plan and Coordinating Instructions)".

1020. However, the academics did not endorse the form. In that context, a little later in AC Crandell's oral evidence, the following exchange occurred:

¹¹⁶⁸ Transcript, T870.20-24.

¹¹⁶⁹ Transcript, T2446.12-T2447.47.

¹¹⁷⁰ Transcript, T872.3-873.39.

¹¹⁷¹ Transcript, T875.34-876.18

Q. Now, pausing there, the academics' view of the systemic validity was that it didn't pass muster, wasn't it?

A. Well –

Q. The system was the form, and they said they couldn't endorse the form?

A. They couldn't endorse it, yes.

Q. Well, if that was the purpose of the academic review and you got the outcome, which was that they couldn't endorse the system - and I appreciate that the Commissioner has essentially asked you, more or less, this question earlier –

A. Yes.

Q. -- but did it not occur to you then that maybe the whole exercise had been misguided?

A. Well, I still believed that the bias crime indicators were valid and I thought that the processes were appropriate.

THE COMMISSIONER: Q. But you were locked in, Mr Crandell, weren't you, because you had stated publicly, being your perception, that a response was necessary - you had stated publicly much earlier in the piece that you were doing this?

A. Yes.

Q. You had police officers posing as being examples of the investigators who were assembled?

A. Yes.

Q. And, to put not too fine a point on it, you were at a point of no return, weren't you? How could you possibly back out of the exercise?

A. Yes.

Q. You had to go through it –

A. Yes.

Q. -- warts and all?

A. Yes.

Q. And that was your choice, wasn't it?

A. Yes, it was - by the time the researchers had conducted their review, it was late in the piece.¹¹⁷²

1021. In the Dalton/de Lint Response, the academic team agreed with some of the observations in the Lovegrove Report and acknowledged that the BCIF, to their knowledge, had no social science to support it.¹¹⁷³ They wrote: “although the BCIF has been widely used as a training instrument, there are no empirical studies that have tested the typology against ‘a universe of cases’”.¹¹⁷⁴

¹¹⁷² Transcript, T890.2-47.

¹¹⁷³ Exhibit 6, Tab 258, Response to Expert Reports by Professor Willem de Lint (endorsed by Associate Professor Derek Dalton), undated, 2 (SCOI.82365).

¹¹⁷⁴ Ibid.

1022. The academic team there (and elsewhere) confuses the *indicators* (nine of which had indeed been used in training curricula), with the *BCIF* itself, which had never been used at all prior to SF Parrabell,¹¹⁷⁵ nor indeed (on the available evidence) has it ever been used since.
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.
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*".¹¹⁷⁶ 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.¹¹⁷⁷ 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.

Consultation with LGBTIQ community

1029. Professor Asquith and Associate Professor Lovegrove are both critical of the failure to involve the LGBTIQ community in the exercise undertaken by SF Parrabell. The Asquith Report states:

¹¹⁷⁵ Transcript, T874.19-39.

¹¹⁷⁶ Transcript, T2446.39.

¹¹⁷⁷ This is not to say that Strike Force Parrabell went beyond the mission or the functions of the NSWPF. The work of Strike Force Parrabell can fairly be characterised as incidental to those functions: *Police Act 1990* (NSW), s. 6(2)(c).

[148] *The “88” had become lore in NSW LGBTIQ communities, and failing to address the concerns of the LGBTIQ communities in relation to these possible historical hate crimes continued—and some argue, continue—to hamper more effective police-community engagement, and policing responses to the unique needs of these communities.*

[149] *The approach decided upon by NSWPF to review the Parrabell cases, however, may have caused more distrust given the exclusion of NSWPF hate crime specialists from the review, the perceived lack of training and preparation of SFP investigators, the exclusion of LGBTIQ stakeholders from the SFP review, and the appointment of an academic team that had only limited knowledge and expertise in heterosexist and cissexist hate crime (or, in fact, hate crime in general).*

1030. The Lovegrove Report also emphasised the importance of involving the LGBTIQ community in the process of developing an instrument to measure LGBTIQ hate crimes:

[40] *It may also be appropriate for this expert person or group to ensure that they conduct the categorisation apprised of what the gay community would regard as the signs of gay hate in the circumstances of these types of crime, as they were manifest in the era and milieu which are the subject of the investigation. I note that this does not necessarily mean that the observations of the gay community would be accepted uncritically in respect of this (since to do so might otherwise result in the over identification of gay hate). Rather, this input would be approached with the attitude that the gay community may be aware of manifestations of gay hate of which others in the community are not aware.*

1031. Certainly, involving the LGBTIQ community in the process of SF Parrabell would have been consistent with its stated “*overriding objective*”,¹¹⁷⁸ and it would have helped to address the “*significant angst*” to which the Parrabell Report refers.¹¹⁷⁹

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 starting point for SF Parrabell might have been to ask those individuals why they thought that those deaths might have involved LGBTIQ bias.

Reliance on archival material

1033. Professor Asquith and Ms Coakley are both critical of the fact that SF Parrabell was solely reliant on archival material.

1034. The Asquith Report addresses this issue as follows:

[150] *In criminology—as with other disciplines reliant upon government data—the guiding principle is ‘dirty data in, dirty data out’. This is no more obvious than in the desktop, cold case review of historical homicides against gay men and transgender women.*

¹¹⁷⁸ Exhibit 1, Tab 2, (n 6), 18.

¹¹⁷⁹ Ibid, 14.

[151] *Contemporary police officers reviewing case file evidence collected, collated, and archived by other officers, decades ago—and under very different social and cultural contexts—was always going to encounter gaps and barriers.*

[152] *Even with the later (more contemporary) Parrabell cases, in the 1990s, the holdings may be deficient when compared to the kinds of records which might be generated today—more than 20 years later—especially in relation to hate crime, where there have been significant changes to mandatory reporting questions, standard operating procedures, and police training.*

1035. The Coakley Report addresses the issue as follows (emphasis in original):

[35] *If the goal of SFP was to determine which, if any, of the 88 deaths were in fact motivated by an “anti-gay bias”, the methodology was only going to be as successful as the original investigators were **at the time** in recognizing, investigating, and identifying evidence of a possible hate/bias crime.*

1036. The force in these views is self-evident. Indeed, the point is conceded by the academic team, who observe in the Flinders Report: “*an archive can only yield something that was captured in the first instance*”.¹¹⁸⁰

1037. Dr Dalton confirmed, in his oral evidence, his awareness of the limitations of relying only on historical material in completing the BCIFs:

*You would often read these cases, sometimes they would run to 20 pages, and there was almost nothing in it - they were enigmatic. There was none in it that often any instrument could discover and I would suggest that that is because back in the 1980s and '90s, et cetera, a lot of police officers were only thinking about gay and lesbian subjectivity, they were not thinking about GLBTIQ, and the sort of nuanced things that could have been observed objectively, registered, counted, written down and collected, that might have gleaned a much more valuable insight into these crimes, wasn't captured. So it's as though, focusing so much attention on the instrument is to misunderstand that it's the paucity of data that's actually in a way the problem.*¹¹⁸¹

1038. The point is also conceded in the Police Report, whose first recommendation was to improve the NSWPF's “*historically deficient*” system of archiving.¹¹⁸²

1039. If investigations by police in the 1970s, 1980s and 1990s did not record evidence or other matters which might be indicative of a hate crime, those matters were necessarily not before SF Parrabell. Investigators might have failed to identify, or appreciate the significance of, such matters at the time, for any number of reasons including (among others) ignorance about hate crimes,¹¹⁸³ incompetence or laziness,¹¹⁸⁴ or bias against the LGBTIQ community,¹¹⁸⁵ manifesting

¹¹⁸⁰ Ibid, 80.

¹¹⁸¹ Transcript, T2399.1-15.

¹¹⁸² Exhibit 1, Tab 2, (n 6), 39.

¹¹⁸³ See Exhibit 6, Tab 255, (n 169), [155].

¹¹⁸⁴ See Transcript, T2821.7-8.

¹¹⁸⁵ See Exhibit 6, Tab 255 (n 169), [158], [163].

as indifference or malice. 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.

Partial motivation (such as robbery-related violence)

1040. Neither the Police Report, nor the Coordinating Instructions or the Investigation Plan for SF Parrabell, set out a definition of “bias”, or “bias crime”, as used by SF Parrabell officers.

1041. However, as noted in the Flinders Report at page 81, there was at the relevant time a definition of “bias crime” in the SOPs (which had been created by Sergeant Steer and approved in 2015 (see Part B above)). That SOPs definition of “bias crime” was:

*A bias crime is a criminal offence motivated against persons, associates of persons, property or society that is motivated, in whole or in part, by an offender’s bias against an individual’s or group’s actual or perceived; race, religion, ethnic/national origin, sex/gender, gender identity, age, disability status, sexual orientation or homeless status.*¹¹⁸⁶

1042. As the Flinders Report also noted at page 81, the Coordinating Instructions for SF Parrabell did contain a definition of “bias crime indicators”, as follows:

*Objective facts, circumstances, or patterns attending a criminal act or acts which, standing alone or in conjunction with other facts or circumstances, suggest that the offender’s actions were motivated, in whole, or in part, by any form of bias.*¹¹⁸⁷

1043. Both of those definitions expressly included the concept of an offender’s actions being motivated “in whole or in part” by any form of bias.

1044. Associate Professor Lovegrove and Professor Asquith both comment on the approach by SF Parrabell to cases involving robbery or other partial motivations. The Lovegrove Report addresses this issue at [93(4)]:

[93(4)] The finding of robbery being identified as the principal motive in 32 cases, presumably did not preclude the case being identified as a bias crime, since it was stated that bias did not have to be the principal motive for the case to be identified as a bias crime. So what is to be made of this finding? In any case, the principal motive might have been robbery, but perhaps these particular people were targeted because they were thought of as ‘fair game’ because they were gay; if so, hate bias would have been an active factor warranting of itself the ‘bias’ label. Against this, the gay victims may have been targeted for robbery because they were seen as soft targets, not because of their sexuality, or alternatively targeted because it was thought that as gay they would not want to involve the police in light of supposed police prejudice.

¹¹⁸⁶ Exhibit 1, Tab 2, (n 6), 81.

¹¹⁸⁷ Ibid.

1045. These views are consistent with the “offender mode of victim selection”, a different approach to understanding hate crime which is explained in the Asquith Report at [82], and which focuses on “how, not why, offenders discriminately select victims”.

1046. The Asquith Report addresses the issue of robbery and partial motivation more specifically as follows:

[93] *...Additionally, indicator 9 of the BCIF, which focusses on a lack of any alternative motive, precludes a partial motivation (or aggravation) that is common in Australian definitions of hate crime.*

[94] *As to partial motivation, robbery is often a concurrent offence with hate crimes such as assault, which Tomsen calls an “incidental relation” to hate crime motivation, and Gruenewald & Kelley call “instrumental offenses”. This does not mean that hate/bias/prejudice/animus was not present; rather, it indicates that hate can be an additive to an underlying offence, or that the harms of the underlying hate-motivated assault can be enhanced by robbery.*

[95] *While most public knowledge and attention is on the motivated “Type A” hate crimes, the research available demonstrates that hate often aggravates an underlying offence—such as assault, robbery, harassment, or criminal damage—in which case the hate crime motivation may be partial. As noted above, partial motivation is not excluded in the NSWPF definition of hate crime, nor in the scope of the sentencing legislation. Yet, Dalton et al and de Lint and Dalton seem to dismiss these cases as not being hate crimes at all, and that including such cases will evacuate the term hate crime of all meaning.*

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.

Other aspects of the experts’ reports

Lovegrove Report

BCIF: Language and content

1048. The Lovegrove Report did not confine its criticisms of the BCIF to the process by which it was adopted. The content of the BCIF was also problematic.

Imprecise language

1049. At [71]-[72], Associate Professor Lovegrove notes various phrases within the BCIF which he says are open to “an investigator’s personal interpretation” and which he suggests do not adequately distinguish between those cases which are hate crimes and those cases which are not.

1050. Associate Professor Lovegrove points out other examples of linguistic imprecision at [75]-[83].

1051. Individually, such instances of linguistic imprecision might not be fatal to the BCIF, as Associate Professor Lovegrove recognises, including at [79] and [80]. However, as he says at [80] and [83]:

- a. *“it is a bedevilling problem for the BCIF’s reliability (and validity) that definitional vagueness is to be found across multiple indicators ...”* [80]; and
- b. *“In light of these shortcomings, it is too open for reasonable minds to differ on whether gay hate was alive in the circumstances of a particular crime.”* [83]

Combination of bias crime indicators to reach conclusion

1052. At [84]-[86], Associate Professor Lovegrove addresses the process by which the results of the individual indicators were converted into an overall finding of bias. The Coordinating Instructions describe that process as follows:

*an overall conclusion will be made referring to each relevant indicator and the relevant evidence; comments will be recorded in order to clarify each finding; a bias indication does not have to establish that a bias was the only or main motivating factor behind an action contributing to their death.*¹¹⁸⁸

1053. Associate Professor Lovegrove observes that there is a lack of clarity as to how that process actually occurred in the Police Report. At [85], he gives some examples of questions which highlight that absence of clarity:

- [85] (1) *Could the decision of bias on one element carry the decision?*
- (2) *Could less patent evidence of bias across several indicators serve to carry the day?*
- (3) *How might hate on several indicators combine to determine gay hate as a motive in the case? The process may be in effect largely additive – hate on two or more indicators sums to reach a threshold – or interactive – hate on two or more indicators is greater than the sum of the individual attributes.*

1054. The evidence available to the Inquiry from the NSWPF does not provide clear answers to such questions.

Different standards of proof

1055. As discussed earlier in these submissions, two different standards of proof (“beyond reasonable doubt”, and “on the balance of probabilities”) are engaged at different stages of the BCIF process.

1056. Mr Willing, former Homicide Commander, was asked about the requirement in the BCIF, for a “finding” of “evidence of bias crime”, that such evidence be present on the paper record “beyond reasonable doubt”. He readily agreed that that requirement would inevitably mean that very few cases on a paper review would meet that criterion.¹¹⁸⁹

1057. When Mr Willing was taken to the conclusion, in the Police Report, that of the 23 cases said to be “unsolved”, not one was categorised as ‘Evidence of Bias Crime’, he also readily agreed that

¹¹⁸⁸ Exhibit 6, Tab 15, (n 134), 4.

¹¹⁸⁹ Transcript, T1737.15-35.

such a very low number was “almost inevitable” given the requirement of beyond reasonable doubt in the form.¹¹⁹⁰

1058. In his Report, Associate Professor Lovegrove said:

[87] *In relation to the characteristics of reliability and validity, there is a further difficulty. Four intuitively sensible categories were created for the purpose of classifying cases involving hate, namely, ‘Bias Crime’, ‘Suspected Bias Crime’, ‘Not Bias Crime’ and ‘Insufficient Information’. For each case, an assessment in respect of each of these categories is made for each of the ten indicators separately and for the ten considered together. But the standard of proof differs across the two; somewhat puzzlingly, no reason being given.*

[88] *The assessment of bias for each of the ten indicators was to be made according to the standard of ‘beyond reasonable doubt’. This standard is not easy to interpret amid a messy evidentiary scene. It is a fine judgement, one learned by long experience in putting criminal circumstances before courts. The absence of this experience invites inconsistent judgements across independent raters, leading to poor reliability of the BCIF. Along with this, it sets a high evidentiary bar. While this minimises the risk of finding bias where there is no bias, it increases the risk of missing bias where it is actually present. This may set up the study to provide an underestimate of the incidence of bias among the 88 cases.*

[89] *In comparison, the standard of ‘on the balance of probabilities’ is applied to the conclusion on bias as a motivating factor in a case considered in its totality. This seems a more appropriate standard in view of the ‘messy’ character of the evidence. But is the damage already done in light of the ‘beyond reasonable doubt’ standard adopted for the individual indicators? Because of the opaqueness of the overall judgement of bias for each case (see preceding discussion), the question must be left open.*

[90] *A final observation on the standards of proof for the four bias categories. The standard in regard to the first, second and fourth are clear (notwithstanding their problematic application) and internally consistent, but the third, ‘not a bias crime’, is left open and stands apart. For this category there is no accompanying standard of proof to differentiate it from the former category.*

1059. As to [88], it was suggested to Associate Professor Lovegrove in his oral evidence, and he largely accepted, that the criminal standard of “beyond reasonable doubt” is commonly used and considered by juries, detectives and judges.¹¹⁹¹ No doubt that is so. 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

¹¹⁹⁰ Transcript, T1741.37-1742.13

¹¹⁹¹ Transcript, T2890.5-2891.43.

was a bias crime. That approach risked underestimating or downplaying the true number of bias crimes.

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 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.

Completion of BCIFs

1061. At [91]-[92], the Lovegrove Report expresses concerns about the lack of information in the Parrabell Report about the degree of inconsistency between the completed BCIFs:

[91] Evidence of the lack of clarity in the minds of the Strike Force team is apparent in the Report’s description of how the team went about making the required judgements. BCIFs were completed by individual investigative police officers, and subject to individual reviews both in batches as they were submitted and in one final sweep. For the former there were several teams and for the latter a final review team. The aim of these reviews was to ‘ensure consistency in methodology and conclusions’. No information is given on the degree of inconsistency review teams were presented with at each stage of the review process. The review process may have been rigorous and elaborate but there is not sufficient information to confirm this. The review process would have been expected to improve rigour by increasing the coherence - internal consistency - of the classificatory process. However, the review process cannot make the BCIF as an instrument inherently more reliable.

[92] In addition, the perceived need for these multiple reviews raises the possibility that the degree of initial inconsistency was not inconsiderable, and with this evidence of the unreliability of the BCIF as an instrument for measuring bias. This process of review itself did not ensure a high degree of consistency of the process. The actual level of unreliability could only be estimated by the process being independently repeated on the same cases and by different personnel, and then comparing the two sets of case bias

assessments. This is what was required to determine whether the BCIF was sufficiently reliable as an instrument for the identification of bias.

1062. It is submitted that these observations and analyses are correct. They were not challenged, and should be accepted.

Conclusions

1063. Associate Professor Lovegrove summarises his conclusions on the methodology of SF Parrabell, in his Report, as follows (emphasis added):

- [104] *The choice of the BCIF was not soundly based and cannot be taken to be adequate. It is not shown how it is appropriate for the research question. The indicators forming part of the BCIF were developed in relation to possible hate crimes generally; they were not developed for the purpose of identifying gay hate specifically. Along with this, there is no evidence that the BCIF was culturally applicable in the specific context of this study (the gay scene in Sydney, Australia).*
- [105] *The different standards of proof applicable to different parts of the BCIF process were problematic. In particular, the use of the standard “beyond reasonable doubt” for assessments with respect to each of the ten indicators unduly risked missing cases where bias was actually present.*
- [106] *The Strike Force adopted the BCIF without any evidence of its reliability and validity. In view of the team’s process of reviewing cases for the purpose of consistency, the level of reliability of the BCIF may well have fallen below the level required of a quality behavioural measure. This was to be expected in light of the problems associated with Strike Force’s methodology for identifying gay hate.*
- [107] *With respect to validity, an analysis of its face validity pointed to low validity. Moreover, low reliability necessarily undermines validity.*
- [108] *The preceding three problems render the BCIF a crude instrument for present purposes and the accuracy of any conclusion about the incidence of bias very uncertain.*
- [109] *The Strike Force’s reporting of their analysis of the case data is too obscure. This applies to the use of the BCIF in identifying gay hate as a factor in these cases and, with this, the process of classifying the cases according to the presence of bias. Two consequences following from this are:*
- (1) *the reader has no means of assessing the soundness (validity) of the team’s judgements of bias, leaving the reader with no more than uncertain conclusions;*
and
 - (2) *it fails a basic requirement of a social science research project, namely, the opportunity for independent researchers to replicate the actual study.*
- [110] *The pivotal role of the BCIF in this study represents faux science; it imparts a false sense of research rigour and validity.*
- [111] *The Strike Force’s reporting of their analysis opens the way for the ‘headline’ conclusion to be: ‘Only 8 of 88 cases positively found to involve ‘gay’ hate bias.’ This would represent a seriously misleading conclusion. More generally, having regard to the present review of the method, the Strike Force’s Report provides no sound basis for any conclusion about the incidence of gay-hate bias in the 88 deaths. The ‘true’ figure may*

be quite low; the 'true' figure might be alarmingly high. We are none the wiser as a result of this research.

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.

Coakley Report

The SF Parrabell methodology, and the BCIF

1065. The Coakley Report propounds the following analysis (emphasis added):

- [34] *SFP's use of the BCIF substitutes a checklist, or "check the box" method for merely reviewing files of past crimes that should have been investigated initially reviewing the totality of the circumstances.*
- [35] *If the goal of SFP was to determine which, if any, of the 88 deaths were in fact motivated by an "anti-gay bias", the methodology was only going to be as successful as the original investigators were at the time in recognizing, investigating, and identifying evidence of a possible hate/bias crime.*
- [36] *For unsolved cases, the use of the BCIF alone would not assist the SFP police reviewers in identifying, or even categorising, gay hate/bias crime. A hate/bias crime requires proof of intent or motive; where no perpetrator and/or suspect has been identified, the SFP cannot address a crucial element needed for categorisation. It is thus not surprising that both the police summaries of investigations, and the review of just those summaries by the academic team, would result frequently in the conclusion that there was no evidence, or insufficient evidence that it was, or may have been a gay hate/bias crime.*
- [37] *The reviews were done by different police officers, with varying degrees of experience and training who looked, it seems, at each factor almost in isolation. The methodology did not address the issue of whether the original investigations may have been inadequate for reasons such as homophobia, transphobia or negligence. If the original case files were inadequate, the SFP officers had very little with which to work. If then you add the differential of varying degrees of experience and training, you cannot be certain even using the BCIF that the stated result in each case is consistent across the range of cases reviewed. Even the SFP noted that the BCIFs were not "user friendly".*
- [38] *The methodology, including employing the academic team, tended to give the impression of an open, rigorous and scientific investigation, but really only created the illusion that there was not extensive homicidal violence towards the LGBTIQ community during the relevant time period.*

1066. In her oral evidence, Ms Coakley reiterated and robustly stood by her analysis and opinions.¹¹⁹²

1067. It is submitted that Ms Coakley's conclusions, also largely unchallenged, should be accepted.

¹¹⁹² See, e.g., Transcript, T2732.46-2733.42.

