



Special Commission of Inquiry into LGBTIQ hate crimes

SUPPLEMENTARY SUBMISSIONS OF COUNSEL ASSISTING

4 August 2023

IN THE MATTER OF WENDY WAINE

Introduction

1. These submissions are filed on behalf of Counsel Assisting the Special Commission of Inquiry into LGBTIQ hate crimes (**Inquiry**) and supplement the submissions in this matter dated 9 June 2023 (**WS**).

Additional Unsolved Homicide Team (UHT) Documents

2. As at 9 June 2023, when the hearing and tender of the tender bundle in this matter took place, the NSW Police Force (**NSWPF**) had produced to the Inquiry two UHT “case screening forms”, as outlined in WS [43] – [53]. One of those is signed by eight people and dated 13 October 2004.¹ The other bears dates in January and February 2005, and has provision for signature by DI Jarrett as “co-ordinator” and DSC McDonald as “reviewer”, but is unsigned.²
3. It would appear that the 13 October 2004 document was the product of a student syndicate at a training course. Under the heading “Location of Brief of Evidence”, it is stated: “This review was conducted by participants of Homicide Course No 18 at the Goulburn Police Academy in October 2004.”
4. It would appear that the January/February 2005 document also related to that October 2004 training course, since under the heading “Location of Brief of Evidence” in that document, the following very similar words appear: “This review was conducted by members of Syndicate #3 of Homicide Course No 18 that was held at the Goulburn Police Academy in October 2004.”
5. The cover page of the January/February 2005 document (Exhibit 30, tab 67A), as produced to the Inquiry, is a one-page document which was one of a set of 88 such UHT documents provided to the

¹ UHT Case Review Screening Form, 13 October 2004 (NPL.9000.0012.0063).

² Exhibit 30, Tab 67A, UHT Case Screening Review Form, February 2005 (SCOI.02706).

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Inquiry in June 2022. Those 88 documents each consisted of the relevant Strike Force Parrabell case summary, together with a UHT notation as to the “status” of each case.

6. In the case of Wendy Waine, this UHT cover page document stated that:
 - “the matter was reviewed in 2008 by the UHT and again in 2012 by the Senior Detectives Course”, and
 - “On tracking file – review conducted 2005”.
7. As at 9 June 2023, the NSWPF had not produced to the Inquiry any documents referable to any UHT review in either 2008 or 2012. The “review” said to have been “conducted [in] 2005” would appear to be, on the evidence available to the Inquiry, a reference to the January/February 2005 document, which in fact related to a training course exercise in October 2004.
8. On 25 June 2023, following the hearing and tender of the tender bundle in this matter on 9 June 2023, the NSWPF produced additional UHT material in relation to the matter of Ms Waine.
9. Amongst that bundle were the following documents (collectively, the **additional UHT documents**):
 - a. An undated and unsigned UHT case screening form, that was different in content to the two case screening forms that the NSWPF had previously produced (see [2] – [4] above),³
 - b. An undated, unsigned two-page document headed “State Crime Command Investigation Plan”;⁴
 - c. An undated, unsigned document, headed “Senior Detectives Course – Unsolved Homicide Assessment”.⁵ This document comprises five questions and their corresponding answers concerning the original investigation and possible future investigative steps. The answers would appear to be those provided by a student syndicate. The spaces for assessment of those answers, by the “Unsolved Homicide Assessment Panel”, as well as for the names of such assessors, are blank. The document contains an assertion, at [1] on the first page, that “the Unsolved Homicide Unit ... rely upon the recommendations of syndicates”.
10. One possibility may be that the first of those three documents relates to the “review” which (according to the 2022 cover page document) is said to have taken place in 2008. Another possibility may be that the third document relates to the “Senior Detectives Course” which, according to that

³ UHT Case Screening Review Form, undated (SCOI.84808).

⁴ State Crime Command Investigation Plan, undated (SCOI.84806).

⁵ Senior Detectives Course – Unsolved Homicide Assessment, undated (SCOI.84807).

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2022 cover page document, took place in 2012. However, no documents establishing or clarifying either of those possibilities have been produced, presumably (given the succession of summonses which have been issued seeking documents relating to Ms Waine’s case) because such documents do not exist. Nor has the Inquiry been provided with any documents indicating when the second of the additional documents (the “Investigation Plan”) was created, or what followed after its creation.