Asquith Report

Limitations and methodology of SF Parrabell

1068. The Asquith Report includes the following paragraphs:

[164] SFP was delimited from the outset; it only considered the “88/85”, it only reviewed the existing holdings of each case (and some evidence may have been lost in the intervening years), and no additional investigation was undertaken.

[165] To add to the partial nature of the review, SFP involved 13 officers over a long period of time, and whilst there was some oversight to provide consistency, it is unclear from the SFP Final Report whether each of these officers were trained in recognising the unique attributes of hate crime, or the cultural characteristics of the LGBTIQ community historically and contemporaneously. The absence of training in either of these subjects could have tempered and skewed the assessment of the holdings on each of these homicides. Additionally, the extent of the compliance checking undertaken by the SFP senior officer, and whether there was consistency in recording and reporting against the BCIF, is unclear.

[166] An additional factor hampering the efficacy—and as a consequence, the extent to which SFP could bolster LGBTIQ communities’ trust in NSWPF—was that nowhere in the SFP Final Report does it give the full list and the conclusions reached by each of the NSWPF and the academic teams in respect of each case. The conclusions are entirely opaque.

[167] When these factors are combined with the lack of training and expertise of the SFP police officers and academic team, the results of SFP are unsurprising—especially, the frequent “finding” that there was insufficient information to make an assessment at all.

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.

What could have been done instead

1070. This final point at [167] of the Asquith Report points to another fundamental question: was SF Parrabell a worthwhile exercise at all, given that it was confined only to looking at historical papers, given that it was not to reinvestigate any case, and given the numerous methodological defects referred to above?

1071. It is submitted that the answer to that question, for the reasons outlined above, is no.

1072. Both the Asquith Report (at [159]) and the Coakley Report (at [47]-[49]) refer to the possibility that actual reinvestigation of at least some of the unsolved cases might have been a more worthwhile project.

1073. When such a suggestion was raised with AC Crandell, he accepted that that would have been a possible approach but referred to (among other things) the significant resources and timeframes that would be needed.¹¹⁹³

1074. Counsel for the Commissioner of Police suggested to Ms Coakley, by reference to the reinvestigation of the death of Scott Johnson, that it may not be practicable to apply the necessary level of resources to each of the unsolved cases considered by SF Parrabell. Ms Coakley responded as follows:

- A. *Well, we're just arguing different points here, counselor. I'm not suggesting that every case could or should have those resources, but I think what we learned is if that case had had the appropriate resources from the beginning, instead of writing it off as a suicide, losing evidence, not talking to folks, and if that was done even with some of these other cases that Parrabell looked at, some of those - some of that progress could be made, because there was just not an acknowledgment that it was even a homicide at the beginning.*"¹¹⁹⁴

1075. It may well be that it would be impracticable to dedicate the resources that were dedicated to investigating the death of Scott Johnson to all of the unsolved cases (some 23) that were considered by SF Parrabell. However, three points may be noted.

1076. First, the resources required in each case will depend on the facts of that case. Investigative progress might have been made in some cases with far fewer resources than were required in Scott Johnson's case.

1077. Secondly, SF Parrabell itself plainly required and received significant resources. Equivalent resources could have been allocated to reinvestigating at least some of the unsolved deaths.

1078. Thirdly, a reinvestigation would be the only way to overcome the problem of reliance only on archival material.

¹¹⁹³ Transcript, T795.30-796.27

¹¹⁹⁴ Transcript, T2739.32-47.

PART G: SF PARRABELL – CHOOSING THE ACADEMICS

Purpose of the academic review

1079. At some point after deciding to embark upon SF Parrabell, AC Crandell formed the view that the work of the SF Parrabell officers should be reviewed by an academic, or a team of academics.

1080. AC Crandell nominated several reasons for this view. The first was independence. He said that an academic review would:

... provide an independent account of Strike Force Parrabell systemic validity. ... By systemic validity I mean the system investigators used to determine whether or not a crime was bias or gay hate related; using the BCIF and following the procedures set out in Strike Force Parrabell documentation (Terms of Reference; Investigation Plan; and Coordinating Instructions) to arrive at the determinations recorded...

In my view, it was critical that an impartial analysis took place in parallel with Strike Force Parrabell. ... I was concerned that the LGBTIQ community would not accept a review conducted by police alone given significant community concern at the time over police investigating police during internal investigations. An academic review, as independent as possible from policing in NSW was the goal in attracting a suitable tender.¹¹⁹⁵

1081. In his oral evidence, AC Crandell said:

A. *I'm not sure when that idea came into my mind, but it was - I desperately wanted it reviewed because I wanted an independent view, and I was conscious at the time that the police investigation may not be accepted by the LGBTIQ community on the basis of police reviewing police information. So that's why I wanted the academic reviewers to come in to give that some objectivity.*

...

Q. *When you say that one reason for getting the academic review was "to ensure transparency of the methodology employed by" the strike force, what did you mean there?*

A. *I think to give - it was more about - I was thinking about it from a community perspective more than anything. To give the community some level of comfort that we had looked at bias crime indicators and that we hadn't simply gone about our business in other than a systemic way. So I wanted to gather some credibility for that outside of the NSW Police Force.¹¹⁹⁶*

1082. Thus, according to AC Crandell, the independence and impartiality of the academic review was essential.

1083. For AC Crandell, one advantage of such independence appears to have been that the rejection by SF Parrabell of the views espoused by the LGBTIQ community as to the numbers of gay hate deaths – a rejection which, as noted elsewhere, AC Crandell evidently anticipated – would

¹¹⁹⁵ Exhibit 6, Tab 4, (n 128), [70].

¹¹⁹⁶ Transcript, T888.18-36, T889.20-29.

thereby be rendered more palatable to that community. For example, on 25 June 2016, in an email to Dr Don Weatherburn, the Director of the NSW Bureau of Crime Statistics and Research, AC Crandell said:

*Unfortunately many sections of the gay/lesbian community will never accept our conclusions simply because of our status as police. I was really after some independence and a method of recording findings for prosperity (sic) rather than just sending a media release at the end.*¹¹⁹⁷

1084. A second reason for the academic review (as initially conceived) was “*where possible, [to] identify evidence of poor or biased police investigations*” and to “*determine whether investigative malfeasance was present if possible*”.¹¹⁹⁸ However, AC Crandell acknowledged in his oral evidence that these objectives were ultimately not able to be pursued.¹¹⁹⁹

1085. Thirdly, the academic review was also intended to “*guide future policing strategies of community engagement*”.¹²⁰⁰ However, in his oral evidence, when asked whether the academic review did contribute in this respect, AC Crandell answered, “*No, I don’t believe so. There were recommendations out of Operation Parrabell, but I don’t think the academics had anything to do with that*”.¹²⁰¹

1086. Fourthly, it was hoped that the academic review would improve police methodology and assist the NSWPF to “*develop a more suitable bias crime identification process*”.¹²⁰² However, in his oral evidence, AC Crandell accepted that no such “*more suitable bias crime identification*” was actually proffered or suggested in the Flinders Report. Instead, after the Parrabell Report had been published, AC Crandell “*made those inquiries with another university*”.¹²⁰³ That “*other university*” was CSU. The work of Dr Birch of CSU, and what did and did not ensue from that work, are discussed in Part B.

1087. The desire to improve police methodology was nevertheless one of the reasons put forward by AC Crandell as to why he wished the SF Parrabell officers and the academic team to work closely together. In that context, he said that he did not have in mind a “*completely arm’s length process*”. AC Crandell thought the academic team “*could provide insights along the way*” and could help to “*improve my methodologies*”.¹²⁰⁴

¹¹⁹⁷ Exhibit 6, Tab 33, Email correspondence between Anthony Crandell and Dr Don Weatherburn re: ‘Gay Hate Homicides’, dated 22-25 June 2015 (SCOI.74119).

¹¹⁹⁸ Exhibit 6, Tab 4, (n 128), [70].

¹¹⁹⁹ Transcript, T891.5-27.

¹²⁰⁰ Exhibit 6, Tab 4, (n 128), [70].

¹²⁰¹ Transcript, T891.29-42.

¹²⁰² Exhibit 6, Tab 4, (n 128), [70].

¹²⁰³ Transcript, T891.44-47, T892.1-14.

¹²⁰⁴ Transcript, T893.15-894.23.

1088. Initially AC Crandell intended that the academic review would commence after the SF Parrabell officers had completed their reviews of the papers relating to the cases. However, by July 2016 it had been decided that the academic team should be involved before that process had been completed.¹²⁰⁵

1089. At about that time, as discussed below, the focus on an “independent” approach seems to have undergone considerable change, and to have given way to an emphasis on a “collaborative process”.¹²⁰⁶

1090. These two changes are apparent in an email from Ms Braw to ACON on 19 July 2016. Ms Braw there informed ACON that (emphasis added):

*We have changed our thinking a little and now want the researchers to be involved prior to completing the Parrabell review and conduct the last stage as a collaborative process if that makes sense.*¹²⁰⁷

1091. According to AC Crandell, this change in approach was inspired by a desire to learn from the academic team.¹²⁰⁸

1092. AC Crandell’s position seemed to be that it was possible for the academic reviewers to be both collaborative and objective. For example, his oral evidence included the following exchange:

Q. I’m not focusing so much on bringing them in earlier; I’m focusing on the change to a collaborative approach?

A. Yes. So - well, I don’t - I don’t necessarily know what Jackie means by “collaborative”, but my view is that we can collaborate and discuss different cases and different outcomes, but I still wanted them to provide objectivity in relation to their findings. So I didn’t want to come up with exactly the same findings unless that was the case. So I wanted to be transparent from that perspective.

Q. Doesn’t “collaborative” suggest something a bit different from independent?

A. Well, yes, it does, but it’s not - that’s not my word, but - but I wanted discussions with - I didn’t want them to simply go about their business and not have anything to do with the investigation team along the way, because we could probably learn from them in terms of what they found and any systematic processes that they may have come up with. In fact, they did come up with.

Q. If your overriding concern, though, was that the whole point of having the academic review was to be independent and thus give comfort, if that’s the word, to the community that the police weren’t just investigating themselves –

A. Yes.

¹²⁰⁵ Exhibit 6, Tab 67, Email correspondence between NSWPF and ACON re: SF Parrabell parameters, attaching ACON Gay Hate Murders List, 19 July 2016, 2 (SCOI.74279).

¹²⁰⁶ Ibid.

¹²⁰⁷ Ibid.

¹²⁰⁸ Transcript, T922.7-12.

Q. -- then you would want them to be literally independent, wouldn't you? You would want them to be hands-off, arm's-length?

A. I want them to be objective, but I don't see that that bars them from speaking to any member of the Parrabell team. In fact, I encouraged that.¹²⁰⁹

In search of possible academic reviewers

1093. In June 2015, AC Crandell corresponded with Dr Weatherburn in relation to the topic of an academic review. Dr Weatherburn was not able to assist himself, but suggested Professor Gail Mason from the University of Sydney Law School and Dr Andrew McGrath from CSU as possible candidates.¹²¹⁰

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.*¹²¹¹

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)¹²¹² 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.

¹²⁰⁹ Transcript, T922.14-47.

¹²¹⁰ Exhibit 6, Tab 33, (n 1197).

¹²¹¹ Ibid.

¹²¹² Transcript, T993.25.

1097. As to the second problem, several observations may be made.

1098. First, as Dr de Lint conceded, unless the academics had gone back and considered the historical papers themselves, they could not assess the quality and effectiveness of the answers arrived at by the SF Parrabell officers in the BCIFs.¹²¹³

1099. Secondly, it was initially envisaged (see the RFQ, discussed below, at clauses 3.4 and 4.1) that the academic reviewers would indeed have access to all the historical material which the SF Parrabell officers had looked at. However, as events transpired, that did not happen.

1100. Thirdly, Professor Asquith (who had been a member of one of the two unsuccessful tendering teams) gave the following evidence:

Q. If you had been chosen - your team - and it turned out you were not going to get access to the original source material which the Parrabell officers had had, and you were only going to get the completed BCIF forms filled in by those officers, what would your response have been? What would you have done?

A. In the first instance, I would have tried to negotiate with NSW Police to explain to them how their methodology would not result in the outcome that they were seeking if they were unprepared to share those extra resources, the original resources, to the - what I feel is that the academic team that were appointed were given third-hand data. What I would have been wanting to get is to get at least second-hand data, the summaries of those case files, not the BCIF forms. If that was not possible, then I would have handed back the money and told them that I could not meet the brief.¹²¹⁴

1101. Ms Braw, who reported to Ms Sharma, was designated as the “project manager for the academic review side of things”.¹²¹⁵ Ms Braw was also designated as the person who would liaise with those academics ultimately awarded the tender.¹²¹⁶

1102. On 25 January 2016, Ms Braw informed AC Crandell by email that Professor Mason had said that she had too much work on at that time. Ms Braw suggested Professor Asquith, who “has experience with the history and the AVP in the past and she seems objective enough”.¹²¹⁷

1103. AC Crandell responded:

I think it worth speaking with Nicole, we just want someone that brings independence to the role. If no good there perhaps we should try Chris Deverey and perhaps send it out to tender or expressions of interest.¹²¹⁸

¹²¹³ Transcript, T2654.1-34.

¹²¹⁴ Transcript, T2826.3-19.

¹²¹⁵ Transcript, T1204.5-18.

¹²¹⁶ Transcript, T1204.5-18.

¹²¹⁷ Exhibit 6, Tab 34, Email correspondence between Jacqueline Braw and Anthony Crandell re: Parrabell researcher, 25 January 2016, 1 (SCOI.74148).

¹²¹⁸ Ibid.

1104. On 27 January 2016, Ms Braw emailed Dr Asquith and her colleague Dr Angela Dwyer to enquire whether they were interested. Professor Asquith responded to say that she and Dr Dwyer would like to submit a quote.¹²¹⁹

1105. Two aspects of Ms Braw's email of 27 January 2016 are noteworthy (emphasis added):

- a. first, Ms Braw said that "*Supt Crandell is really keen to ensure that whatever we produce is verified by an independent researcher*";¹²²⁰ and
- b. second, Ms Braw said that "*[w]e would prefer someone who is neither actively 'pro' or anti' police ... which kinda rules out a few others you and I could probably think of!*"¹²²¹

1106. Asked whether he knew who Ms Braw was referring to, AC Crandell said:

*[n]ot really. I don't - I don't know. We had contact with academics in my role, but, I mean, there's so many different views in the LGBTIQ community, and certainly in academic - in the academic land I'm not sure who she might be referring to.*¹²²²

1107. Ms Sharma said:

*I don't know. You would have to ask Jackie that. I wouldn't know. I mean, I can't - I'd only be guessing. Because Jackie is my subject matter expert, so I'm relying on her to advise me. I manage eight portfolios. This is one of them.*¹²²³

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.

1109. By 11 February 2016, Professor Asquith and Dr Dwyer had submitted a draft proposal to conduct a review of the SF Parrabell findings.¹²²⁴

1110. By early March 2016, Dr Chris Devery, Manager of the Research Co-ordination Unit at NSWPF, had advised AC Crandell that at least three quotes were needed in order to satisfy NSWPF procurement guidelines. Dr Devery suggested Professor Murray Lee from the University of Sydney, and Nicholas Cowdrey from the University of NSW, as possible reviewers. AC Crandell then asked Ms Braw to assist him in obtaining additional quotes.¹²²⁵

¹²¹⁹ Exhibit 6, Tab 35, Email correspondence between Jacqueline Braw and Nicole Asquith re: Research proposal, 27 January–11 February 2016 (SCOI.78856).

¹²²⁰ Ibid.

¹²²¹ Ibid.

¹²²² Transcript, T902.

¹²²³ Transcript, T1220.32-36.

¹²²⁴ Exhibit 6, Tab 20, Contract Brief of Dr Nicole Asquith and Dr Angela Dwyer – Independent Evaluation of Strikeforce Parrabell, 11 February 2016 (SCOI.77316).

¹²²⁵ Exhibit 6, Tab 36, (n 961).

1111. On 13 April 2016, Professor Lee expressed interest, on behalf of a team comprising himself, Professor Thomas Crofts and Professor Tomsen, in tendering for the project.¹²²⁶

1112. On 14 April 2016, Ms Braw replied to Professor Lee.¹²²⁷ As to what the academic review would involve, Ms Braw set out nine bullet points which summarised the main tasks to be completed by the academics. Those nine bullet points were, in order (emphasis added):

- *An independent evaluation of SFP's review of the 88 deaths*
- *An examination of the process and method used to conduct SFP including the application of NSWPF Bias Crime indicators*
- *Access and review original source materials as needed*
- *Research and provide an introductory section detailing the historical context of policing during this period and a commentary on investigating deaths of men identified as gay or transgender during this period*
- *Provide a conclusion including comment on the efficacy and quality of SFP's review, the outcomes of the review, does the researcher agree with SFP outcomes/determinations?*
- *Provide recommendations for future policing, community engagement, training, development of bias crime indicators/processes*
- *Provide relevant recommendations for future directions of the GLLO program*
- *Produce and publish a research article*
- *Throughout this entire process maintain close contact with the Corporate Sponsor Sexuality & Gender Diversity and the Senior Programs Officer.*¹²²⁸

1113. No such list had been provided to Professor Asquith or Dr Dwyer.

1114. On 5 May 2016, Professor Lee emailed Ms Braw with a draft proposal to conduct the SF Parrabell review. A final version, which included minor amendments, was submitted the following day.¹²²⁹

1115. By mid-May 2016, it had become apparent that a formal RFQ would need to be issued before an academic review team could be appointed. Steps were taken to prepare a draft RFQ (as to which see below), whilst Ms Braw continued to attempt to locate a third quote from an academic team.

¹²²⁶ Exhibit 6, Tab 37, Email correspondence between Jacqueline Braw, Anthony Crandell and Murray Lee re: Anti-gay homicides in NSW, 13-28 April 2016, 2 (SCOI.74202).

¹²²⁷ Ibid.

¹²²⁸ Ibid.

¹²²⁹ Exhibit 6, Tab 21, Research Proposal of Professor Murray Lee, Professor Stephen Tomsen and Professor Thomas Crofts – Independent evaluation of Strikeforce Parrabell's review of the identified 88 deaths during the late 70s, 80s and 90s, 12 February-6 May 2016 (SCOI.74206).

1116. In about June 2016, then Associate Professor Dalton of Flinders University was suggested as a possible third tenderer. On 24 June 2016, Ms Braw emailed Dr Dalton asking whether he would be interested in submitting a proposal to review the findings of SF Parrabell.¹²³⁰ That email set out the same nine bullet points that had been provided to Professor Lee.

1117. Dr Dalton said that Ms Braw explained to him on the phone that:

*It was conveyed to me that this was not a 'rubber stamping' process, but one where full and frank scrutiny was encouraged. I was given to understand that regardless of the police findings, if we found significant differences, we were free to state these differences without fear or favour.*¹²³¹

1118. By July 2016, however, as noted above, the focus on an “independent” approach had undergone considerable change, and had given way to an emphasis on a “collaborative process”.¹²³²

The RFQ, the “collaborative approach”, and some “challenges”

1119. In July 2016, a draft RFQ was finalised.¹²³³ In its final form,¹²³⁴ it was sent to the three prospective tenderers on 22 July 2016.¹²³⁵

1120. Section 4 of the RFQ was headed ‘Terms of Reference’. It contained only one clause, clause 4.1, which was headed ‘Services Required’. The required “services” were listed, in ten bullet points.¹²³⁶ The second to ninth of those bullet points were in substantially the same terms as the nine bullet points set out in Ms Braw’s earlier emails to Professor Lee and Dr Dalton (on 14 April and 24 June 2016 respectively). However, inserted at the top of the list, as the first bullet point, was a new one, namely:

- *A collaborative approach to working with NSWPF on Strikeforce Parrabell*¹²³⁷

1121. Consistently with the new and prominent emphasis on “collaboration”:

- a. Clause 3.3 stated that the researchers would be invited (emphasis added) “to collaborate with NSWPF to provide advice on reviewed cases, determinations (conclusions),

¹²³⁰ Exhibit 6, Tab 244, Emails between Jacqueline Braw and Derek Dalton, and Derek Dalton and Narmon Tulsi re: Seeking proposals to conduct an independent review “Strikeforce Parabell”, 24 and 29 June 2016 (SCOI.79884). See also Exhibit 6, Tab 1, Joint Statement of Professor Willem de Lint and Associate Professor Derek Dalton, 28 October 2022, 3 (SCOI.76959).

¹²³¹ Exhibit 6, Tab 1, (n 1230), 3.

¹²³² Exhibit 6, Tab 67, (n 1205).

¹²³³ Exhibit 6, Tab 264, Email from Jacqueline Braw to Voon Chin, 14 July 2016 (SCOI.74248).

¹²³⁴ Exhibit 6, Tab 23, (n 996).

¹²³⁵ Ibid; Exhibit 6, Tab 43, Email from Jacqueline Braw re: Invitation to tender, 22 July 2016 (SCOI.74286).

¹²³⁶ Exhibit 6, Tab 23, (n 996), 7.

¹²³⁷ Ibid.

methodology, language used and any other aspect of the Strikeforce Parrabell review”,¹²³⁸ and

- b. Clause 6.1 said that a tenderer’s response should include (emphasis added) *“Willingness and capacity to closely liaise with Operational Programs, Strikeforce Parrabell Team and the Corporate Sponsor, Sexuality and Gender Diversity, as required”*.¹²³⁹

1122. As outlined below, the Flinders proposal enthusiastically embraced the *“requirement”* of a *“collaborative approach”* and *“close liaison”*.

1123. According to Ms Sharma, the RFQ was drafted by Ms Braw and *“refined”* by Ms Braw and Ms Sharma before it was sent to AC Crandell.¹²⁴⁰

1124. When AC Crandell was asked whether he had a part in drafting the RFQ, he stated *“I don’t believe so”*.¹²⁴¹

1125. However, the documentary evidence would indicate, essentially as Ms Sharma recalled, that:

- a. Ms Braw produced an initial draft of the RFQ (in May 2016), which she sent to both AC Crandell and Ms Sharma;¹²⁴²
- b. That draft listed, as the ‘Services Required’, the original nine bullet points (not the ten as in the final July document);¹²⁴³
- c. By 11 July 2016, Ms Braw had produced a further draft of the RFQ;¹²⁴⁴
- d. Ms Sharma made some amendments to the draft, which was then sent to AC Crandell;¹²⁴⁵
- e. AC Crandell made one or more *“edits”* of his own;¹²⁴⁶ and
- f. By that time, July 2016, the proposed RFQ included all ten bullet points, including the first one, namely, *“A collaborative approach to working with NSWPF on Strikeforce Parrabell”*.¹²⁴⁷

¹²³⁸ Ibid, 6.

¹²³⁹ Ibid, 8.

¹²⁴⁰ Transcript, T1202.38-42. See also T1211.18-41.

¹²⁴¹ Transcript, T927.1-3.

¹²⁴² Exhibit 6, Tab 262, Email correspondence between Jacqueline Braw, Anthony Crandell and Shobha Sharma re: Strike Force Parrabell RFQ, 19 May 2016 (SCOI.74216).

¹²⁴³ Exhibit 6, Tab 262A, Request for Quotation: Evaluation of Strikeforce Parrabell (Draft), undated (SCOI.74217).

¹²⁴⁴ Exhibit 6, Tab 263, Email correspondence between Shobha Sharma, Jacqueline Braw and Anthony Crandell re: Strike Force Parrabell RFQ, 11 July 2016 (SCOI.74247).

¹²⁴⁵ Ibid.

¹²⁴⁶ Ibid; Exhibit 6, Tab 264 (n 1233).

¹²⁴⁷ Exhibit 6, Tab 264A, Draft Request for Quotation: Strikeforce Parrabell Project, undated (SCOI.74249).

1126. AC Crandell was asked about the term “collaborative” (in Ms Braw’s email to ACON of 19 July 2016). He agreed that “collaborative” suggested something a bit different from independent, but then said (as to the word “collaborative”), “that’s not my word”.¹²⁴⁸
1127. Pressed on this answer, AC Crandell again stressed that the word was “Jackie’s word”. Asked whether he distanced himself from it, or said the word was wrong in any way, AC Crandell’s response was, “No, not necessarily”.¹²⁴⁹
1128. AC Crandell was also asked about the first bullet point in the RFQ of 22 July 2016, namely, “A collaborative approach to working with NSWPF on Strikeforce Parrabell”.¹²⁵⁰
1129. Again, AC Crandell was most unwilling to acknowledge the word “collaborative” as his word. He “supposed” he took responsibility for it. Once more, he insisted that he had not drafted the RFQ.¹²⁵¹
1130. Clause 3.4 of the RFQ was entitled ‘Challenges’, and read as follows (emphasis added):
- One of the key challenges is locating suitable, qualified and independent researchers.*
- Many researchers in this area are connected to the “gay community” and may not be as independent as desirable.*
- Some researchers have had their own personal history of negative relationships with police.*
- Other researchers are concerned about the highly political nature of this area.*
- Another challenge will be the sheer volume of original material that researchers may need to deal with. NSWPF will provide access to this material however, the volume is significant.*¹²⁵²
1131. AC Crandell was asked about this clause, including whether it indicated that someone connected with the “gay community” might not be objective.¹²⁵³ He said it did not. Again, he insisted, several times, that the RFQ was not his document, and that he had not drafted it. He conceded that, “probably”, it was “unlikely” that he had not reviewed it.¹²⁵⁴
1132. AC Crandell accepted that Professor Asquith and Dr Dwyer, and also Professor Tomsen and Professor Lee, were “connected to the gay community”, but said that the RFQ was not suggesting that therefore they might not be as objective as desirable. He said that Dr Dalton

¹²⁴⁸ Transcript, T922.25-27.

¹²⁴⁹ Transcript, T924.3-41.

¹²⁵⁰ Transcript, T933.8-42.

¹²⁵¹ Ibid.

¹²⁵² Exhibit 6, Tab 23, (n 996), 6.

¹²⁵³ Transcript, T926.33-933.4.

¹²⁵⁴ Transcript, T927.45-928.6.

and Dr de Lint were also connected to the “*gay community*”, because they had “*written articles about gay-related topics*”.¹²⁵⁵

1133. AC Crandell was asked, “*Why would people connected to the gay community not be as independent as desirable?*” He answered “*Well, I don’t know*”.¹²⁵⁶ He said he did not know what was meant by these words in the RFQ, and that he could not give an explanation as to why such a statement would be put in the RFQ. He said it “*may be the case*” that it was “*a rather strange statement*”.¹²⁵⁷

1134. When Ms Sharma was pressed on whether a person’s connection to the “*gay community*” might indicate that they lacked independence, she said:

*Look, I think in hindsight, we could have worded that better, but what we had in mind was not to exclude people - in fact, we wanted people that were connected to or understood the gay community, so that was certainly a desirable. But what we had in mind, and how we worded it, is perhaps not the most effective way of having done it.*¹²⁵⁸

1135. Ms Sharma said that she thought a connection with the “*gay community*” could be a good thing, because of their familiarity with the subject matter, but if they “*had a strong background of being an activist*”, that “*would impact on the independence they would bring*”.¹²⁵⁹

1136. Ms Sharma at first said she did not have anyone in mind in that regard.¹²⁶⁰ However, a little later in her evidence, she nominated “*Stephen Tomsen potentially*”.¹²⁶¹

1137. Ms Sharma also accepted that if her view, and that of Ms Braw, AC Crandell and Dr Devery, was that activist researchers such as Professor Tomsen and Professor Asquith might not be as independent as desirable, and if independence was an important criterion, then those teams were “*perhaps*” going to start behind the others on the starting grid.¹²⁶²

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

¹²⁵⁵ Transcript, T931.45-932.14.

¹²⁵⁶ Transcript, T930.21-931.9.

¹²⁵⁷ Transcript, T932.16-933.4.

¹²⁵⁸ Transcript, T1213.1-7.

¹²⁵⁹ Transcript, T1213.9-28.

¹²⁶⁰ Transcript, T1213.24-28.

¹²⁶¹ Transcript, T1215.4-15.

¹²⁶² Transcript, T1216.11-32.

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.

The selection criteria, and the three proposals

1139. Section 5 of the RFQ was entitled ‘Selection Criteria’. The selection criteria were as follows:

1. *The proposed solution meets the requirements as set out in RFQ 001286*
2. *Demonstrated capability to provide services, including support, of comparable complexity and size*
3. *Demonstrated experience in supply of similar services within Australia*
4. *Demonstrated objectivity to ensure an independent evaluation is conducted*
5. *Assessment of value for money*
6. *Capacity to obtain and maintain a security clearance as determined by the NSW Police Force at the level appropriate to the position held and/or information/data accessed.*¹²⁶³

1140. On 28 July 2016, Dr Dalton wrote to Ms Braw. He enclosed what he described (emphasis added) as a “*formal proposal to conduct a collaborative review of Strikeforce Parrabell*”.¹²⁶⁴

1141. The Flinders proposal identified “*five key reasons*” why their team should be awarded the tender, namely:

- (i) *Excellent research expertise*
- (ii) *Independence [a guarantee of objectivity]*
- (iii) *Dedication to genuine cooperation*
- (iv) *A meticulously thought out approach to the brief provided*
- (v) *Value for money*¹²⁶⁵

1142. Under “*Excellent Research Expertise*”, the relevant experience of the three team members was summarised.¹²⁶⁶ In particular it was said that:

As to Associate Professor Dalton:

- He “*has extensive experience in conducting and publishing research in relation to the policing, [sic] homosexuality and public space*”, especially in relation to beats.

¹²⁶³ Exhibit 6, Tab 23, (n 996), 8.

¹²⁶⁴ Exhibit 6, Tab 25, Tender Proposal of Flinders University (Associate Professor Derek Dalton, Professor Willem de Lint and Dr Danielle Tyson), 28 July 2016 (SCOI.75775).

¹²⁶⁵ *Ibid*, 25-30.

¹²⁶⁶ *Ibid*, 25.

- He “does not profess to be expert per se in ‘hate crime’”, but he “nevertheless has an excellent grasp of this academic literature particularly as it relates to the commission and indicators of homophobic violence”.¹²⁶⁷
- References to Dr Dalton having presented one lecture in 2004 and a “keynote address” in 2006, and to his attending monthly meetings of a “GLBTIQ South Australia Police Focus Group” from 2004 to 2007, testified to the fact that that [he] “has extensive experience communicating with police officers and fostering mutual respect, trust and cooperation with a view to securing positive outcomes”.¹²⁶⁸

As to Professor de Lint

- His areas of interest include security and policing, particularly public order policing.
- He has an esteemed international reputation in relation to his policing research.
- He has expertise in “policing culture and practices”, which would be “crucial” to the approach that the team would take to “this collaboration”.¹²⁶⁹

As to Dr Danielle Tyson

- She has 15 years experience researching in the area of intimate partner violence, domestic homicide, filicide in the context of separation and divorce, and family violence and family law reform.¹²⁷⁰

1143. Under “*Independence [a guarantee of objectivity]*”, it was said that this arose from the fact the academics were located in South Australia and Victoria, and not NSW. By contrast, there was “*baggage*” associated with key players (in NSW) such as “*activists, academics*” and others.¹²⁷¹

1144. Under “*Dedication to genuine cooperation*”, the proposal stressed (emphasis added):

- That the project would be “*a collaboration*”;
- That “*fostering transparency and genuine cooperation*” would “*foster a collaborative spirit*”;
- That by “*working creatively and collaboratively*” (and with a focus on the minutiae), the police and the academic team would craft a meticulously well thought through report; and

¹²⁶⁷ See also Dr Dalton’s oral evidence to the Inquiry, including at T2023, T2430.36-2431.21.

¹²⁶⁸ Exhibit 6, Tab 25, (n 1264) 25.

¹²⁶⁹ Ibid, 25-26.

¹²⁷⁰ Ibid, 26.

¹²⁷¹ Ibid, 27.

- That the *“intimate police knowledge (of the cases under review) and our academic knowledge will coalesce in a manner that sees a very tightly honed report produced that both parties will be proud to carry their mark of authorship”*.¹²⁷²

1145. In his oral evidence, Dr Dalton agreed that, in his tender proposal, he devoted *“considerable emphasis to the idea of collaboration”* as being how he saw the project proceeding.¹²⁷³ He said that the document that the Flinders team were responding to (i.e. the RFQ) *“really emphasised this idea of collaboration”*, and that colleagues at Flinders University told him to emphasise this concept.¹²⁷⁴

1146. At another point in his oral evidence, in relation to his tender proposal, Dr Dalton said this:

Could you even accuse me, in this document, of kind of embellishing a little to try to get the tender because this is what you have to do with this process? I think even you could do that and that would be justified. We were told to embellish, to sell yourself like there’s no tomorrow to get the money.

*They were literally salivating when I went into that office saying, “We might be able to get this tender. They were sort of just seeing the dollar signs, they took 20 something per cent or 25 per cent off the top of it.”*¹²⁷⁵

1147. Under *“A meticulously well through approach to the brief provided”*, among the matters highlighted was that (emphasis added) *“hon[ing]”* the *“quality and scope”* of SF Parrabell would be *“a two-way process”*, and that Dr Dalton and his team would write the first draft of the (single) report *“in close collaboration with police”*.¹²⁷⁶

1148. Under *“Value for money”*, the Flinders University team offered a 66% discount on the *“expertise charge rates”*, or the daily rates of the academic team, because they were *“enthusiastic about the research topic and are keen to secure the work”*.¹²⁷⁷

1149. On 5 August 2026, Professor Lee submitted a response to the RFQ. His proposed research team included himself, Professor Crofts and Professor Tomsen.¹²⁷⁸ Professor Tomsen was noted as the *“most published academic expert on gay homicides, masculine violence and hate crime in Australia”*.¹²⁷⁹ Professor Crofts was identified as a *“expert in homicide law”* and a person who had worked on *“numerous GLBTI and GLLO focused projects”* with the NSWPF.¹²⁸⁰

¹²⁷² Ibid, 27-28.

¹²⁷³ Transcript, T2453.47, T2454.39.

¹²⁷⁴ Transcript, T2454.11-35.

¹²⁷⁵ Transcript, T2434.4-14.

¹²⁷⁶ Exhibit 6, Tab 25, (n 1264) 28.

¹²⁷⁷ Ibid, 30.

¹²⁷⁸ Exhibit 6, Tab 27, Tender Proposal of Professor Murray Lee, Professor Thomas Crofts and Professor Stephen Tomsen, 4 August 2016 (SCOI.75764).

¹²⁷⁹ Ibid, 7.

¹²⁸⁰ Ibid.

1150. At about the same time, Professor Asquith and Dr Dwyer also submitted a response to the RFQ.¹²⁸¹

The selection process

1151. A Quotation Evaluation Committee (**QEC**), which consisted of AC Crandell, Ms Sharma, Dr Devery and Ms Braw, evaluated the three tenders.

1152. The results of the evaluation are tabulated in a document styled 'Quotation, Evaluation and User Guide', bearing various dates between 18 July and 22 August 2016.¹²⁸²

1153. The six criteria were each given a mark out of 5. Thus, the maximum "raw" score was 30. The Lee/Crofts/Tomsen team scored 23.5; the Asquith/Dwyer team scored 26; and the Dalton/de Lint/Tyson team scored a perfect 30.¹²⁸³

1154. When a weighting process was applied to the raw scores, whereby the maximum score was 100, the Lee/Crofts/Tomsen team scored 81; the Asquith/Dwyer team scored 90; and the Dalton/de Lint/Tyson team scored a perfect 100.¹²⁸⁴

1155. Accordingly, the Dalton/de Lint/Tyson tender was successful. On around 30 September 2016, NSWPF and Flinders University entered into a contract entitled 'Terms and Conditions of Supply for Strikeforce Parrabell Project (Supply Agreement)'.¹²⁸⁵ The unsuccessful tenderers were notified shortly thereafter. The entry into the supply agreement was authorised by AC Crandell.¹²⁸⁶

1156. In about October 2016, the academic team from Flinders University commenced work on the review of SF Parrabell.

1157. The selection process, and the scores allocated to the three competing tenders, give rise to some concerns, including those noted in the following paragraphs.

1158. For the 2nd and 3rd criteria, related to "capability" to provide the services, and "demonstrated experience" in the supply of similar services, all three teams were ranked equally, each scoring 5 out of 5.¹²⁸⁷

¹²⁸¹ Exhibit 6, Tab 26, Tender Proposal of Dr Nicole Asquith and Dr Angela Dwyer, undated (SCOI.75770).

¹²⁸² Exhibit 6, Tab 22, NSWPF Quotation, Evaluation and User Guide for Procurement Activities up to \$150,000 (QE), undated (SCOI.77324).

¹²⁸³ Ibid, 15-17.

¹²⁸⁴ Ibid.

¹²⁸⁵ Exhibit 6, Tab 31, Supply Agreement with Flinders University – Contract Number 001286, executed 30 September 2016 (SCOI.77325); Exhibit 6, Tab 46, Email correspondence between NSW Police Force and Flinders University re: Executed Supply Agreement, 6-7 October 2016 (SCOI.74332).

¹²⁸⁶ Exhibit 6, Tab 4, (n 128), [81].

¹²⁸⁷ Exhibit 6, Tab 22, (n 1282), 15-17.

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.¹²⁸⁸ By comparison, both Professor Tomsen and Professor Asquith were widely regarded and respected as experts on the subject matter of hate crime.¹²⁸⁹
1160. Ms Sharma readily agreed that Professor Asquith and Professor Tomsen had expertise in hate crime, as did Professor Lee and Dr Dwyer.¹²⁹⁰
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.¹²⁹¹
1162. AC Crandell flatly disputed the proposition, put to him by the Commissioner, that the most significant factor would be the level of experience in the particular area of motivation that SF Parrabell was concerned with. AC Crandell said, "*No. I think that's a factor. I don't think it's the most significant factor necessarily.*"¹²⁹²
1163. For the 4th criterion, "objectivity", the Dalton/de Lint/Tyson team was awarded a perfect score, 5 out of 5. The comment assigned to this factor was: "*This team is from outside NSW and demonstrates the most objectivity of all RFQs.*"¹²⁹³
1164. No other particular factor, besides geography, seems to have been perceived, or propounded, as providing support for the perfect 5/5 score for the Dalton/de Lint/Tyson team on the "objectivity" criterion. In his oral evidence AC Crandell confirmed that the reason that the Flinders team was perceived to be the "*most objective*" was that they had "*no contact with the communities of LGBTIQ of New South Wales*".¹²⁹⁴
1165. These sentiments were echoed by Ms Sharma, who stated that because the Flinders University team was based in South Australia, that was an advantage in terms of objectivity because:

¹²⁸⁸ Exhibit 6, Tab 25, (n 1264) 25-26.

¹²⁸⁹ See for example Exhibit 6, Tab 27, (n 1278), 7; Exhibit 6, Tab 22, (n 1282), 15; Exhibit 6, Tab 34, (n 1217), 1.

¹²⁹⁰ Transcript, T1226.9-14.

¹²⁹¹ Transcript, T952.34-959.36.

¹²⁹² Transcript, T950.41-951.8.

¹²⁹³ Exhibit 6, Tab 22, (n 1282), 17.

¹²⁹⁴ Transcript, T952.3-17.

*They didn't know anyone in New South Wales, so there could be that element of being at arm's length from whatever happened here. So they could look at it without being part of it, so to speak.*¹²⁹⁵

1166. Yet when pressed on this answer, Ms Sharma immediately acknowledged that actually she did not know what difference it would make if the researchers had some awareness of some of the police involved or of some of the deaths: *"I don't know. It wouldn't make a great deal of difference, maybe."*¹²⁹⁶
1167. By contrast, the other two teams were marked down on the "objectivity" criterion, heavily so in the case of the Lee/Crofts/Tomsen team (a mark of 2 out of 5).¹²⁹⁷
1168. In the case of the Asquith/Dwyer team (4 out of 5), the relevant comment was *"One University – Western Sydney – does work for NSWPF"*.¹²⁹⁸ This appears to be a reference to the fact that Professor Asquith had in the past been retained by NSWPF to provide assistance on one or more projects (because of her expertise).¹²⁹⁹ AC Crandell conceded that he was aware of no other factor about Professor Asquith or Dr Dwyer that in any way indicated, in his mind, a lack of objectivity.¹³⁰⁰
1169. In the case of the Lee/Crofts/Tomsen team (2 out of 5), there were two comments. The first was that *"There is an association with Sydney University and NSWPF"*, and the second was *"One of the team – Tomsen – has an undisclosed association,"* as to which there was *"no evidence in the RFQ declaring and dealing with this association"*.¹³⁰¹
1170. AC Crandell did not know whether these two comments referred to one matter or two different matters, and he could not remember what this *"association"* specifically referred to.¹³⁰² Ms Sharma also could not remember *"exactly"* what this association was, but did indicate that Professor Tomsen's involvement in the compilation of the "list of 88" would have been a *"conflict"*.¹³⁰³
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

¹²⁹⁵ Transcript, T1227.10-22.

¹²⁹⁶ Transcript, T1227.24-38.

¹²⁹⁷ Exhibit 6, Tab 22, (n 1282), 15.

¹²⁹⁸ Ibid, 16.

¹²⁹⁹ Transcript, T949.24-951.25.

¹³⁰⁰ Transcript, T951.25.

¹³⁰¹ Exhibit 6, Tab 22, (n 1282), 15.

¹³⁰² Transcript, T946.20-948.18.

¹³⁰³ Transcript, T1231.44-47, T1232.1-4, T1238.19-24.

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.

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.¹³⁰⁴ 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.

¹³⁰⁴ Exhibit 1, Tab 2, (n 6), 14; Exhibit 6, Tab 81, Letter to Naomi Malhotra from Anthony Crandell re: Third inquest into the death of Scott Johnson, 13 December 2016, 3 (SCOI.75069); Exhibit 6, Tab 125, Email from Ainslie Blackstone to Anthony Crandell re: Draft response to Rick Feneley, 25 May 2018 (SCOI.74675); Exhibit 6, Tab 225, Rick Feneley, 'Gay-Hate Crime Police to Dump FBI Investigation Tool', *The Australian* (online), 28 May 2018 (SCOI.82032); Exhibit 6, Tab 234, Submission No 20: NSW Police Force, 7 November 2018, 5 (SCOI.02320).

PART H: SF PARRABELL – THE ACADEMICS’ METHODOLOGY

Purpose and scope of academic review

1173. The methodology of the academic team is summarised in Part A of these submissions at [103]-[113]

1174. The RFQ, issued on 22 July 2016, stated the objective of the academic review as follows:

The objective of the RFQ is to assist the NSW Police Force in their conduct of Strikeforce Parrabell. This Strikeforce is a NSWPF review of 88 alleged ‘gay hate’ homicides during the late 1970s, 80s and 90s.