11. The similarities in the content of the three additional documents are striking. The language in each of them is in some respects identical.⁶ This may give rise to an inference that they had a common author. If so, an alternative possibility may be that all three of the additional documents were prepared in connection with, or shortly after, a review of Ms Waine’s case by a syndicate of students in a “Senior Detectives Course”, possibly in 2012.
12. However, the paucity of the material produced by the NSWPF, as to the UHT’s activities in relation to Ms Waine’s case, is such that the Inquiry cannot be sure what those UHT activities have actually been. The two case screening documents previously produced, bearing dates in October 2004 and January/February 2005 respectively, both appear to relate to a training course exercise in October 2004. At least one of the additional UHT documents (see 9c above) also relates to a training course exercise, perhaps in 2012. Whether an actual “review” of Ms Waine’s case, by the UHT itself, has ever taken place, and if so when and with what outcome, is unclear on the evidence available to the Inquiry.
13. The above state of affairs suggests that the UHT’s document management system is in disarray. The UHT does not appear to have any clear record as to whether and when reviews of Ms Waine’s case, by the UHT itself, have been conducted, or by whom. No records have been produced indicating whether the recommendations made by two separate training course syndicates, one in October 2004 and another at the time of the training course relevant to the third additional document (9c above), were considered, accepted, rejected, implemented or otherwise. The reasons why these additional UHT documents were not produced until 25 June 2023, only after further searches were conducted at the insistence of the Inquiry, are not apparent.

Content of the additional documents

⁶ See, for example, the text under the heading “synopsis” in first and second document (SCOI.84808, pp. 8-9 and SCOI.84807, p 2), and under the heading “situation” in the third document (SCOI.84807).

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14. Each of the three additional UHT documents includes the comment that the “most pertinent” line of enquiry would be to re-examine exhibits that were seized from the crime scene, namely the anal swab, hair and cigarette butts.⁷
15. However:
- (a) in the case screening form (see 9a above), the column provided to indicate the location of each of these exhibits is left blank;⁸
 - (b) in the third additional document (see 9c above), the answer to question 4, as to (*inter alia*) deficiencies in exhibit management), is that the “records maintained are made (sic) it difficult to determine what has occurred with each exhibits such as where they were located and what examination has taken place”.⁹
16. Similarly:
- (a) in the October 2004 case screening form (Exhibit 30, tab 102), it was stated (at p 4) that “There are no details of current exhibit location”, and (final page) that “Advice is that no items were retained after 1986. Inquiries need to be made ... re location of all exhibits”; and
 - (b) in the January/February 2005 document (Exhibit 30, tab 67A), it was stated (at p 2) that the location of exhibits was “to be established”. Annexure A to that document, dealing with exhibits, does not mention the anal swab at all, but notes that the whereabouts of the hair and the cigarette butts were “to be clarified”.
17. As noted in the primary submissions (WS), the present whereabouts of all three of these exhibits are unknown. Taken together, the five UHT documents now available appear to indicate that that has been the position since 1986. There is no evidence that any re-examination of the exhibits seized from the crime scene was ever conducted.
18. The case screening form produced on 25 June 2023 (see 9a above) acknowledges that there is no information available to identify where the fingerprint of MG was located within the crime scene,¹⁰ consistent with Counsel Assisting’s submissions at WS [249]-[250].

⁷ UHT Case Screening Review Form, undated, 9 (SCOI.84808); State Crime Command Investigation Plan, undated, 1 (SCOI.84806); Senior Detectives Course – Unsolved Homicide Assessment, undated, 2 (SCOI.84807).

⁸ UHT Case Screening Review Form, undated, 5 (SCOI.84808).

⁹ Senior Detectives Course – Unsolved Homicide Assessment, undated, 7 (SCOI.84807).

¹⁰ UHT Case Screening Review Form, undated, 6 (SCOI.84808).

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19. The additional UHT documents do not affect the submissions made by Counsel Assisting in the written submissions dated 9 June 2023 (WS) as to manner and cause of death, or as to bias.

Peter Gray SC

Kathleen Heath

Counsel Assisting