*Specifically, the RFQ seeks independent advice, analysis and commentary on the overall methodology and conclusions of the Strikeforce, from a qualified and credible, independent researcher/research team.*¹³⁰⁵

1175. Clause 4.1 of the RFQ outlined the “services required” from the academic team:

- *A collaborative approach to working with NSWPF on Strikeforce Parrabell*
- *Independent advice on Strikeforce Parrabell’s (SP) review of the identified 88 deaths during the late 70s, 80s, 90s to early 2000s*
- *An examination of the process and method used to conduct SP including the application of NSWPF Bias Crime indicators*
- *Access and review original source materials as required*
- *Research and provide an introductory section detailing the historical context of policing during this period and a commentary on investigating deaths of men identified as gay or transgender during this period*
- *Provide a conclusion including comment on the efficacy and quality of SP’s review, the outcomes of the review, does the researcher agree with SP outcomes/determinations?*
- *Provide recommendations for future policing, community engagement, training, development of bias crime indicators/processes*
- *Provide relevant recommendations for future directions of the GLLO program*
- *Produce and publish a research article*
- *Throughout this entire process maintain close contact with the Corporate Sponsor Sexuality & Gender Diversity and the Senior Programs Officer (Sexuality & Gender Diversity).*¹³⁰⁶

1176. Schedule 1 of the Draft Supply Agreement, which was circulated with the RFQ, emphasised that “independent and qualified experts” would add “a completely independent perspective”.¹³⁰⁷

¹³⁰⁵ Exhibit 6, Tab 23, (n 996), cl. 2.2.

¹³⁰⁶ See also, Exhibit 6, Tab 24, Terms and Conditions of Supply for Strike Force Parrabell Project: Supply Agreement – RFQ Number: 001286, undated, Schedule 1, cl. 2.1 (SCOI.76961.00008).

¹³⁰⁷ Ibid.

1177. In the Police Report, SF Parrabell described the purpose of engaging the academic team as follows:

*The purpose of academic review was to provide an independent account of Strike Force Parrabell's systemic validity; where possible, identify evidence of poor or biased police investigations; guide future policing strategies of community engagement; and develop a more suitable bias crime identification process.*¹³⁰⁸

1178. In the Flinders Report, the academic team described their task as follows:

*The principal task of the academic team was to comment on the efficacy and quality of SFP's review and to comment on the extent of agreement with the SFP outcomes and determinations. Additionally, the academic team was to provide recommendations for future policing, community engagement, training and development of bias crime indicators and processes.*¹³⁰⁹

1179. In their Joint Statement to the Inquiry, Dr de Lint and Dr Dalton described their brief as:

- a. a "review of the NSWPF findings concerning the determination of these crimes as involving or not involving hate/bias";
- b. to "provide independent advice on SFP's review of these investigations";
- c. to "comment on the extent of agreement with the SFP outcomes and determinations"; and
- d. to "provide recommendations for future policing, community engagement, training and development of bias crime indicators and processes."¹³¹⁰

1180. Three points should be made at the outset.

1181. First, there is an obvious tension in the RFQ between the requirement for a "collaborative approach" and the requirement of independence. As has been seen in Part F, the academic team were far more collaborative than they were independent.

1182. Secondly, the RFQ envisaged that the academic team would "access and review original source materials as required". This did not occur. In fact, the academic team reviewed only the BCIFs completed by SF Parrabell. This issue is significant, as outlined below and elsewhere in these submissions.

1183. Thirdly, the Parrabell Report acknowledged that the services described in the fifth, seventh and eighth bullet points of clause 4.1 of the RFQ, set out above, were not ultimately pursued: see Part F.

¹³⁰⁸ Exhibit 1, Tab 2, (n 6), 14.

¹³⁰⁹ Ibid, 56.

¹³¹⁰ Exhibit 6, Tab 1, (n 1230), 4.

Sequence of events

1184. Upon being awarded the tender, Dr Dalton acted as liaison between the NSWPF and the academic team. On 20 and 21 October 2016, he undertook an initial two-day exploratory trip to Sydney to meet with the SF Parrabell team. The purpose of this meeting was for Dr Dalton to spend some time with the Bias Crimes Unit and the SF Parrabell team, and to understand the methodology of SF Parrabell as well as its origins and history.¹³¹¹ During his time in Sydney, Dr Dalton met with Mr Willing (then Homicide Commander), AC Crandell, Sergeant Steer and Ms Braw.¹³¹²

1185. In around November 2016, the NSWPF began sending the academic team the completed BCIFs for their review.¹³¹³ In around December 2016, each member of the academic team began to review the completed BCIFs independently from each other.¹³¹⁴

1186. On 27 February 2017, the NSWPF finalised their review and send all the final, completed BCIFs to the academic team for their review.¹³¹⁵

1187. On 22 March 2017, Dr Dalton wrote to AC Crandell informing him that the academic team:

*... have almost finished agreeing on our codings. This was a much more laborious process than first envisaged [and required unqualified quality control at our end]. Dr Tyson is reviewing some cases so that the 3 of us can reach absolute agreement about what we think (Like the NSW police, we have ultimately decided that we have to force ourselves to "agree" and reach a consensus. Otherwise the report will be potentially confusing).*¹³¹⁶

1188. In around June 2017, the academic team began to review the Taradale cases. On 5 June 2017, Dr Dalton wrote to DCI Middleton saying, as to the case of Mr Russell:

*We are being driven mad by Russell (36). You guys say SBC (I agree with that 100%) but applying our classificatory tool is problematic. Coroner says he was thrown by person(s) unknown, but we think that it might be a better classification. And yet that clashes with the coronial ruling.*¹³¹⁷

1189. On 29 June 2017, the academic team provided the NSWPF with the "first draft" of their final report. They wrote (emphasis added):

¹³¹¹ Exhibit 6, Tab 69, Email correspondence between Jacqueline Braw, Anthony Crandell, Shoba Sharma and Geoffrey Steer re: first meeting with Derek Dalton, 11 October 2016 (SCOI.74335).

¹³¹² Ibid; Exhibit 6, Tab 74, Draft agenda for Derek Dalton visit, 21 October 2016 (SCOI.78710).

¹³¹³ Exhibit 6, Tab 76, (n 995); Exhibit 6, Tab 78, Email correspondence Craig Middleton and Derek Dalton re: Update on SF Parrabell academic review, 13 December 2016 (SCOI.74391).

¹³¹⁴ Exhibit 6, Tab 247, (n 1120).

¹³¹⁵ Exhibit 6, Tab 90, Email from Craig Middleton to Derek Dalton re: SF Parrabell results, 27 February 2017 (SCOI.74455).

¹³¹⁶ Exhibit 6, Tab 97, (n 1151).

¹³¹⁷ Exhibit 6, Tab 102, Email correspondence between Derek Dalton and Craig Middleton re: Parrabell update on numbers, 29 May-5 June 2017 (SCOI.74496).

We have diligently tried to strike a fair balance in composing this report. Sometimes (well, very rarely actually) we have had to criticise NSWPF but, more often than not, our sense is that we have taken pains to defend aspects of the review (e.g. we think we have explained how painstaking and thorough your review process was). However, it bears emphasizing that some inherent criticism (all of it levelled at police from a past era) will ensure our report is taken seriously by the public of NSW. We all appreciate that this report is going to be subject to rigorous scrutiny. The worst outcome for NSWPF would be for the report to be labelled/decreed a “papering over the cracks” treatment. That would be disastrous for NSWPF and compromise the hard work that underpins the review that you conducted.

We hope that you don't ask for any content to be excised that we (the academic team) feel is a necessary inclusion in the final version. It may well be that we end up having to insist that some content remains. That said, let us cross this bridge if and when we come to it. In any event, we are keen to hear your thoughts.¹³¹⁸

1190. In July 2017, the NSWPF provided their comments on the report: see Part F.¹³¹⁹

1191. On 30 August 2017 the academic team provided what was to be a final draft of the report to the NSWPF. On 13 October 2017, following some further suggested changes by Ms Braw, a further version of the final report was circulated by the academic team to NSWPF.¹³²⁰

Rejection of the BCIF

1192. As outlined in Part F, the academic team considered that the BCIF was not a suitable instrument for the assessment of bias crimes. How and why the academic team reached that view is considered in the following paragraphs.

1193. In the Flinders Report, the academic team wrote:

we commenced our assessment of the SFP review with a query concerning the authorities cited by the police to support the use of the BCIRF instrument ... We were informed ... [by the NSWPF] that the factors were used as prompts and that there is no necessary correlation between or weighting of any of the factors and a determination of bias.¹³²¹

1194. Upon attempting to use the BCIF in categorising cases, the academic team found that it was “too ambiguous”¹³²² and produced a lack of distinction between categories of bias, such as evidence of the character of motivation, that they considered to be germane to their investigation.¹³²³

¹³¹⁸ Exhibit 6, Tab 106, Email correspondence between Derek Dalton, Anthony Crandell and Jacqueline Braw re: Draft report of academic review, 29-30 June 2017 (SCOI.74518).

¹³¹⁹ Exhibit 6, Tab 109, (n 1154).

¹³²⁰ Exhibit 6, Tab 117, Email correspondence between Derek Dalton, Anthony Crandell and Craig Middleton re: Amended Parrabell report, 16 October 2017 (SCOI.74590).

¹³²¹ Exhibit 1, Tab 2, (n 6), 70. See also Exhibit 6, Tab 1, (n 1230), 5.

¹³²² Exhibit 6, Tab 1, (n 1230), 5.

¹³²³ Exhibit 1, Tab 2, (n 6), 70-71.

1195. At some stage, the academic team determined that they needed “to get behind” the BCIF and “re-interpret the summary evidence” (i.e. the BCIFs) they were given.¹³²⁴ According to the Flinders Report:

*As we scanned the summaries, we became aware that we needed to distinguish the direction of the animus, because it appeared that there were many cases in which there was a potential to over-categorise anti-gay bias. We determined that a proper evaluation of the cases required more than a reproduction of the methodology used by the NSWPF and its BCIRF, comprising of an ‘indicative’ list of ten factors. In our re-assessment, we found it necessary to develop a short list of necessary, research-informed factors directly from a definition of bias crime that could then be drawn down to mostly binary categorisations.*¹³²⁵

1196. The academic team did not “get behind” the BCIF in the sense of seeking or obtaining access to the original documents on which the BCIFs were based.

1197. The Flinders Report said that “The detectives scored each case using the indicators on the BCIRF”.¹³²⁶ However, as became apparent in the oral evidence of both Dr Dalton and Dr De Lint, the SF Parrabell officers had not actually engaged in a “scoring” process in the usual sense of that word.

1198. Dr Dalton and Dr de Lint gave evidence about their understanding of the manner in which the BCIFs were completed.

1199. Dr Dalton stated that his understanding was that NSW Police “read the case material that they had and they used the Bias Crime Indicator Form, they would occasionally tick it, type notes, et cetera, do various things with it, and, as a result of that, determine the cases.”¹³²⁷ He did not consider that the language of “scoring” had been used in the sense of attributing numbers or scores.¹³²⁸ Rather, the SF Parrabell officers would read the material available for a given case and “arrive at a view”, “intuitively”.¹³²⁹

1200. Dr de Lint said that the word “scored” merely referred to the SF Parrabell officers filling in the BCIF, with answers to various questions; it was “not a scoring in the sense of a numerical ranking”.¹³³⁰

¹³²⁴ Exhibit 1, Tab 2, (n 6), 71.

¹³²⁵ Ibid.

¹³²⁶ Ibid, 69.

¹³²⁷ Transcript, T2383.14-16, T2383.26-31.

¹³²⁸ Transcript, T2383.36.

¹³²⁹ See Part F; Exhibit 1, Tab 2, (n 6), 69; Transcript, T2384.21-37.

¹³³⁰ Transcript, T2656.45.

1201. The academic team said they were “unable to follow the NSWPF in applying the BCIF to score the cases”, due to various problems which they encountered.¹³³¹ They expressed their reservations in footnote 20 of the Flinders Report (emphasis added):

²⁰ *Whilst the NSWPF placed great faith in this instrument, the academic team were surprised to discover that scarcely any academic literature exists that has evaluated or critiqued this instrument. Indeed, our search efforts could not even locate one academic article. Nor could the NSWPF supply such an article when requested to do so. In the face of an apparent dearth of such literature, the academic team are reluctant to endorse these indicators. The academic team are not decreeing they are wholly deficient and needing to be dropped, but we would have liked to garner independent evidence that they are indeed ‘best practice’ for law enforcement. We note here that with few choices available (the UK model is over-inclusive because it pivots on victim perceptions), the NSWPF worked with this instrument despite [no] empirical evidence for its efficacy.*¹³³²

1202. Dr Dalton agreed that this was the view of the entire team.¹³³³ He agreed not only that the academic team were reluctant to endorse the indicators, but also that they did not, in fact, endorse them. Instead, the academic team pointed out the shortcomings of the instrument.¹³³⁴ Dr de Lint similarly agreed that the academic team had been reluctant to endorse the BCIF indicators.¹³³⁵

1203. The Lovegrove Report noted the academic team’s reservations about the BCIF as follows:

[119] *The academic team does not regard the BCIF as adequate to the task for two reasons. First, it is accompanied by no evidence regarding its reliability and validity; this includes the constituent elements themselves and the assessments made in relation to these elements considered individually and together ...*

[120] *Second, the academic team asserts that as an instrument for the identification of hate, the BCIF is not soundly based or sufficiently nuanced. Assessments not based on key elements of bias as a measure are too crude. With this, they say, the BCIF does not differentiate between different expressions of hate, which reveal variation in motive and have different implications for certainty of classification and for social policy and, consequently (from this perspective), the potential to ‘over-categorise’ gay bias.*

1204. In the Flinders Report, the academic team put it this way: “Whilst we most often agreed on the result, we were less enthused about the means.”¹³³⁶

¹³³¹ Exhibit 6, Tab 258, (n 1173), 4-5.

¹³³² Exhibit 1, Tab 2, (n 6), 68-71 fn 20.

¹³³³ Transcript, T2395.41, 44.

¹³³⁴ Transcript, T2397.45-2398.6; Exhibit 1, Tab 2, (n 6), 70-71.

¹³³⁵ Transcript, T2659.17.

¹³³⁶ Exhibit 1, Tab 2, (n 6), 71.

1205. In his oral evidence, Dr Dalton was blunter. He said that *“to have adopted the instrument was the first step to misusing it, if that makes sense”*,¹³³⁷ and he described the BCIF as *“a pretty appalling instrument”*.¹³³⁸

1206. The academic team’s concerns with the BCIF were not limited to the abstract; they also had concerns with the manner in which the BCIFs were completed.

1207. At an early stage, Dr Dalton and Sergeant Steer corresponded about the way in which SF Parrabell officers were using the BCIF. On 12 December 2016, following a meeting about the progress of the SF Parrabell review, Dr Dalton wrote to Sergeant Steer that he *“really appreciate[d] what you said about the ‘tick sheet’ approach and that the suggestion that the Parrabell detectives seem to have misused the instrument”*.¹³³⁹

1208. In February 2017, Dr Dalton wrote to Sergeant Steer to ask for more information about the BCIF:

*We fully appreciate that the instrument is just used as “tick sheet” or guide to identifying a range of BIAS crimes [which is fine], but we really need to know if you have any data or research findings (that you may have gleaned whilst on training in the USA perhaps?) that speaks to the reliability and grounding that underpins its accuracy use as an instrument.*¹³⁴⁰

1209. Sergeant Steer’s reply pointed out that his position was quite different. He said that if the BCIF indicators *“are used as a checklist they do not work”*. In reply to that email, Dr Dalton wrote, *“To be clear ... I completely appreciate that the indicators are not a definitive checklist or tick sheet. Mind you, the detectives did somewhat [partially] use them in this way as a tool to identifying bias.”*¹³⁴¹

1210. In oral evidence, Dr Dalton identified numerous weaknesses in the completed BCIFs that were received by the academic team. Some of those weaknesses were:

- a. He emphasised that the completed BCIFs were *“often rich in detail, but not always”*.¹³⁴² It is submitted that that is perhaps a generous characterisation of the completed BCIFs which the Inquiry has considered (namely those for the “unsolved” cases from SF Parrabell).

¹³³⁷ Transcript, T2442.6-8.

¹³³⁸ Transcript, T2446.38-40.

¹³³⁹ Exhibit 6, Tab 246, (n 1001), 1.

¹³⁴⁰ Exhibit 6, Tab 248, Email chain between Geoffrey Steer, Derek Dalton and Danielle Tyson re: Research/data regarding reliability of FBI bias instrument, 2 (SCOI.79391).

¹³⁴¹ *Ibid*, 1-2.

¹³⁴² Transcript, T2385.20-21.

- b. He agreed that the descriptions in the 'General Comments' sections were *"a subjective view on the part of the officer or officers who are handling each particular case"*.¹³⁴³
- c. He said that *"the wider problem is the paucity of data that the instrument is applied to. You would often read these cases, sometimes they would run to 20 pages, and there was almost nothing in it - they were enigmatic."*¹³⁴⁴
- d. He agreed that the BCIF instrument itself was the source of the problem and that that was why, in the end, the academic team declined to endorse it.¹³⁴⁵

1211. In his oral evidence, Dr Dalton did not go so far as to say that, because of such problems, SF Parrabell was *"beyond redemption"*.¹³⁴⁶ He said he thought the NSWPF *"were doing the best they could with good intentions"*.¹³⁴⁷

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.

Development of alternative methodology

1213. In light of the conceptual and practical difficulties with the BCIF, the academic team decided that it was necessary to develop their own approach for reviewing the completed BCIFs. That approach and the results reached by the academic team are briefly outlined in Part A at [137]-[140]. It is appropriate now to consider the approach in more detail.

1214. The new approach has been described in different ways by different people. The Asquith Report describes the academic team's framework as a "typology". The Lovegrove Report refers to it as a "classificatory framework". The Coakley Report refers simply to the academic team's "categories". In the Flinders Report itself, the academic team expressed their approach this way:¹³⁴⁸

In our re-assessment, we found it necessary to develop a short list of necessary, research-informed factors directly from a definition of bias crime that could be drawn down to mostly binary categorisations.

¹³⁴³ Transcript, T2386.2-17.

¹³⁴⁴ Transcript, T2399.1-15.

¹³⁴⁵ Transcript, T2443.43-47.

¹³⁴⁶ Transcript, T2447.25-34.

¹³⁴⁷ Transcript, T2447.37-40.

¹³⁴⁸ Exhibit 1, Tab 2, (n 6), 71.

1215. It is not clear quite when the academic team developed their own methodology, but it seems that they had started doing so by February 2017.¹³⁴⁹

1216. First, the academic team formulated its own definition of “bias crime”, said to have been based on a review of the literature, from which they took “selectively”.¹³⁵⁰ The quality of this literature review is addressed below. The definition of “bias crime” arrived at was as follows:

Bias crime:

- a. expresses a *categorical animus* (directed at a person or group on the basis of his/her perceived identification with a vulnerable group).
- b. produces an act that intentionally, by way of criminal predation on the basis of that *categorical animus*, causes harm to that person or group.
- c. is mitigated or aggravated by an offender’s contemporaneous associations that are linked by a commitment of denunciatory non-identification with the vulnerable person or group.¹³⁵¹

1217. The Flinders Report goes on to discuss each limb of this definition, in somewhat dense terms.

1218. In oral evidence, Dr de Lint agreed that under the first limb of the definition, it is essential that the relevant act *expresses* an animus, by some form of *communication*.¹³⁵² His reasoning was that without some trace of communication, a bias crime could not be discovered.¹³⁵³ In the absence of such a “communication”, a case could not be classified as a “bias crime”.¹³⁵⁴ However, he did not consider that this would inevitably result in a low number of cases meeting the threshold.¹³⁵⁵

1219. Secondly, the “short list of necessary, research-informed factors”, “that could then be drawn down to mostly binary categorisations”, were as follows:

- a. the degree or value of animus (proactive or reactive);
- b. its target (anti-gay or other); and
- c. the communication of the bias in association with others (yes or no).¹³⁵⁶

1220. The academic team conceived of three ‘types’ of bias crimes, as follows:

¹³⁴⁹ See Exhibit 6, Tab 92, Document titled ‘Notes Bias’, undated (created 28 February 2017) (SCOI.77540).

¹³⁵⁰ Exhibit 1, Tab 2, (n 6), 82.

¹³⁵¹ *Ibid*, 82-83.

¹³⁵² Transcript, T2691.3.

¹³⁵³ Transcript, T2691.30-34.

¹³⁵⁴ Transcript, T2690.

¹³⁵⁵ Transcript, T2692.4.

¹³⁵⁶ Exhibit 6, Tab 1 (n 1230), 5.

- a. Type A Bias Crime denotes events that have two features. First, offenders proactively seek out opportunities in which to brutally express their animus. Second, they communicate and associate with others on the basis of this animus.¹³⁵⁷
- b. Type B Bias Crime denotes events in which offenders proactively seek out opportunities to brutally express their animus, but do so furtively or in isolation from others, and act individually against victims.¹³⁵⁸
- c. Type C Bias Crime denotes an event in which an offender is reacting with criminal violence on the basis of the victim’s perceived identity in an included category, usually as an over-reaction to a perceived slight against his identity.¹³⁵⁹

1221. A “concept matrix”, or “checklist”¹³⁶⁰ was then developed by Dr de Lint, which was apparently used by the academic team to analyse the cases. This matrix, or checklist, is reproduced below. This checklist was then used by the academic team to classify each of the cases they had to assess.

| Type | Motivation | Indicators |
|------|--|---|
| A | <i>Associative and proactive</i> The offender has gone out of his way to place himself in a situation in which he can subordinate a person on the basis of his/her perceived identity AND | <ul style="list-style-type: none"> • Witness statements, comments • Formalised hate associations • Previous existence of hate crime incidents • Location of incident [proximity to a ‘beat’ may be significant] |
| | The offender has engaged in bias <i>communications</i> in the course of carrying out a harmful act or activity against a person identified by that bias, (eg. anti-gay) and/or the offender <i>associates</i> with others on the basis of a shared bias | |
| B | <i>Proactive, non-associative</i> A non-associative offender has gone out of his way to place himself in a situation in which he can subordinate a person on the basis of his/her perceived identity | |
| C | <i>Reactive</i> An offender has reacted to a situation in a manner that suggests that an animus towards a vulnerable group contributed to the motivation for the crime | |

1222. According to the Flinders Report, each member of the academic team used the above method to “*independently code*” each of the cases before engaging a process whereby they were to

¹³⁵⁷ Exhibit 1, Tab 2, (n 6), 89; see also Exhibit 6, Tab 1 (n 1230), 5.

¹³⁵⁸ Exhibit 1, Tab 2, (n 6), 89; see also Exhibit 6, Tab 1 (n 1230), 5.

¹³⁵⁹ Exhibit 1, Tab 2, (n 6), 89; see also Exhibit 6, Tab 1 (n 1230), 5.

¹³⁶⁰ Exhibit 1, Tab 2, (n 6), 89.

“reach consensus as a team”.¹³⁶¹ They conducted this coding exercise by reference to the definition of bias crime outlined above.¹³⁶²

1223. In the Flinders Report, the academic team said of this exercise that they *“scored cases on whether we could find that the bias involved an association with others”*.¹³⁶³

1224. However, in oral evidence, Dr Dalton clarified that the academic team did not “score” the cases, in terms of adding up numbers to reach a score.¹³⁶⁴ He said that “scoring” in this exercise meant “categorising”, or placing cases into “categories”, because *“our instrument wasn’t about numbers, it was about the different attributes that you’ve seen”*.¹³⁶⁵

1225. After this process it appears that the academic team engaged in a further coding exercise *“on the revised instrument”* which was then also subject to *“concordance consultation”*. Thus it would appear that at some stage, the methodology used by the academic team underwent some refinement. Despite some disagreement, the academic team were eventually able to reach internal consensus.

1226. The end result of the academic team’s exercise was the categorisation of each of the 85 cases into the following groups:

- a. insufficient information to make a determination (II);
- b. no evidence of bias (NB); or
- c. one of two categories of bias crime, namely *“anti-gay bias”* or *“anti-paedophile animus”* (dealt with below).¹³⁶⁶

The cases designated as being motivated by *“anti-paedophile animus”* were excluded from the cases where the academic team otherwise concluded that there was evidence of anti-gay bias. There was no equivalent of SF Parrabell’s *“suspected bias crime”* category.

1227. The (85) cases were ultimately classified by the academic team as follows:¹³⁶⁷

- a. Anti-gay bias: 17 cases (2 unsolved, 15 solved);
- b. Anti-paedophile animus: 12 cases (0 unsolved, 12 solved);
- c. Insufficient Information: 33 cases (19 unsolved, 14 solved); and

¹³⁶¹ Exhibit 1, Tab 2, (n 6), 90.

¹³⁶² Ibid, 90.

¹³⁶³ Ibid, 88.

¹³⁶⁴ Transcript, T2519.46-2520.6.

¹³⁶⁵ Transcript, T2520.6-8.

¹³⁶⁶ Exhibit 1, Tab 2, (n 6), 92.

¹³⁶⁷ Ibid.

d. No Evidence of Bias Crime: 23 cases (2 unsolved, 21 solved).

1228. The academic team then proceeded to further categorise the cases according to whether they were a Type A, B or C crime. The academic team volunteered the view that “for the purpose of public policy, the most serious kind of bias is proactive and associative”, or “Type A” motivated crime. As will be seen, Professor Asquith has a very different view.

1229. The first draft of the Flinders Report was provided to AC Crandell on 29 June 2017. Subsequent revised drafts were not substantially different, in terms of these various categorising methods adopted by the academic team. AC Crandell appears to have had no concerns with the approach of the academic team in this regard; his evidence was:

*The methodology, protocols and arrangements pursuant to which the Flinders University team were to, and/or did, carry out their respective tasks is outlined on the academic review which is annexed to the Strike Force Parrabell Final Report. I had general discussions with the Flinders University academic team in the preparation of the academic review in relation to their findings. I had no oversight of the Funder’s [sic] University academic team’s methodology or conclusions. From my review of the report and my discussions with the members of the Flinders University team, I have no concerns about the validity of their approach.*¹³⁶⁸

Anti-gay bias and “anti-paedophile animus”

Origins and rationale of this distinction

1230. In addition to developing three categories of bias crime, the academic team drew a distinction between “anti-gay bias” and “anti-paedophile animus”.

1231. The academic team ultimately categorised twelve cases as “anti-paedophile animus”.¹³⁶⁹ However, they began their discussion of these cases in the Flinders Report by reference to seven such cases, in which young men between the ages of 15 and 25 killed older men aged 45 years or older. These cases appear to have prompted the academic team to consider drawing the following distinction:

*It seemed apparent or at least more than plausible that the animus that was present was directed at men who were accused or perceived to have been sexually exploiting boys, whatever the facts. In some cases it also appeared as though a strong animus against homosexual paedophiles may have developed from historical sexual abuse. It is not clear to us that the bias expressed in these cases was motivated against homosexuality per se as against homosexual men that were assumed, rightly or wrongly, to be paedophiles.*¹³⁷⁰

¹³⁶⁸ Exhibit 6, Tab 4, (n 128), [92].

¹³⁶⁹ Exhibit 1, Tab 2, (n 6), 92.

¹³⁷⁰ Ibid, 84.

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.

1234. In his oral evidence, Dr Dalton told the Commissioner: *“It seems to me that if you’re attacking someone and you’re doing so because you hate paedophiles, as opposed to whether you just hate gay people, that the distinction is worth preserving”*.¹³⁷¹ He explained some of the complexity with which the academic team was grappling:

*...it gets really messy, because back in the ‘90s, et cetera, for some men who hated homosexuals, a paedophile and a rock spider and a poofter and a this and a that, they were all inter-dispersed and they made no distinction between the two.*¹³⁷²

1235. However, Dr Dalton ultimately said that he could neither recall nor explain why the academic team drew the distinction.¹³⁷³

1236. Dr de Lint similarly expressed reservations about the distinction, in the course of his oral evidence. He said: *“It’s a – it’s a very fraught issue, problem, and I’m – I’ve never been very comfortable with it, you know, even although it’s there”*.¹³⁷⁴

1237. In the Flinders Report itself, the academic team gave various explanations of its reasons for this distinction, not always consistently. One statement of its reasons, seemingly based on “public policy”, is as follows:

*We reasoned is that it is not sound public policy to conflate an animus towards homosexual paedophilia and an animus towards homosexuals. There are not too many social analysts who would want to support the historical slander that gays and paedophiles can be understood under a common moniker. Failing to distinguish the direction of animus and, as a consequence, overincluding anti-paedophile animus under a straightforward anti-gay animus would be to lend inadvertent support to this historical slander.*¹³⁷⁵

¹³⁷¹ Transcript, T2412.4-2413.28.

¹³⁷² Ibid, T2411.15-19.

¹³⁷³ Ibid, T2412.4-T2413.28.

¹³⁷⁴ Transcript, T2706.25-27.

¹³⁷⁵ Exhibit 1, Tab 2, (n 6), 85.

1238. The academic team reiterated at different points that homosexuality and paedophilia are “*not synonymous*” and that it would be simply wrong to categorise anti-paedophile animus “*generically as anti-gay*” if an offender is targeting a victim on the basis of their belief that the person is a paedophile. The academic team sought to illustrate their point by way of an analogy:

*For instance, we believe that a person who acts out once in sudden violence without planning on apparent animus or fear toward a much older male may well not be homophobic just, as a woman who acts out aggressively against an unwanted sexual solicitation by a male is not necessarily anti-heterosexual.*¹³⁷⁶

1239. Dr Dalton was asked whether he would endorse and adopt that analogy. After initially replying that he “*didn’t write those sentences*”, he was pressed about whether he considered this to be a suitable analogy. He replied: “*I guess so*”.¹³⁷⁷

1240. A second reason for the distinction appears to have arisen from a concern that the results not ‘over-record’ or ‘mis-categorise’ the instances of bias related crimes, and that there be a “concordance between offender motivation and target category”. Such over-recording may occur, according to the academic team, “*where the subtlety of that motivation cannot be registered*” (emphasis in original).¹³⁷⁸ The concerns about over-recording echo the academic team’s views on “moral panic”, which are addressed elsewhere.

1241. In the Flinders Report, the academic team used the term “*anti-paedophile animus*” to “*refer to a (greater than usual or vigilante) anti-paedophile animus toward homosexually attracted paedophiles*”.¹³⁷⁹ They suggested that “[i]t helps if one thinks of anti-paedophile animus as sitting on a continuum of gay hate bias”. Why that might be so was not explained.

1242. The academic team considered that when “*anti-paedophile animus*” coalesced with “*anti-homosexual bias*”, it can produce a “*particularly potent form of animus*”. However, the academic team also conceded that “*disentanglement*” of one form of animus from the other is “*not straightforward*”. Elsewhere, the academic team suggested that where both forms of animus are at play, there would be a “*primary animus*” that needs to be distinguished from the “*secondary animus*”.¹³⁸⁰

1243. All of this complexity – whether or not it contributed to the task at hand, namely reviewing the work of SF Parrabell – stands in stark contrast to the simplicity of the evidence given by AC Crandell on this issue. AC Crandell shared the stated desire of the academic team to avoid

¹³⁷⁶ Ibid, 50-51.

¹³⁷⁷ Transcript, T2415.27-2416.1.

¹³⁷⁸ Exhibit 1, Tab 2, (n 6), 50.

¹³⁷⁹ Ibid, 84-85.

¹³⁸⁰ Ibid, 86.

conflating homosexuality with paedophilia. However, he dealt with that point in a straightforward fashion in his evidence: “I felt that if a perpetrator believed that all gay men were homosexual – sorry, were paedophile, then it was still gay hate, from my perspective.”¹³⁸¹

1244. AC Crandell was there reiterating concerns to which he had referred in his statement:

*I also note that I did not wish for the ‘anti-paedophile bias’ to be included and referred to as part of Strike Force Parrabell. I was conscious that this may suggest a connection between homosexuality and paedophilia, which is not synonymous, is erroneous and often broadly misunderstood. However, the animus towards paedophilia was subsequently included in the academic review because of perceptions at the time, which the academics believed were often independent or inseparable from the animus towards homosexuality due to attitudes and widespread ignorance of the times.*¹³⁸²

Expert commentary

1245. The academic team’s “anti-paedophile animus” distinction was the subject of attention by the experts who gave evidence.

1246. The Lovegrove Report had this to say:

[124] *Now to the distinction that the academics make in respect of anti-gay bias and anti-paedophile animus. The argument here is that it is important to distinguish between a pure anti-gay hate and an anti-paedophile hate. The argument is that these two categories sometimes get conflated in the minds of perpetrators, as a result producing a particularly potent hatred. The academic team insist that the two must be distinguished on public policy grounds, namely, that not making the distinction is to perpetuate the slander that they are one and the same people. This is surely problematic. If the aim is to identify gay-hate crime, then motive counts whether or not it is based on a misperception. And in situations where a paedophile is involved, the ‘gay’ component of the bias may not be expressed either at or outside of the scene of the crime. To the offender this may be self-evident.*

...

[130] *As noted above at [129(3)], the academic team observed: “... a variety of animuses at play ... the team wanted to capture the element of paedophile hatred. This leads one to infer that where both anti-gay and anti-paedophile hatred were at play, there was a prevailing team disposition to preference the classification of paedophile over gay.*

[131] *It appears that any offenders who took it as self-evident that most paedophiles were in fact gay (an assumption unexpressed at the scene of the crime) would not be counted as anti-gay. The academic team’s discussion of the case of Tuckey illustrates the problem “... when a crime is categorised (in this case as Anti-paedophile because the killer used the terms ‘poofter’ and ‘rock spider’ to describe the victim)”. The academic team reach this conclusion, although in the offender’s mind the two were apparently closely associated and the animus expressed at the scene was joint, and although the academic team acknowledges that at the time of the offending the presumption was certainly common among the community of potential perpetrators.*

¹³⁸¹ Transcript, T983.1-22.

¹³⁸² Exhibit 6, Tab 4, (n 128), [72].

[132] *In these circumstances one might have thought the more reasonable approach would have been to categorise all such cases as anti-gay, unless there was clear evidence to the contrary. Of course, this would carry the error of over-inclusion, just as their approach carries the error of under-inclusion. Yet in the milieu of the two animuses being not uncommonly conflated, the former error might be expected to be the smaller of the two. It would appear that the academics' approach allows for a case where minor anti-gay bias would be trumped by antipaedophile bias in the categorisation of cases.*

1247. The Asquith Report said this:

[193] *Dalton et al then make the further distinction between anti-gay bias and anti-paedophile animus. The authors suggest that a perpetrator animated by anti-paedophile animus "...may well believe... has some tacit social approval in subjecting a man... to a violent assault", as if, at the time of most of the Parrabell cases, this social approval was not also present in attacks against gay men.*

[194] *This distinction between anti-gay bias and anti-paedophile animus is not articulated in other research on heterosexist and cissexist hate crimes—though Mason has discussed the Snowtown cases in light of hate crime provisions (and rejected their recognition as deserving victims)—and this distinction was not a requisite of the independent analysis undertaken by SFP.*

[195] *The academic team claim that they make the distinction between anti-gay bias and antipaedophile animus in order to revoke the "inadvertent support to... [the]... historical slander" that "...gays and paedophiles can be understood under a common moniker". Whilst this distinction is important from the perspective of the rights of LGBTIQ people, for much of period under analysis in SFP, being gay and being a paedophile were considered by many as the same thing. As illustrated in my own PhD research, the popular misconception of homosexuality as paedophilia continued to enliven heterosexist and cissexist violence into the 1990s when there was an uptick in violence against gay men containing anti-paedophile verbal-textual hostility, which occurred concurrently with the Wood Royal Commission.*

...

[207] *The distinction made by Dalton et al and de Lint and Dalton between anti-paedophile animus and anti-gay bias was confusing and seemed to imply that animus was justifiable whilst bias was not. It is also bizarre, particularly given the context at the time in Sydney, that they differentiate between anti-paedophile animus and anti-gay bias.*

...

[209] *Again, as noted above, I do not know of any other hate crime research that has sought retrospectively to reassess alleged heterosexist hate crimes as motivated by anti-paedophile animus. This is a distinction that assumes knowledge about a victim's (perceived and recorded) criminal behaviour, and in some cases, may in fact rely on the perpetrator's own justification for their violence.*

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.

1249. In one particular subset of cases, the victim may actually be a paedophile and the offender's sole motivation may be knowledge of that fact. In some such cases, a view that that the offence is not an LGBTIQ bias crime may be available.
1250. However, in most, if not all, other LGBTIQ hate crime deaths, the distinction will be untenable. Where an offender conflated queerness and paedophilia, or had motivations that included both anti-gay and anti-paedophile components, in whatever proportions or variations, it would be difficult if not impossible to separate them out.
1251. Further, it would also be irrelevant to do so if one is working with a concept or definition of "bias crime" which incorporates the possibility of an offender's actions being motivated, "*in whole or in part*", by "*any form of bias*". The academic team assert, in the Flinders Report, that they "*largely agree with*" such a definition.¹³⁸³
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*".¹³⁸⁴ 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.
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".¹³⁸⁵ However, if the categories could be combined so easily, it once again begs the question: why were they separated in the first place?

Application

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".¹³⁸⁶ Several are cases where the (younger) offender claimed that the (older) victim had

¹³⁸³ Exhibit 1, Tab 2, (n 6), 81.

¹³⁸⁴ Ibid, 85.

¹³⁸⁵ Ibid, 92.

¹³⁸⁶ Exhibit 6, Tab 49, (n 48). See, e.g., Cases 12, 13, 24, 59, 61, 72 and 78.

made an unwanted advance, but the offenders were themselves adults.¹³⁸⁷ In such circumstances, it is difficult to see how the academic team could positively, or defensibly, characterise the motivation as “anti-paedophile animus”.¹³⁸⁸

1255. Dr de Lint was taken, in his oral evidence, to several examples of cases which the academic team had classified, in the Case Summaries, as “anti-paedophile animus”. He was unable to explain the basis for that classification in any of those cases.¹³⁸⁹ He ultimately gave evidence that in applying the distinction between “anti-gay bias” and “anti-paedophile animus”: “*we went down a track that we shouldn’t have gone down.*”¹³⁹⁰

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.

The ‘Moral Panic’ article

1257. One of the required “services”, in the RFQ, was that the academic team would produce and publish a research article.

1258. On 31 July 2020, presumably in fulfilment of that requirement, an article by Dr de Lint and Dr Dalton was published online in *Critical Criminology*. The article was titled, ‘Anatomy of Moral Panic: The “List of 88” and Runaway Constructionism’ (**‘Moral Panic’ article**).¹³⁹¹

1259. The evidence makes clear that the academic team commenced working on such an article by early 2017, within a few months of starting work on SF Parrabell, and well over a year before the Parrabell Report was published.¹³⁹²

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*”;¹³⁹³ and

¹³⁸⁷ Transcript, T2713.34-2715.3.

¹³⁸⁸ See also above at [60].

¹³⁸⁹ Transcript, T2713-2715.

¹³⁹⁰ Transcript, T2715.020-21.

¹³⁹¹ Exhibit 6, Tab 205, (n 141).

¹³⁹² Transcript, T2539.2-9, T2770.2-11, T2770.36-44, T2773.6, T2773.41-42. See also Exhibit 6, Tab 277, Email correspondence between Nicolas Parkhill, Anthony Crandell, Jacqueline Braw, Derek Dalton and Willem de Lint re: ACON Report, 23 February-8 April 2018, 1 (SCOI.80026); Exhibit 6, Tab 92, (n 1349); Exhibit 6, Tab 129, Email correspondence between Derek Dalton and Craig Middleton re: Strike Force Parrabell, 24 October 2018 (SCOI.74734).

¹³⁹³ Transcript, T2795.46-2796.9.

c. the moral panic was not supported by evidence.

1261. This is essentially the same idea that is advanced in the Lehmann/Young Issue Paper of 25 September 2013, considered elsewhere in these submissions. It is also readily discernible in the Flinders Report itself. Even the Lehmann/Young term “*gross exaggeration*” is woven into the Flinders Report.¹³⁹⁴

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.

1263. In his oral evidence, Dr de Lint agreed that he was aware, as at February 2017, that there was a strongly held view within the NSWPF that claims of 80-plus gay bias homicides were a gross exaggeration,¹³⁹⁵ and he accepted that his views as at February 2017 correlated with that police view, but he declined to concede that he was aware of that correlation.¹³⁹⁶ It is submitted that his evidence in that latter respect should be rejected.

1264. At this point, it is salutary to consider the candid evidence of AC Crandell on this topic. AC Crandell explained in his oral evidence that he had deliberately used the term “*moral panic*” in the Police Report to describe the “*alarm*” that was actually felt in the gay community at the time, about the violence to which they were being exposed. In his view the “*moral panic*” was both genuine and justified.¹³⁹⁷

1265. In stark contrast, Dr Dalton and Dr De Lint deployed the term in a very different way.

1266. In the ‘Moral Panic’ article, the two authors refer to academic literature regarding the expression. They begin with a definition of moral panic as “*a public outburst of sentiment – a societal reaction – that draws attention to the extent or scale of a social problem, intimating the dangers of inattention to certain widely accepted values.*”¹³⁹⁸

1267. They emphasise that a moral panic must be disproportionate to the true extent of the problem (which, it becomes clear, is their view of any suggestion of 88 gay hate deaths):

Too much moral outrage to the societal reaction side of the ledger suggests that it is not a problem, whatever its scale, that demands such extensive and intensive response, and moral panic analysis ‘has always sought to do this’ (Cricher 2009: 30). In other words, the

¹³⁹⁴ Exhibit 1, Tab 2, (n 6), 79.

¹³⁹⁵ Transcript, T2778.35.

¹³⁹⁶ Transcript, T2778.40.

¹³⁹⁷ Transcript, T908.9-18.

¹³⁹⁸ Exhibit 6, Tab 205, (n 141), 726.

*use of the term suggests a view that the emotive response supersedes or is too large in relation to the objective stimulus.*¹³⁹⁹

1268. These two aspects of a moral panic are described by the academic team, in the abstract of their article, as *“a discovered crime fact and demand for an enforcement response disproportionate to the fact”*.¹⁴⁰⁰

1269. The view that there was a moral panic, so understood, about the SF Parrabell cases is clearly reflected in the Flinders Report. The Executive Summary asserts (emphasis added):

*Altogether, the policy question on combatting anti-gay bias is not as simple as some moral crusaders make it out to be. Publicity around anti-gay bias can be a two sided-coin. Promotion of a social problem may, however paradoxically, draw attention to the issue and foster more anti-social behaviour. The publicity may also fuel fear of crime in the wider community and somewhat distort the risk of victimisation that actually exists.*¹⁴⁰¹

1270. As to who these “moral crusaders” were, Dr Dalton nominated:

*Anyone who was promulgating the idea that there was a major and serious problem with too many homicides, proportionate to other places or cities in the world – that there was an epidemic, if you like, or whatever the phrases were that were being touted at the time.*¹⁴⁰²

1271. More specifically, Dr Dalton identified, as “moral crusaders”, *“people that seemed to be in the media reports”* including Ms Thompson, Professor Tomsen and *“anyone who would support the proposition that there may have been as many as up to 88 deaths which were or might have been gay hate”*.¹⁴⁰³ He conceded that it sounded like *“a pejorative sort of term”* but suggested that Dr de Lint had used it in a *“non-pejorative”* way.¹⁴⁰⁴

1272. Dr Dalton was himself, however, pejorative about moral crusaders in correspondence; at one point, he described Professor Tomsen’s *“devotees”* (presumably including, *inter alia*, Ms Thompson and ACON) as *“imbecilic”*.¹⁴⁰⁵

1273. Dr Dalton said that he used the phrase *“moral crusader”* because *“it seemed as though, from the second I started doing this work, if you were to find that there was any number less than 88, you were somehow a police apologist, which is an offensive sort of assertion.”*¹⁴⁰⁶ That evidence is illustrative of an adversarial approach on his part, one that supported the police view that 88 was a “gross exaggeration”, and attacked the contrary view. It again suggests (regardless of

¹³⁹⁹ Ibid, 727.

¹⁴⁰⁰ Ibid, 726-727.

¹⁴⁰¹ Exhibit 1, Tab 2, (n 6), 53.

¹⁴⁰² Transcript, T2417.19-23.

¹⁴⁰³ Transcript, T2417.27, T2417.33, T2417.37, T2418.3-20.

¹⁴⁰⁴ Transcript, T2418.20-23.

¹⁴⁰⁵ Exhibit 6, Tab 129, (n 1392).

¹⁴⁰⁶ Transcript, T2418.27-30.

what view might be taken about the relative merits of the two opposed positions) that the approach of the academic team was not truly “independent”, but was truly “collaborative”.

1274. The Flinders Report emphasises the academic team’s concerns with moral panic and moral crusaders under the heading ‘Dimensions of the Issue’, beginning at page 61.

1275. The first two sub-sections consider the history of the “list of 88”. In the view of the Flinders team, the “list” should be considered as a symbol that has effectively taken on “*a life of its own*” and that generates or represents a particular “*mythology*” or “*folklore*” connected to gay hate crimes in NSW.

1276. The academics characterise the list as both “*an indicator of the truth of a social problem*” and an emblem that “*has come to support the case that there was in NSW extraordinary anti-gay bias and questionable anti-bias policing,*” so that “*to the extent that [the] wider community of NSW citizens know about the “problem” of murders in NSW during this two decade period, it is because the trope of the list has helped shape this understanding.*”¹⁴⁰⁷

1277. Later in the Flinders Report, the academic team state:

*We determined that the list of cases developed by Thompson and Tomsen did not have a known relationship with the actual number of gay bias homicides during the period in which the cases were collected. Possible errors related to the list includes under-recording and uneven or inconsistent application of inclusion criteria, where cases come to attention of investigators by a variety of means. The cases may well represent most of the possible gay-related deaths during this time period, but in our view it was not informed by any one means consistently and this is surmised to result in an uneven and somewhat unpredictable under- and over-recording.*¹⁴⁰⁸

1278. The academic team referred to the risks of under-reporting and over-reporting of hate crimes:

*Where there is an under-recording of bias crime, there may be systemic or institutional bias against a social group that is not being adequately redressed by public resources or that may, as has been suggested, indicate a malfeasance by those public institutions. Where there is an over-recording of bias crime, the opposite distortion may occur. There will be over-criminalisation and the potential for public or moral panic that will have impact on freedoms.*¹⁴⁰⁹

1279. In respect of the SF Parrabell cases, the academic team contended that the latter “*distortion*” arose. However, they do not identify the “*demand for an enforcement response disproportionate to the fact*”.¹⁴¹⁰ They do not identify any “*freedoms*” which would be

¹⁴⁰⁷ Exhibit 1, Tab 2, (n 6), 65.

¹⁴⁰⁸ Ibid, 70.

¹⁴⁰⁹ Ibid, 79-80.

¹⁴¹⁰ Exhibit 6, Tab 205, (n 141), 726-727.

“impacted” by the so-called moral panic.¹⁴¹¹ Nor do they identify any policy reforms (proposed or implemented) which have arisen from the so-called moral panic, let alone how those policy reforms have overreached.

1280. Their concern appears to reduce to a view that the list of 88 amounts to “fake news” and that the criticism of the NSWPF was disproportionate to the actual extent of its failings. The ‘Moral Panic’ article concludes:

*And so, the number continues to haunt. It is not just the police who are vexed by the figure; the wider community is jolted by a ‘false news’ imprimatur, whatever the social reality of the period in history the number is meant to represent.*¹⁴¹²

1281. The academic team’s concern about the police being “vexed” goes back to the beginning of the entire exercise: by the early stages of his engagement with SF Parrabell, Dr de Lint knew that there was a strongly held view within the NSWPF that claims of 80-plus gay bias homicides were a “gross exaggeration”.¹⁴¹³ By February 2017, Dr de Lint shared that view.¹⁴¹⁴

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.

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.

1284. When questioned about the ‘Moral Panic’ article in their oral evidence, both Dr Dalton and Dr de Lint expressed their sincere regret regarding several aspects of the article, including the following:

- a. the inaccurate framing of why the academic team developed its own assessment tool, which “omitted” the true reason (namely that the “police instrument wasn’t fit for purpose”);¹⁴¹⁵

¹⁴¹¹ Exhibit 1, Tab 2, (n 6), 80.

¹⁴¹² Exhibit 6, Tab 205, (n 141), 740.

¹⁴¹³ Transcript, T2778.35.

¹⁴¹⁴ Transcript, T2778.40.

¹⁴¹⁵ Exhibit 6, Tab 205, (n 141), 734-736; Transcript, T2645.28, T2851.46, T2852.41, T2551.13-19, T2551.43, T2552.10-13, T2850.11-40.

- b. the article's reference to gay homicide as a "*so-called problem*",¹⁴¹⁶ which Dr Dalton described as "*terrible*", "*sloppy*" language;¹⁴¹⁷ and
- c. the use of the terms "*fake news*" and "*false news*" to describe the figure of 88 deaths.¹⁴¹⁸

1285. Dr de Lint gave evidence that he regretted that the article was ever submitted for publication.¹⁴¹⁹

Expert evidence: outline

1286. As noted in Parts A and F, the Inquiry has been assisted by the evidence of Associate Professor Lovegrove, Professor Asquith and Ms Coakley. Their views on the methodology of the academic team are outlined below (except in respect of "*anti-paedophile animus*", where their views are outlined above).

1287. The Inquiry was also assisted by the evidence of Dr Dalton and Dr de Lint. Where their evidence relates to an issue raised by the experts, it is dealt with below.

Expert evidence: common issues

1288. As with the methodology of the SF Parrabell officers (see Part F), there are a number of issues where two or three of the experts expressed similar views about the methodology adopted by the academic team. Those issues are dealt with first, before the issues to which each expert gave particular attention.

Reliance on BCIFs prepared by SF Parrabell

1289. As outlined above, the academic team disavowed the BCIF as an instrument. Dr Dalton went as far as to call it a "*pretty appalling instrument*".¹⁴²⁰

1290. However, the academic team do not appear to have reflected on the extent to which their own views were dependent on the BCIFs. Despite the RFQ indicating that the academic team would refer to the original source documents, they did not ultimately do so. The academic team did not go back and create their own summaries based on the source material. Their methodology was overlaid on the summarised and filleted information that they had: namely the BCIFs, on which they were entirely reliant.

¹⁴¹⁶ Exhibit 6, Tab 205, (n 141), 737.

¹⁴¹⁷ Transcript, T2554.11-18, T2853.5-29, T2853.5-29, T2554.11-18.

¹⁴¹⁸ Exhibit 6, Tab 205, (n 141), 723, 740 (SCOI.82022); Transcript, T2830.22, T2547.33-35, T2838.33, T2838.45, T2839.9, T283915.

¹⁴¹⁹ Transcript, T2867.15, T2866.44, T2543.12-13, T2543.41.

¹⁴²⁰ Transcript, T2446.38-40.

1291. All three of the expert reports identified this as an issue with the academic team's methodology.

The Lovegrove Report put it this way:

[152] Nonetheless, in one respect Police understandings did constrain the academic team's capacity to identify gay hate in the 88 crimes. This arises from the quality of the raw data with which the academic team had to work. These data were the 'case summaries' (apparently the BCIF forms completed by the police investigators). It must be presumed that any prejudices or limitations of understanding of what constitutes gay hate would infect these case summaries and exclude or distort information which the academics might have considered material to the finding of gay hate.

1292. The Coakley Report said:

[39] The academic team seems to recognize that their process is not likely to produce different or other results from the original case files, noting that there are limits on archival information: "an archive can only yield something that was captured in the first instance".

...

[45] The academic team seems to understand the shortcomings of the original investigations, and thus the limited ability of SFP to have success in further identifying, or even categorising, gay bias/hate crimes. They of course are limited by the same shortcomings. Even more so as they are merely reviewing summaries that SFP compiled.

1293. The Asquith Report addressed the issue in this way:

[198] That the academic team developed this typology from the case summaries drafted by SFP officers, and not on the original evidence in these cases, is problematic because they assumed that:

- a. the case summaries are a true reflection of the evidence and holdings, which requires not only trust in SFP officers and NSWPF as it exists now, but also as it existed at the time of the original creation of these holdings;*
- b. the case summaries (based on NSWPF case holdings) are sufficient to create a bespoke typology, despite noting that over a third of cases had insufficient information to make a determination;*
- c. they could assess the motivation based on these case summaries despite noting the inadequacy of record keeping—with or without bias, or with or without incompetence— at the time of many of the incidents, and that the subsequent archiving may also be deficient; and*
- d. a bespoke typology created from the summary data written by SFP officers could elicit a robust evaluation of the competence of the original SFP assessments of bias, and the methodology of such assessments by SFP officers.*

[199] Given the quality of data, the context of data consolidation into summaries, and the use of these summaries by the SFP academic review team to create a bespoke typology—and one that does not address the existing literature or typologies and indicators, nor the significant differences in the heterosexual and cissexist violence in the "88/85" cases—I believe that the typology created by Dalton et al has limited utility in evaluating the SFP methodology or whether any of the existing "88/85" cases are hate-motivated

or aggravated. I also believe that it does not meet the expected academic conditions required of either a process evaluation or an outcome evaluation.

Data provided by NSWPF

[200] The academic team were not granted access to the holdings for the “88/85” cases, and were reliant upon the initial BCIF review conducted by the SFP team. Inconsistencies or inaccuracies in the first order review would necessarily be replicated in the second order review by Dalton et al.

[201] As with much crime data, the technological, cultural, social, and political contexts of when that data was collected will shape what is collected, recorded, and archived. Returning to this “dirty data” decades later does not imbue it with new insights; on the contrary, with fresh eyes on old data we can better see its inadequacy in light of better, more contemporary policing practices.

[202] Too often policing organisations make decisions about strategy and resourcing based on the data collected, recorded, and archived by the organisation, even when that data was clearly collected under different cultural and social expectations. Using that data to contemporaneously assess bias—or in the case of the academic team, the competency of NSWPF officers’ historical investigations—is deeply flawed given the different contexts of police work.

[203] However, in effect, Dalton et al had to trust that the work completed by SFP officers was appropriate to the terms of reference, and that they could rely on these assessments to guide their evaluation of motivation.

[204] If inadequate data was collected and recorded at the time of the homicide—which at least appears to be the situation in some of the earlier cases—then the SFP team are assessing based on “dirty data”, which is then taken as fact by the academic teams to evaluate both the bias elements of the “88/85”, as well as the competency and possible presence of bias in the original investigations and SFP review.

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.

1295. In her oral evidence, Professor Asquith was asked what she would have done if she had been part of the academic team and she had only been granted access to the BCIFs. Her answer was compelling:

In the first instance, I would have tried to negotiate with NSW Police to explain to them how their methodology would not result in the outcome that they were seeking if they were unprepared to share those extra resources, the original resources, to the - what I feel is that the academic team that were appointed were given third-hand data. What I would have been wanting to get is to get at least second-hand data, the summaries of

*those case files, not the BCIF forms. If that was not possible, then I would have handed back the money and told them that I could not meet the brief.*¹⁴²¹

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 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).¹⁴²²

Terminology

1298. The language used by the academic team in the Flinders Report is, at best, imprecise. The Lovegrove Report notes, for example, that:

[117] As to their understanding of ‘gay’, they say little, other than it involves sexuality and gender, presumably meaning sexual orientation and the public flouting of gender norms. In respect of the LGBTIQ label, there is no reason not to take it as all-embracing; note, their apparent inclusion of transgender women and men who cross-dress as part of a discussion of nuancing sexuality and gender.

1299. The Asquith Report makes similar, more detailed observations about the terminology adopted by the academic team:

[62] Previous reviews, inquiries, and SFP itself did not make reference to the LGBTIQ community (or more appropriately, communities), and nor did they explore either the lethal or sub-lethal violence experienced by lesbians, bisexual women (or men for that matter), or intersex people. Furthermore, in the SFP Final Report, transgender people appear to have been erased or deadnamed.

...

[168] It is concerning that in both the SFP Final Report, and in De Lint and Dalton’s subsequent academic review, the attention was primarily on the experiences of gay men—and especially the characteristics, cultural attributes, history, and politics of gay men murdered in public places such as beats.

[169] In fact, the transgender women who were included in the original “88” (as well as the “85”) seem to have disappeared or have been deadnamed by the authors of both the SFP Final Report and the academic review. This erasure of transgender women’s experiences of cissexist violence is concerning given that the “88/85” homicides were

¹⁴²¹ Transcript, T2825.28-2826.19.

¹⁴²² Exhibit 1, Tab 2, (n 6), 24, 92.

already skewed towards the experiences of heterosexist violence against gay men. As there are unique characteristics of cissexist hate crime (as noted above in Vergani et al's indicators), the SFP and the academic review may have missed the critical factors that shape this type of hate crime.

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”.¹⁴²³
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.

Definition of bias crime, and the issue of partial motivation

1302. As noted above, the academic team developed their own definition of bias crime. Unlike that of the police (with which they said they “largely agree[d]”),¹⁴²⁴ the academic team’s definition does not incorporate the notion of motivation “in whole or in part” by bias.
1303. The Lovegrove Report criticised the academic team’s approach to this issue, including as follows:

[115] The academic researchers state that they “largely agree” with the police definition of bias crime. Nonetheless, they do formulate their own definition of bias crime:

...

[116] This definition excludes the qualification inserted by Police i.e. ‘motivated, in whole or in part ...’. In practice this may constitute a very significant difference. Since this is part of the one discussion, it would appear to be a conscious decision on the academic researchers’ part. This suggests that to the Police a crime in which hate was a secondary motive was still deemed a hate crime. The question arises whether the academic team required more in this respect; if they indeed did - the reference to ‘financial’ identified as the principal motive suggests this may be the case - they would find fewer hate crimes: see below at [129(4)]. In regard to the academic team’s elaboration, hate also requires some degree of overt expression of animus. The question must be asked, ‘Why?’ Again, if this informs the team’s interpretation of evidence, they will find fewer incidences of hate crime. The academics offer a second elaboration; it is in respect of

¹⁴²³ Ibid, 14, 18.

¹⁴²⁴ Ibid, 81.

'association', which is more appropriately dealt with in the following discussion of their classificatory framework.

1304. The concern raised by Associate Professor Lovegrove is a valid one, and a serious one. The Flinders Report is quite unclear as to whether a crime which had or may have had a partial gay hate motivation (such as where a robbery is also involved) was included or excluded: see the Flinders Report at pages 102-105. They say they found such questions *"profoundly challenging"*, and that robbery was *"a vexatious factor in bias crime theory"*, but it is not clear how, or if, they resolved such questions.

1305. The Asquith Report also criticised the academic team's definition of "bias crime":

[188] Rather than rely on the subjectivity of victims' (and witnesses') assessments of motivation— who the academic members claim are "...in no better position to determine..." motive, leading to what they claim is over-reporting of bias crimes— Dalton et al take "selectively" from the hate crime scholarship to generate their own definition of bias crime, namely ...

[189] This definition reduces hate crime victimisation to only those incidents that are:

- a. wholly motivated (and not partially motivated);*
- b. not aggravated by other motivations; and*
- c. incidents where the offender, by contemporaneous actions, demonstrates a pre-existing hatred/bias/ prejudice/animus that they share with others (such as Organised Hate Groups [OHGs]).*

[190] In particular, the authors claim that "[a] person who seeks out a gay person against whom to do harm because of a perceived vulnerability is arguably more of a threat to the community than a person who reacts violently against an unanticipated gesture or sexual advance".

[191] Not only does this reduce aggravated hate crimes to a perceived sexual advance by the victim—as if offenders are not aggravated by the very presence of the hated other in a preexisting conflict over another matter—it incorrectly assumes lethality from the degree of an offender's motivation.

[192] While it is clear that in the US, and particularly in relation to racist, antisemitic and Islamophobic hate crimes, there is an increased lethality generated by OHGs, the absence of Australian OHGs that target LGBTIQ people, and the lethality of violence demonstrated in some of the "88/85" cases committed by individuals acting alone, appears to contradict this aspect of Dalton et al's typology.

1306. Professor Asquith was not challenged on this evidence, which should be accepted.

1307. It is submitted that if members of the LGBTIQ community are targeted for robbery because of their identity as members of the LGBTIQ community, then that can and should be characterised as a bias crime.

Victim perceptions

1308. In the course of their literature review, the academic team rejected the subjective approach to hate crime which is favoured in the United Kingdom. In the course of doing so, they wrote (emphasis added): *“victims are often in no better position to determine the motivation for behaviour than is the perpetrator or the bystander. England and Wales have enormous numbers of bias crimes, no doubt due to the over-inclusive definition used to discover the phenomenon”*.¹⁴²⁵
1309. One obvious difficulty with this view, among others, is that perpetrators are not always forthcoming, to say the least, about their motivations, particularly where their motivations are aggravating factors at sentencing. Putting that to one side, it is worth briefly touching on the subjective-objective debate.
1310. The Asquith Report includes the identification and analysis of different approaches to identifying and policing hate crimes internationally. Professor Asquith favours the subjective, UK approach to hate crime and she does not consider that this leads to an over-recording of hate crimes (as distinct from hate *incidents*): see, for example, [129] and [224].
1311. Plainly, it is impossible to obtain victim perceptions in the case of a homicide (excluding cases in which there are multiple victims of an attack, some of whom survive). The Asquith Report notes that, in the UK, *“in cases of homicide or manslaughter where the victim is unable to declare their perception that it was hate-motivated, any other person with a ‘legitimate interest’ can make this claim, including family members, carers, police officers, and victim support groups.”*¹⁴²⁶
1312. Both the Asquith Report and the Lovegrove Report identify a legitimate and important role for victim perceptions.
1313. The Asquith Report describes victims as *“experts in being hated”* and suggests that their subjective assessment is *“better placed to respond to the continuum and escalation of violence, as it captures all incidents, not just those that some may perceive as warranting increased police attention.”*¹⁴²⁷ 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

¹⁴²⁵ Ibid, 82.

¹⁴²⁶ Exhibit 6, Tab 255, (n 169), [123].

¹⁴²⁷ Ibid, [222]-[223].

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.

1314. The Lovegrove Report includes the following passage:

[118] It is problematic that the academic team appears to eschew victim perceptions of gay hate so readily. In my view, these perceptions informing what victims understand to constitute gay hate must be attended to in any understanding of the phenomenon. Their observations should not be accepted uncritically in respect of this, since this may result in the over identification of gay hate. Rather, this input will be approached with the attitude that the gay community may be aware of manifestations of gay hate not in the awareness of individuals who are not in this community. The academics' argument is that gay victims are in no better position than anyone else to determine gay bias in the circumstances of a crime. Certainly, the observations of other witnesses to a crime are potentially valid, but the gay community's experiences and thoughts must be central to the understanding of what constitutes a gay-hate crime. It should not be forgotten that many in the gay community will be victims and associates of victims of anti-gay violence.

1315. This builds on the observation at [40] of the Lovegrove Report that a person designing an instrument to measure gay hate should be “apprised of what the gay community would regard as the signs of gay hate”.

1316. It is submitted that the evidence of both Professor Asquith and Associate Professor Lovegrove on these topics should be accepted.

1317. In their response to the expert reports, the academic team disputed the “criticism that [they] did not sufficiently take advice from the ‘LGBTIQ community.’”¹⁴²⁸ They observed, correctly, that they had received and reviewed information from ACON, as described in Appendix A of the Final Parrabell Report. However, as Appendix A records: “In terms of the academic review, the ACON dossiers were read with a view to reveal if they had captured any new of [sic] fresh material that was not in the individual police case files”.¹⁴²⁹ The academic team concluded that the ACON dossiers “did not ultimately provide any compelling reasons for the academic team to reclassify any cases”.¹⁴³⁰

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

¹⁴²⁸ Exhibit 6, Tab 258, (n 1173) 7.

¹⁴²⁹ Exhibit 1, Tab 2, (n 6), 119.

¹⁴³⁰ Ibid, 120.

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.”*¹⁴³¹

1319. This Inquiry has proceeded on the basis that members of the LGBTIQ community do have knowledge that is relevant to understanding hate crimes. One example (among others) of that approach was Public Hearing 1 in November 2022, when the Inquiry received a wide range of evidence, from numerous members of the LGBTIQ community, relating to issues relevant to anti-LGBTIQ bias and the nature and extent of hate crime in NSW in the relevant time period.

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.

Intuition vs. objectivity

1321. Having rejected the UK approach as too subjective, the academic team sought to emphasise the objectivity of its own process. They failed to convince the experts of their objectivity.

1322. The Lovegrove Report has this to say:

[125] The purpose of the conceptual analysis by the academic team, in the preceding section, is to present and explain their understanding of the problem, and to identify the factors critical to this understanding. It also allows the reader to evaluate the soundness of this understanding and is the basis of any assessment of validity. The definitions of the factors identified are also critical in this analysis. These definitions should be used to determine how to measure or assess the relevant phenomenon, here, to identify the presence of gay hate in the circumstances of the 85 cases. However, the academic team do not take this step; they offer nothing more specific, no operational definitions. The team broadly favours the use of ‘(objective facts, circumstances, or patterns attending a criminal act...’ as bias crime indicators, yet offers nothing more than examples of classified cases, described in no more than several lines. Wide is the gap indeed between the behaviour described in the definitions and the detailed facts arising in the specific circumstances of the individual case.

[126] Thus, when the researchers first individually assessed the cases according to their classificatory scheme they, as individuals, had inadequate guidance as to how the hate was manifested according to the scheme in the circumstances of actual cases. An elaboration on the academic team’s thinking process used to classify cases is offered in Appendix C. I found it unenlightening; it lacked (but certainly required) an illustration of

¹⁴³¹ Exhibit 6, Tab 258, (n 1173), 7.

its application in a particular case. Problematic reliability among members of the research team was inevitable; so it proved to be. Though no numerical measure was made, we can discern this from their account of the coding process. Thus, cases were independently coded and then group reviewed in an effort to reach consensus. Moreover, the subsequent independent coding on the revised instrument also required a subsequent concordance consultation. The academic team's use of a review process would have been expected to improve rigour by increasing the coherence of the assessments. However, the group review process cannot make the application of the alternative framework inherently more reliable.

[127] *Again (see above at [86]), let it be clear, there must always be room for intuition in the application of definitional guidance; a balance between specificity and generality. In my view, the academic team's definition erred in the former respect in that they left too much room for intuition.*

1323. The Asquith Report contains a similar criticism of the academic team's claims of objectivity:

[173] *Dalton et al in their review of SFP note that even though each case was "scored" by SFP officers, any conclusions as to whether that case was bias-related was "...not determined by counting the number of 'yes' or 'no' indicators of bias and referencing that number to some sort of table that accorded a finding of bias to a particular threshold number (e.g. seven out of ten indicators)". Dalton et al instead accept a description of the process of determination, by the SFP officers, as "intuitive" and "contextual", and say that the Summary of Findings section of the BCIF was "rich in detail".*

[174] *While "intuition" is not necessarily a bad approach to investigating a complex phenomenon such as hate crime, Dalton et al's adamant declaration that for their part they deployed "objective" techniques to evaluate these cases seems counter to their acceptance that "intuition" was critical to the SFP findings. Only the SFP officers, and not the academics, had access to the full holdings of the cases. The "intuitive" reading and review of that full material was intrinsic to the composition and content of the summary documents (drafted by police officers barely briefed on hate crime offending, motivation, and victimisation), which were all that the academics had available to them.*

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.

1325. The Coakley Report likewise rejected the claims of objectivity on the part of the academic team as mere projection:

[46] *Thus, the Parrabell Report projects a conclusion that a transparent and robustly verifiable review did not uncover evidence of either a large number of gay hate/bias crimes, or a failure by the Police to identify those crimes. The SFP officers reached that conclusion by using the bias crime indicators for a purpose for which they were not intended. The academic team used even less relevant categories to assess the SFP summary files. Neither conclusion is based on a sound methodology. Both are open to doubt.*

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.

Other aspects of the experts' reports

Lovegrove Report

Development of typology

1327. Associate Professor Lovegrove outlined, at [38]-[52] of his Report, the ways in which a "valid" and "reliable" instrument for social science research would need to be developed.

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: Lovegrove Report at [51], [126], [134], [135], [144(4)] and [144(5)].

1329. In the Dalton/de Lint Response, the academic team accepted that *"it would have been preferable to subject the tool to the kind of reliability and validity exercises necessary in the development of such a device, as elaborated by Associate Professor Lovegrove. This was not possible with the time and resources available."*¹⁴³² The academic team had previously made a similar point in the Dalton/de Lint Statement, where they claimed that they *"researched the tool to the extent that time permitted"*.¹⁴³³

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 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.

1331. Nor is any such doubt reflected in the 'Moral Panic' article. Instead, the academic team there argues that the release of the Parrabell Report ought to have been *"a fatal setback"* to concerns about the scale or extent of the violence against the LGBTIQ community.¹⁴³⁴

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

¹⁴³² Exhibit 6, Tab 258, (n 1173), 7.

¹⁴³³ Exhibit 6, Tab 1, (n 1230), 5.

¹⁴³⁴ Exhibit 6, Tab 205, (n 141), 724.

time and resource constraints, then they ought to have acknowledged clearly that their views were necessarily attended by doubts.

Conclusions

1333. Associate Professor Lovegrove sums up his overall conclusions, in respect of the academic team's methodology, as follows:

[144] On the basis of this review of these matters, the following conclusions are drawn.

- (1) The term 'gay' is not clearly defined, leaving it somewhat open as to how what the academic team call 'gay' relates to the label 'LGBTIQ'.*
- (2) The academic researchers do not use an actual instrument for identifying gay hate but have a broad definition of hate. They do develop a framework for identifying the various circumstances in which gay hate is expressed and as it is related to motive, but this adds little to identifying the incidence of gay hate in the cases before them.*
- (3) The academic team, in planning their research method, do not appear to have engaged the 'gay' community, in this way perhaps sacrificing validity in their measurement of gay hate.*
- (4) The academic team do not provide evidence supporting the reliability of their assessments of gay hate in the cases. The acknowledged need for review suggests that reliability of the initial application of the framework to detect hate was not reliable.*
- (5) The academic team's reporting of their assessment and identification of gay hate in the case data is too obscure. They do engage a definition of hate, but the gap between this definition and the manifestation of hate in the circumstances of the individual cases is too great. Two consequences follow from this. They are:*
 - i. the reader has no means of assessing the soundness (validity) of the team's judgements of bias, leaving the reader with no more than uncertain conclusions, and*
 - ii. it fails a basic requirement of a social science research project, namely, the opportunity for independent researchers to replicate the actual study.*
- (6) The academic team's reporting of their tabular analysis opens the way for the 'headline' conclusion to be: 'Only 17 of 85 cases positively found to involve 'gay' hate bias.' This would represent a seriously misleading conclusion.*
- (7) More generally, having regard to the present review of the method set out above, the Academic Report provides no sound basis for any conclusion about the incidence of 'gay'-hate bias in the 85 deaths. The 'true' figure may be quite low; the 'true' figure might be alarmingly high. We are none the wiser as a result of this research.*

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.

Coakley Report

1335. Ms Coakley expressed her overall conclusions, in relation to the academic team's methodology, in this way:

- [40] *Nonetheless, they establish their own categories of "proactive, reactive ... associative or nonassociative" crimes. In my view these different categories are not such as to produce any better results. The academics even note that "the distinction between 'proactive' and 'reactive' can be hard to determine, even when a great deal of forensic testimony and witness testimony is available...", which was not the case here.*
- [41] *Moreover, most crimes, including homicides, can either be pre-planned or crimes of opportunity, or somewhere in between. Most crimes also can be committed alone or in concert with others. There is nothing unique about these categories in connection with gay hate/bias crimes or indeed any hate/bias crimes.*
- [42] *In my opinion, therefore, these categories of the academic team do not assist police in the SFP exercise, or in the future for recognizing, investigating, and identifying hate/bias crimes. These categories provide possible parameters as to how and/or why a (known) perpetrator might have committed any homicide, but are not particularly helpful for investigators seeking to rule in or rule out a gay bias/hate crime.*
- [43] *The academic team categories might or might not be useful in sentencing a convicted offender, as they go to intent, or dangerousness, although the academic team was not engaged in an exercise relating to sentencing. The finding of whether any crime is proactive or reactive might go to the state of mind of the perpetrator, the amount of planning involved, and the risk to the public in the future without appropriate general and specific deterrents employed in sentencing.*
- [44] *The academic team also recognized that in some cases, including that of Scott Johnson, there was a failure to determine, or sometimes even consider, that a death was a homicide, but rather they were labelled "suicide" or left undetermined. They seemed to recognize that where there is no sufficient investigation of a death at the time, a later review like that of SFP will not remedy this problem. Their categories are even less useful than the BCIF in unsolved cases, because there is no suspect available to assess a motive or behaviour according to their categories.*

1336. These views are soundly based and were also not challenged. They are clearly reasoned and should be accepted.

Asquith Report

Typology

1337. The Asquith Report concludes that the academic team's typology "*misconstrues the harms of hate crimes as primarily emanating from the proactive, associative homicides they identified in a minority of cases*".¹⁴³⁵ As Professor Asquith explains earlier in her report, she considers that the academic team places too much emphasis on Type A cases:

¹⁴³⁵ Exhibit 6, Tab 255, (n 169), [206].

[80] *The findings of Levin & McDevitt in their 2002 study are significant in relation to the typology created by Dalton et al to counter the perceived inadequacies of the BCIF used by SFP. Levin & McDevitt's "mission" motive most closely aligns with the Type A (proactive and associative) category of bias crimes created by the SFP academic team, which is the most unlikely form of targeted violence to occur according to Levin & McDevitt. In Dalton et al's typology, mission-motivated violence is given primacy over other motivations. They suggest this form of hate/bias/prejudice/animus is the most amenable to prosecution given that it is ideologically or socially organised. They also suggest that delimiting the types of motivation to proactive and, preferably, associative ensures that the law does not overreach or overcriminalise.*

1338. Professor Asquith's evidence in this regard was again not challenged and should be accepted.

1339. Given that SF Parrabell was concerned only with suspected hate crime deaths, the choice by the academic team to treat some cases as "most serious" and others as "least serious",¹⁴³⁶ was unfortunate and indeed misguided. Plainly, all homicides, and all hate crime deaths, are serious.

1340. The Asquith Report also takes issue with Type C of the academic team's typology:

[210] *The Type C hate crime typology established by the SFP academic team is a strange mix of both "retaliatory" and "defensive" motives created by Levin & McDevitt; yet, in Dalton et al, the motive is framed as solely, or primarily, as provocation—or retaliation or defence—from sexual advances. While a "homosexual advance defence" was proffered by perpetrators (and sometimes accepted by courts) to justify their actions, it is difficult to know if an "advance" was made or just used as a way to mitigate their violence. And as this defence has been largely erased from the criminal justice system because of the bias contained in such a construction of motivation—for women do not respond to advances by murdering the perpetrator—it is unusual for Dalton et al and de Lint and Dalton to create a typology that rests on such a construction of motivation.*

1341. As Professor Asquith argues, the characterisation of this type of homicide as less serious than Types A and B downplays the seriousness of homicides committed in response to a "homosexual advance" and other domestic or intra-familial crimes.

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.

Engagement with hate crimes literature

1343. Professor Asquith makes a powerful criticism of the academic team in her Report, in that the academic team did not engage sufficiently with the existing academic literature:

¹⁴³⁶ Exhibit 1, Tab 2, (n 6), 49, 88, 92, 93, 94.

- [82] *In their critique of Levin & McDevitt's typology, Gruenewald & Kelley, using open-source data (rather than reported crime data) on homicides of LGBT people, reconceptualised existing offender motivation typologies such as Levin & McDevitt's typology, to consider what they call the offender mode of victim selection. Here they focus on "how, not why, offenders discriminately select victims", and avoid the "impossible task of reading offenders' minds and evaluating their feelings".*
- [83] *What the Levin & McDevitt and the Gruenewald & Kelley typologies demonstrate is that over the years preceding SFP, there was already a large corpus of research and theorisation about hate crime motivation. While much of this has yet to be subject to a robust evaluation using the gold-standard random control trials (RCT) methodology, the follow up study conducted by Levin & McDevitt, along with others such as Gruenewald & Kelley, and Phillips (and those noted at f16) provide ample evidence of the two typologies' efficacy in capturing most contexts in which hate crime occurs.*
- [84] *The original set of nine indicators was developed by McLaughlin et al based on Levin & McDevitt's typology, first published in 1993 and expanded in 2002.*
- [85] *As far as I am aware, and as identified by Dalton et al in their contribution to the SFP Final Report, the BCIF—whilst 9 of the 10 indicators found within it were in wide use across the US as an assessment tool used by police—has not been evaluated either by policing organisations or independent researchers.*
- [86] *As noted in the different results reported by McDevitt et al and Phillips, and as with some of the research cited at footnote 16, researchers have sought to test the Levin & McDevitt expanded typology, but no consistent and reliable results have been reported as each study uses different data sets, collected by different agencies, often with different purposes or intents.*
- [87] *I have referred to the Levin & McDevitt typology—as well as that of Gruenewald & Kelley—to illustrate the limited understanding of hate crime typologies and motivations demonstrated by Dalton et al in their academic review of SFP, and to demonstrate that despite their limitations, these typologies continue to be used as a measure of motivation or victim selection across various jurisdictions, data sets, and agencies.*

1344. Professor Asquith returned to this failure at a later point of her Report:

- [178] *Equally, it was concerning that despite the BCIF being based on McLaughlin et al's work, which in turn was based on Levin & McDevitt and McDevitt et al's typology, the academic team only reference these authors in passing to evidence an argument about the prevalence of reported hate crime. They do not engage at all with their typology, which, as noted above, is widely recognised, and applied across the field of hate crime studies. A more comprehensive review of the literature may have assisted in better assessing those cases that do not fit with the bespoke typology created by Dalton et al.*
- [179] *While the efficacy of the Levin & McDevitt typology in capturing all forms of hate crime continues to be questioned, it seems counterintuitive to me for the SFP academic team to create their own typology based on a limited analysis of the existing research and without having conducted their own empirical research on heterosexual and cissexist hate crimes.*
- [180] *While the academic team note that there is a lack of consistency in language, concepts, and data, it was surprising that given they were not experts in hate crime that they decided to deploy language and phrases not in use in the field. Amongst other things, this has made comparisons with existing research difficult. They further confuse the field by creating another set of concepts and phrases, based on what they already identified*

as incomplete and unreliable historical data that "...can only yield something that was captured in the first instance".

[181] *In defining bias, the academic team also make the distinction—not present in law, or hate crime scholarship—between animus and hostility, bias, prejudice or hatred. Further, at times, they elide the concepts into one (for example, in the Executive Summary where they identify “two categories of bias or animus”, yet then in the following paragraph, assign “animus” to the “most serious types of bias (Type A and B)"); at other times, Dalton et al make a distinction between anti-paedophile animus and anti-gay bias, as they do in the same Executive Summary.*

[182] *The academic team also note that they and the NSWPF SFP officers used two definitions of “bias crime”, with the second noted in the Coordinating Instructions requiring “[o]bjective facts, circumstances, or patterns”. This definition varies considerably from that used by the NSWPF, or that contained in the sentencing legislation. It also contradicts the arguments presented by Dalton et al (in citing Hall) that ‘...it is difficult to overcome...’ the subjectivity aligned with hate motivation.*

1345. In the academic team’s own words, they took “selectively” from the academic literature on hate crimes.

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. As discussed earlier in these submissions, the Flinders academics’ tender emphasised that:¹⁴³⁷

Whilst Dr Dalton does not profess to be expert per se in ‘hate crime’, he nevertheless has an excellent grasp of this academic literature, particularly as it relates to the commission and indicators of homophobic violence [bias crime].

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 undertaking new academic work is to engage deeply with existing academic work. They did not do so.

1348. At [205] of her report, Professor Asquith offers this opinion: *“Instead of creating a new typology, I believe it was incumbent on the SFP academic team to deploy existing typologies generated from over 30 years of application and research from internationally recognised hate crime scholars.”*

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:

¹⁴³⁷ Exhibit 6, Tab 25, (n 1264), 25.

- 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.

1350. The Dalton/de Lint Response takes issue with the allegation that the academic team did not engage with the academic literature in sufficient detail:

*There are indeed multiple literatures that intersect on the questions of bias crime, sexual and gender identity, lethal violence, etc., some from the location Professor Asquith prefers and, of course, not all of which is cited in the brief review for the report.*¹⁴³⁸

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]).

Was a typology necessary at all?

1352. There is a more fundamental question. Could any typology of hate crimes serve any of the purposes for which the academics were engaged? Those purposes were as follows:

*The purpose of academic review was to provide an independent account of Strike Force Parrabell's systemic validity; where possible, identify evidence of poor or biased police investigations; guide future policing strategies of community engagement; and develop a more suitable bias crime identification process.*¹⁴³⁹

¹⁴³⁸ Exhibit 6, Tab 258, (n 1173), 6.

¹⁴³⁹ Exhibit 1, Tab 2, (n 6), 70.

1353. If the purpose of SF Parrabell was to form a view as to whether certain deaths were or may have been hate crimes, and the purpose of the academic review was to “*provide an independent account*” of the Strike Force’s “*systemic validity*”, then it is unclear what utility there was in a typology which sought to classify different types of hate crimes: see for example the distinction between indicators and typologies at [67]-[68] of the Asquith Report.

1354. Ms Coakley concluded that there was no such utility:

[42] In my opinion, therefore, these categories of the academic team do not assist police in the SFP exercise, or in the future for recognizing, investigating, and identifying hate/bias crimes. These categories provide possible parameters as to how and/or why a (known) perpetrator might have committed any homicide, but are not particularly helpful for investigators seeking to rule in or rule out a gay bias/hate crime.

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.

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 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.

1357. This difficulty is perhaps not confined to the typology created by the academic team. While Professor Asquith is very familiar with the Levin & McDevitt typology, she acknowledges that it has limitations, including that:

- a. Little is known of the fourth category of “reactive” or “retaliatory” hate crimes;
- b. Very little research has been conducted on it;
- c. The categories are not mutually exclusive and can overlap;

- d. Alternative academic approaches have been proposed, such as Gruenewald & Kelley's typology based on the "offender mode of victim selection"; and
- e. No consistent and reliable results have been reported on testing.¹⁴⁴⁰

1358. An additional limitation of the Levin & McDevitt typology, for the present context, is that it was originally created to analyse racist hate crimes in the United States. That is plainly a very different context to analysing LGBTIQ bias crimes in NSW. A similar limitation applies to the use by SF Parrabell of the bias crime indicators, as outlined above.

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.

1360. There may of course be purposes for which it is useful to categorise or classify bias crimes, or hate crimes. The Levin & McDevitt typology continues to be used for various purposes. Ms Coakley suggests one possible purpose for the academic team's typology:

[43] The academic team categories might or might not be useful in sentencing a convicted offender, as they go to intent, or dangerousness, although the academic team was not engaged in an exercise relating to sentencing. The finding of whether any crime is proactive or reactive might go to the state of mind of the perpetrator, the amount of planning involved, and the risk to the public in the future without appropriate general and specific deterrents employed in sentencing.

1361. Understanding the motivations for hate crimes would no doubt also serve other important purposes, such as to inform approaches to policing and preventing them, and to rehabilitating the offenders who commit them. Interventions to address "thrill" hate crimes would, for example, presumably be different to those required to address "mission" hate crimes.

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.

¹⁴⁴⁰ Exhibit 6, Tab 255, (n 169), [73]-[86].

PART I: THE PARRABELL REPORT

1363. The Parrabell Report, published in June 2018, is in two parts:

- a. The first section, by AC Crandell and the SF Parrabell officers,¹⁴⁴¹ is at pages 11 to 46 (Police Report); and
- b. The second part, by the Flinders academic team, is at pages 47 to 133 (Flinders Report).

1364. The Parrabell Report begins with 'Acknowledgements' (page 6) and 'Cases Reviewed' (pages 7 to 10). The 'Acknowledgements' section lists the names and ranks of the officers who were seconded to SF Parrabell, and the names of the academics who prepared the Flinders Report. The 'Cases Reviewed' section lists the names of the 88 individuals whose deaths were reviewed by SF Parrabell. (In fact, only 86 were reviewed.)¹⁴⁴²

The Police Report

Introduction

1365. The introductory pages of the Police Report refer to the historical, social and legal contexts which shaped the era under review, in particular from the perspective of the LGBTIQ community. These pages are replete with admirably frank acknowledgements, by AC Crandell and SF Parrabell, both of the discrimination and hostility faced by that community over many years, and of the part played by NSWPF in that state of affairs.

1366. For example, after referring to the 1978 protests (which led to what is now Sydney's annual Gay and Lesbian Mardi Gras) which attracted a police response involving excessive force and arrests, the following appears:

*The degree of animosity towards gay men especially was not isolated to any particular section of society which reflected well entrenched social, political, legal, cultural and institutional bias. Within this context the NSW Police Force was no different with the backing of legislation that identified criminality by natural behaviour.*¹⁴⁴³

1367. A section headed 'Social Progress' emphasises the impact of the HIV/AIDS crisis, and the 1987 'Grim Reaper' campaign, on the LGBTIQ community. The authors accept that "*the link between anti-gay violence and moral panic associated with the spread of AIDS in Australian states is well documented.*"¹⁴⁴⁴ AC Crandell explained in his oral evidence that he had deliberately used the

¹⁴⁴¹ Transcript, T595.40-46.

¹⁴⁴² Exhibit 1, Tab 2, (n 6), 23.

¹⁴⁴³ Ibid, 11.

¹⁴⁴⁴ Ibid, 13.

term “*moral panic*” in the Police Report to describe the “*alarm*” that was felt in the LGBTIQ community at the time, about the violence to which they were being exposed. In his view the “*moral panic*” was both genuine and justified.¹⁴⁴⁵ The use of the term “*moral panic*” in the Police Report is very different from its use by the academic team in both the Flinders Report and the ‘Moral Panic’ article.

1368. AC Crandell readily accepted, in his oral evidence, that there was a view abroad (at the time of the ‘Grim Reaper’ campaign) that the HIV/AIDS crisis was the fault of gay men, and that therefore gay men were, in effect, “*fair game*”.¹⁴⁴⁶ This was particularly so at beats, where “*men were identified as legitimate targets of violence [and] unlikely to seek police involvement or assistance*”.¹⁴⁴⁷

1369. Under the heading ‘Responsibility of Police’, the Police Report states candidly that, although the 1984 legislation meant that “*homosexual activity*” was no longer contrary to law, “*police culture and societal values took far longer to change*”,¹⁴⁴⁸ and that “*there is no doubt that police culture inhibited the kind of impartial support now becoming a feature within LGBTIQ community relationships*”.¹⁴⁴⁹ AC Crandell agreed in his oral evidence that “*police culture*” had this inhibiting effect during the 1970s, 1980s and 1990s.¹⁴⁵⁰

1370. Under this heading, the Police Report goes on to make a number of commendably unambiguous statements, including among others the following:¹⁴⁵¹

- “*The NSW Police Force is acutely aware of and acknowledges without qualification both its and society’s acceptance of gay bashings and shocking violence directed at gay men, and the LGBTIQ community between 1976 and 2000.*”
- “*It is clear and beyond question that levels of violence inflicted upon gay men in particular were elevated, extreme and often brutal.*”
- “*The Gay and Lesbian Rights Lobby and later, the AIDS Council of NSW (now ACON) kept records, usually comprising self-reported incidents of gay-hate violence, that on several occasions amounted to more than 20 entries per day. Unfortunately, fear associated with antigay attitudes of officers within the NSW Police Force at the time prevented these reports being formally recorded, which in tum meant that crimes were not investigated. This inherent lack of consequences or accountability meant that perpetrators were given a kind of ‘social license’ to continue inflicting violence upon members of the gay community.*”

¹⁴⁴⁵ Transcript, T908.9-18.

¹⁴⁴⁶ Transcript, T597.12.

¹⁴⁴⁷ Exhibit 1, Tab 2, (n 6), 13; Transcript, T597.24-37.

¹⁴⁴⁸ Exhibit 1, Tab 2, (n 6), 13.

¹⁴⁴⁹ Ibid, 14.

¹⁴⁵⁰ Transcript, T597.33.

¹⁴⁵¹ Exhibit 1, Tab 2, (n 6), 14-15.

- *“Importantly, fear, moral panic and moral judgments towards beat usage were very real. It would be naïve to assume that these attitudes did not colour the perceptions of police officers as members of the same society so publicly against gay men and the LGBTIQ community generally.”*
- *“The NSW Police Force must acknowledge and has, to some extent, acknowledged its part in marginalisation of the LGBTIQ community during the 1970s, 80s and 90s especially.”*

1371. In his oral evidence, AC Crandell readily stood by those statements.¹⁴⁵²

Impetus for, and objectives of, the Parrabell Report

1372. According to the Police Report, SF Parrabell *“was developed to show proactivity, from this point in history at least, in the investigation of anti-gay crime”*.¹⁴⁵³

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.

1374. As to why the particular 88 deaths were chosen to be the subject of this review, the Police Report first states that *“a scholarly article”* had been published *“in 2013”* by the AIC, relating to a list of 88 suspicious deaths which had been *“developed and published by the AIC”*.¹⁴⁵⁴ Then it is stated that the 88 deaths had been *“originally listed in a submission to the AIC”* in 2002.¹⁴⁵⁵

1375. In fact, as AC Crandell acknowledged,¹⁴⁵⁶ 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 appeared in 2000 and 2001, but they related to a different and smaller subset of possible gay hate-related deaths.¹⁴⁵⁷

1376. However, the Police Report is accurate in stating that in 2013 *“a number of articles were published in mainstream Sydney media”* relating to 88 deaths *“with potential gay hate*

¹⁴⁵² Transcript, T596–599.

¹⁴⁵³ Exhibit 1, Tab 2, (n 6), 14.

¹⁴⁵⁴ Ibid, 17-18.

¹⁴⁵⁵ Ibid, 19.

¹⁴⁵⁶ Transcript, T600.1-45.

¹⁴⁵⁷ Exhibit 2, Tab 35, (n 53); Exhibit 2, Tab 36, (n 69).

motivations".¹⁴⁵⁸ As submitted elsewhere, it is plain that those articles were indeed a significant, if not the main, catalyst for SF Parrabell.

1377. At page 18 of the Police Report the "*overriding objective*" of SF Parrabell is said to be (in bold font):

To bring the NSW Police Force and the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer community closer together by doing all that is possible from this point in history.

1378. This objective was to be achieved, "*in part*", it was said, by reviewing the 88 deaths.¹⁴⁵⁹

1379. Thus on pages 19-20, the Police Report states (emphasis added):

On 30 August 2015 Strike Force Parrabell commenced a thorough investigative review to determine whether 88 deaths ... commonly referred to by media representatives, could be classified as motivated by bias including gay-hate.

The identification of bias motivation was of primary importance, however, where appropriate, investigators were to also make recommendations about conducting further enquiries if fresh evidence might be uncovered, or bias of the original investigator was shown or suspected.

1380. As outlined elsewhere in these submissions, SF Parrabell was not to, and did not, involve any "investigation", or "reinvestigation", whatsoever, of any of the 88 cases. It was a review of historical paper holdings, not a reinvestigation. AC Crandell contended that the word "*investigative*" was an appropriate description of what was involved in such a paper "*review*".¹⁴⁶⁰

1381. As is apparent, at the heart of the exercise, according to AC Crandell, was the "*identification of bias motivation*" in the perpetrator/s of the crime.

1382. As to the purpose of the academic review, the Police Report states (numbers added):

*The purpose of academic review was (1) to provide an independent account of Strike Force Parrabell's systemic validity; (2) where possible, identify evidence of poor or biased police investigations; (3) guide future policing strategies of community engagement; and (4) develop a more suitable bias crime identification process.*¹⁴⁶¹

1383. As outlined elsewhere in these submissions, AC Crandell acknowledged that, of those four "purposes", the second, third and fourth were ultimately not pursued.¹⁴⁶²

¹⁴⁵⁸ Exhibit 1, Tab 2, (n 6), 17.

¹⁴⁵⁹ Ibid, 18.

¹⁴⁶⁰ Transcript, T725.5-726.38.

¹⁴⁶¹ Exhibit 1, Tab 2, (n 6), 14.

¹⁴⁶² Transcript, T1737.36-39, T2771.19-21, T2391.8-13; Exhibit 1, Tab 2, (n 6), 19.

Terms of Reference for SF Parrabell

1384. Under the heading 'Strike Force Parrabell Terms of Reference', on pages 20-21 of the Police Report, the following six paragraphs appear:

Assess each of the 88 deaths identified as involving potential gay-hate bias between 1976 and 2000

The timeframe for review is 18 months from 30 August 2015

If during the assessment suspects are identified, that information will be forwarded to the Unsolved Homicide Team for information and further inquiries/investigation

After each assessment, a detailed report outlining the bias classification of each incident and justifying material will be prepared and presented to prominent representatives of the LGBTIQ community

Each incident will be filtered through the NSW Police Force 10 bias crime indicators as a general guide to identify direct or circumstantial evidence of bias motivation

*Examine and report upon evidence capable of identifying suspected bias of the original police investigator.*¹⁴⁶³

1385. As noted earlier in these submissions, AC Crandell was not able to locate a copy of the original Terms of Reference, but said "I know there was one".¹⁴⁶⁴

1386. As to the second paragraph, the "timeframe" ultimately extended from about 30 August 2015 to late June 2018 (when the Parrabell Report was published), nearly three years.

1387. As to the fourth paragraph, AC Crandell gave evidence that this process was never completed. He said that the intention had been that the presentations would take place quarterly, and that the first such presentation took place on 1 December 2015. However, it then proved "very awkward to discuss matters, particularly when we were always thinking of confidentiality".¹⁴⁶⁵ As a consequence, SF Parrabell did not persevere with this objective.¹⁴⁶⁶

1388. As to the sixth paragraph, AC Crandell agreed that in the end that topic was also not able to be pursued to any significant extent. The task proved "effectively impossible".¹⁴⁶⁷

1389. As to the first and fifth paragraphs, which concern methodology and the use of the bias crime indicators, submissions have been made in Part F.

¹⁴⁶³ Exhibit 1, Tab 2, (n 6), 20-21.

¹⁴⁶⁴ Transcript, T602.35-36.

¹⁴⁶⁵ Transcript, T684.24-38.

¹⁴⁶⁶ Transcript, T684.42-44.

¹⁴⁶⁷ Transcript, T603.36-45, T685.37-686.4; see also Recommendation 6 at Exhibit 1, Tab 2, (n 6), 40.

“A Simple Question”

1390. At page 21, the Police Report asserts that what the SF Parrabell officers did was to answer “a simple question”. That assertion is expressed as follows (emphasis added):

Neither Strike Force Parrabell nor the Academic Review Team could confidently classify every death as either involving, or being devoid of, gay-hate or other bias, leaving a number of cases classified as ‘Insufficient Information.’ To be clear, NSW Police Force investigators assigned to Strike Force Parrabell applied a general tenet to case classification by answering a simple question:

“Is there evidence of a bias crime?”

Consistent with police methodology, this was the foundational question that allowed greater classification certainty from a policing perspective.

1391. As outlined earlier, the true position was much more complex. The various constituent documents all posited either three questions or four questions, not just one; the language of those questions was different in each of those constituent documents; and the BCIF itself (including, in particular, the language of the questions) was subject to several successive changes over the course of the life of the Strike Force.

1392. In the version of the BCIF that ultimately appeared in the Parrabell Report (at pages 121 to 131), the first question (of four) is (emphasis added):

Is there sufficient evidence/information to prove beyond a reasonable doubt that there might have been bias crime?

1393. That question (one of four) is very different, in several significant respects, from the single (“simple”) question which the Police Report suggests was “foundational”. It is a complicated question, with several components, all of which bring with them complexities and/or nuances and/or ambiguities which would need to be clearly resolved. As elsewhere submitted, there is no evidence that any such clear resolution was ever sought by or provided to the SF Parrabell officers.

1394. Dr Dalton agreed that the “simple question” at page 21 of the Police Report was not the question in the BCIF as it finally emerged: “No, I guess it’s not. It’s a strange sort of sentence”.¹⁴⁶⁸

1395. However, AC Crandell’s position appeared to be, in substance, that there was no relevant difference between the questions, and/or that any differences did not really matter.¹⁴⁶⁹ It is submitted that such a position is unsustainable.

¹⁴⁶⁸ Transcript, T2406.45-46.

¹⁴⁶⁹ See, e.g., Transcript, T822.9-29, T1036.23-1037.12.

“Each team endorsed the systemic approach of the other”

1396. At page 21, the Police Report contains the following passage (emphasis added):

*[T]he academic research team did not necessarily adopt the same classification interpretation, which is one reason for differences between findings of both teams. Whilst different findings and classifications were made, each team understood and endorsed the systemic approach of the other. The fact that findings remain different, and that they subsist after rigorous review, highlights the difficulty of bias crime classification.*¹⁴⁷⁰

1397. It is submitted that the assertion highlighted underlined above is simply not true.

1398. The academic team expressly did not “endorse” the “systemic approach” of the police team, namely the use of the BCIF.¹⁴⁷¹

1399. When first asked about this, AC Crandell initially did not agree that this assertion was even an exaggeration.¹⁴⁷² However, he later agreed that it was “not really right”,¹⁴⁷³ and eventually that it was “quite inaccurate”.¹⁴⁷⁴

1400. Dr Dalton for his part immediately said, when taken to the assertion in question, that it was “not true”.¹⁴⁷⁵

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.

Findings

1402. At page 23 of the Police Report, a heading ‘Findings’ is followed by some fifteen pages of statistics, graphs and pie charts relating to the work of SF Parrabell on the 88 cases (two of which were actually not reviewed).

1403. None of these “findings” identifies any of the cases by reference to any of the names of the 88 deceased persons listed in the ‘List of Cases Reviewed’ on pages 7 to 9, or otherwise indicates which cases fit into which categories.

1404. Some of these “findings” are noted in the following paragraphs.

1405. Of the 88 cases, SF Parrabell’s position is that:

¹⁴⁷⁰ Exhibit 1, Tab 2, (n 6), 21-22.

¹⁴⁷¹ Ibid, 68 (fn 20).

¹⁴⁷² Transcript, T606.42-607.27.

¹⁴⁷³ Transcript, T607.33-41.

¹⁴⁷⁴ Transcript, T876.35-877.26.

¹⁴⁷⁵ Transcript, T2407.1-37.

- a. 63 cases were solved (72%);
- b. 23 cases were unsolved (26%); and
- c. Two cases were not reviewed (2%).¹⁴⁷⁶

1406. Of the 86 cases which it reviewed, SF Parrabell's position is that:

- a. There was evidence of bias crime in eight cases (9%);
- b. There was suspected bias crime in 19 cases (22%);
- c. There was insufficient information in 25 cases (29%); and
- d. There was no evidence of bias crime in 34 cases (40%).¹⁴⁷⁷

1407. Of the 63 cases that were solved, SF Parrabell's position is that:

- a. There was evidence of bias crime in eight cases (13%);
- b. There was suspected bias crime in 14 cases (22%);
- c. There was insufficient information in 11 cases (17%); and
- d. There was no evidence of bias crime in 30 cases (48%).¹⁴⁷⁸

1408. Of the 23 cases that remained unsolved, SF Parrabell's position is that:

- a. There was evidence of bias crime in zero cases (0%);
- b. There was suspected bias crime in five cases (22%);
- c. There was insufficient information in 14 cases (61%); and
- d. There was no evidence of bias crime in four cases (17%).¹⁴⁷⁹

1409. Such statistics, among others, are the subject of commentary by Associate Professor Lovegrove, as discussed elsewhere in these submissions.

The Flinders Report

1410. The Flinders Report begins, on page 49 of the Parrabell Report, with an 'Executive Summary', which includes the following statements (emphasis added):¹⁴⁸⁰

- *"The list [of 88] has increased popular interest and has been used as a proxy for the view of anti-gay police bias in the New South Wales Police Force (hereafter NSWPF)."*

¹⁴⁷⁶ Exhibit 1, Tab 2, (n 6), 23.

¹⁴⁷⁷ Ibid, 24.

¹⁴⁷⁸ Ibid, 25.

¹⁴⁷⁹ Ibid, 26.

¹⁴⁸⁰ Ibid, 49-51.

- “For this analysis, we categorised the 85 cases into five groups: insufficient information to make a determination (II), no evidence of bias (NB), or three types and two categories of bias or animus.”
- The “most serious types of bias” are those formulated by the Flinders team, in the bespoke methodology which they created, as “Type A” and “Type B”. That methodology is the subject of submissions in Part H.
- “Anti-gay bias homicide is not typically a case of serial homicide offending where offenders or associates are linked to more than one case.” (In his oral evidence, Dr Dalton could not recall the basis for making this statement.)¹⁴⁸¹
- “Our view is that the over-reporting and recording of bias can produce unfortunate consequences.”
- As reviewers, we found the need to distinguish anti-paedophile animosity from anti-gay bias in the more generic form. This finding may cause controversy.”
- “A significant number of cases involved large age differences between offenders and victims. Anti-paedophile animosity underwrote a substantial amount of lethal violence in the homicide cases under review.”
- “We sought not to conflate homosexuality with paedophilia (the two are not synonymous). If an offender is targeting a specific victim on the basis of a belief that that particular person is a paedophile, it would be wrong to categorise that animus generically as anti-gay.”

1411. The final paragraph of the Executive Summary, on page 53, begins (emphasis added):

*Altogether, the policy question on combatting anti-gay bias is not as simple as some moral crusaders make it out to be.*¹⁴⁸²

1412. According to Dr Dalton, a “moral crusader” was:

*Anyone who was promulgating the idea that there was a major and serious problem with too many homicides, proportionate to other places or cities in the world – that there was an epidemic, if you like, or whatever the phrases were that were being touted at the time.*¹⁴⁸³

1413. As to who these “moral crusaders” were, Dr Dalton identified “anyone who would support [the] proposition” that “there were as many as up to 88 deaths which were or might have been gay hate”, including Ms Thompson and Professor Tomsen.¹⁴⁸⁴

1414. From page 61, various topics are referred to under the overall heading ‘Dimensions of the Issue’. At pages 64-65, under a sub-heading “Taking on a life of its own: the problem of the media, mythology and folklore in relation to the ‘lists’ of murders” (emphasis added), the authors

¹⁴⁸¹ Transcript, T2408.9-2409.24.

¹⁴⁸² Exhibit 1, Tab 2, (n 6), 53.

¹⁴⁸³ Transcript, T2417.19-23.

¹⁴⁸⁴ Transcript, T2417.27, 2417.33, 2417.37, 2418.3-20.

deprecate the list (of 88), and lament the impact they believe that list to have had in the general community.

Flinders Report: as to the methodology of SF Parrabell

1415. At pages 65 to 70, the methodology employed by the SF Parrabell officers is discussed.

1416. As noted elsewhere, the academic team expressed significant reservations about the BCIF, and expressly did not endorse it.¹⁴⁸⁵

1417. In his oral evidence, Dr Dalton confirmed that this was the view of the entire team,¹⁴⁸⁶ and that not only was the academic team “reluctant” to endorse the indicators, but in fact did not endorse them and instead pointed out the shortcomings of the instrument, as summarised at pages 70 and 71.¹⁴⁸⁷

1418. At page 67 there is a heading, ‘Scoring the cases’. Under that heading it is asserted more than once that the SF Parrabell officers “scored” each case. However, in his oral evidence, Dr Dalton clarified that his understanding was not that the SF Parrabell officers had engaged in a “scoring” process in the sense of attributing numbers or scores in the way that word is usually understood.¹⁴⁸⁸ Rather, having read the case material that they had, they would “arrive at a view”,¹⁴⁸⁹ and they would do so “intuitively”, as referred to on page 69 of the Flinders Report.¹⁴⁹⁰

1419. He later accepted, as well, that the “elaborate apparatus” of the BCIF was apt to conceal the near impossibility of the task being attempted, because there was “such a paucity of data in particular with the older cases”.¹⁴⁹¹

Flinders Report: as to the methodology of the academic team

1420. The methodology adopted by the academic team is the subject of submissions in Part H.

1421. As there outlined in more detail, because the academic team were dissatisfied with the methodology of the SF Parrabell officers including the BCIF, they developed their own methodology, as outlined at some length and in some detail in the Flinders Report, especially at pages 70 to 91.

¹⁴⁸⁵ Exhibit 1, Tab 2, (n 6), 68-71, 68 (fn 20).

¹⁴⁸⁶ Transcript, T2395.41, T2395.44.

¹⁴⁸⁷ Transcript, T2397.43-2398.33.

¹⁴⁸⁸ Transcript, T2383.1-36.

¹⁴⁸⁹ Transcript, T2384.4-19, T2384.14-16, T2384.26-31.

¹⁴⁹⁰ Transcript, T2384.21-2386.17.

¹⁴⁹¹ Transcript, T2399.17-24.

1422. First, the academic team formulated and applied their own definition of “bias crime”.¹⁴⁹² That definition was as follows (emphasis in original):

Bias crime:

- a. *expresses a categorical animus (directed at a person or group on the basis of his/her perceived identification with a vulnerable group).*
- b. *produces an act that intentionally, by way of criminal predation on the basis of that categorical animus, causes harm to that person or group.*
- c. *is mitigated or aggravated by an offender’s contemporaneous associations that are linked by a commitment of denunciatory non-identification with the vulnerable person or group.*¹⁴⁹³

1423. Next, the academic team devoted considerable attention to a distinction between an anti-gay “bias” and an anti-paedophile “animus”.¹⁴⁹⁴

1424. Finally, the academic team conceived of three ‘types’ of bias crimes (emphasis in original):¹⁴⁹⁵

- a. **‘Type A’ bias crimes** were those where “offenders proactively seek out opportunities in which to brutally express their animus” and where “they communicate and associate with others to effect this animus”.
- b. **‘Type B’ bias crimes** were those where “offenders proactively seek out opportunities to brutally express their animus, but do so furtively or in isolation from others, and act individually against victims”.
- c. **‘Type C’ bias crimes** were those where “an offender is reacting with criminal violence on the basis of the victim’s perceived identity in an included category, usually as an over-reaction to a perceived slight against his identity”.

1425. This produced the “checklist” extracted in Part H, in tabular form.

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.

¹⁴⁹² Exhibit 1, Tab 2, (n 6), 82-83.

¹⁴⁹³ Ibid.

¹⁴⁹⁴ Ibid, 84-86.

¹⁴⁹⁵ Ibid, 88-89.

Flinders Report: Findings

1427. Starting at page 91 of the Flinders Report, the academic team sets out ‘Bias Review Findings’, by way of a series of graphs and pie charts.

1428. First, at page 91, the academic team purport to summarise the findings of SF Parrabell. However, the figures there cited are different from SF Parrabell’s own summary of its conclusions, in the Police Report (as set out above). The academic team claimed that SF Parrabell had categorised 62 cases as solved, 17 as “suspected bias crime”, 26 as “insufficient Information” and 34 as “no evidence of bias crime” – whereas the actual figures in the Police Report are, respectively, 63, 19, 25 and 34. Such discrepancies do not encourage confidence in the accuracy of the work of at least one of the teams.

1429. The academic team summarised their own findings as follows:

- a. There was anti-gay bias in 17 cases (two unsolved, 15 unsolved);
- b. There was anti-paedophile animus in 12 cases (all of them solved cases);
- c. There was insufficient information in 33 cases (19 unsolved, 14 solved); and
- d. There was no evidence of bias crime in 23 cases (two unsolved, 21 solved).¹⁴⁹⁶

1430. It may be noted that the academic team nominated “insufficient information” in a larger number of cases (33) than did the SF Parrabell officers (25). This is perhaps not surprising, given that the academic team had less information than SF Parrabell, not having had access to the underlying historical papers.

1431. As to the academic team’s three different types of bias crime, namely Type A, Type B and Type C, the academic team’s allocations were:

- a. 13 Type A cases (two unsolved, 11 unsolved);
- b. Seven Type B cases (zero unsolved, seven solved); and
- c. Nine Type C cases (zero unsolved, nine solved).¹⁴⁹⁷

1432. As to the distinction made by the academic team between “anti-gay bias” and “anti-paedophile animus”, the academic team’s allocations were:

- a. Of the 13 Type A cases, eight were said to be anti-gay, and five anti-paedophile;
- b. Of the seven Type B cases, four were said to be anti-gay, and five anti-paedophile; and

¹⁴⁹⁶ Ibid, 91-92.

¹⁴⁹⁷ Ibid, 93-94.

c. Of the nine Type C cases, five were said to be anti-gay, and four anti-paedophile.¹⁴⁹⁸

1433. Given the deficiencies in the academic team’s methodology outlined in Part H, little weight can be placed on these findings.

CONCLUSION

1434. The Terms of Reference for this Inquiry relevantly authorise the Commissioner to “*inquire into*”, and “*report and make recommendations on*” (*inter alia*):

The manner and cause of death in all cases that remain unsolved from the 88 deaths or suspected deaths of men potentially motivated by gay hate bias that were considered by Strike Force Parrabell.

1435. The Commissioner is also directed, in clause C of the Terms of Reference, to “*have regard*” to “*the findings of previous inquiries and reports*”, including “*the report and findings of Strike Force Parrabell*”.

1436. By clause F of the Terms of Reference, it is directed:

that the Commissioner is not required to inquire, or to continue to inquire, into a particular matter to the extent that the Commissioner is satisfied that the matter has been or will be sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

1437. Both SF Macnamir and SF Neiwand were previous inquiries or investigations, which (*inter alia*) “*dealt with*” matters within clause A of the Terms of Reference, and both also fell to be considered by reference to clauses C and/or F of the Terms of Reference.

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7 June 2023

¹⁴⁹⁸ Ibid, 95.