



## Special Commission of Inquiry into LGBTIQ hate crimes

21 October 2022

Natalie Marsic  
 General Counsel  
 New South Wales Police Force  
 Locked Bag 5102  
 PARRAMATTA NSW 2150

By email: [REDACTED]

Dear Ms Marsic,

### Special Commission of Inquiry into LGBTIQ hate crimes

I refer to your letter to the Commissioner, the Honourable Justice John Sackar, of 18 October 2022.

#### The Inquiry

As you are aware, on 13 April 2022 the Governor of NSW, by Letters Patent, authorised the Commissioner to inquire into and report on all unsolved LGBTIQ hate crime deaths in the 40 years between 1970 and 2010. Specifically, the Letters Patent require the Commissioner to inquire into, report and make recommendations on the following matters:

- 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; and
- 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.”

As is clear, the Commissioner is required to carry out his own inquiry, including by investigation where appropriate, into all of those deaths, and not merely to review the existing documentation. The total number of deaths falling within those two categories, A and B, is still being assessed but is likely to be 40 or more.

In conducting the Inquiry, the Commissioner is also expressly directed to have regard to the reports and findings of previous inquiries and reports, including, *inter alia*, the final report of Strike Force Parrabell.

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As you know, the Commissioner is required to deliver his report, having assembled all relevant information and carried out all necessary inquiries and investigations, by 30 June 2023.

### Sources of information about the deaths

Obviously the primary source of information, in relation to every one of the historical deaths falling within both Category A and category B, is the material held by the NSW Police Force (**NSWPF**). It is the NSWPF that investigated the deaths (sometimes once, sometimes more than once), created and/or gathered all the records relating to the deaths and the investigations, and retains control of that material.

The Inquiry is also making every attempt to locate relevant records by other means, including through requests to the Coroners Court of NSW (and other courts in the cases of matters where criminal charges have been laid), as well as summonses issued to the Office of the Director of Public Prosecutions, NSW Health Pathology and other sources.

The Inquiry has to date issued 32 summonses to produce to the NSWPF (as at 21 October 2022). In respect of many of the summonses, production by the NSWPF has been late and/or incomplete. Often no extension of time was sought. On some but not all occasions the NSWPF advised, on or about the last day for production, that it would not be able to comply. Ultimately the Inquiry was obliged to write to the NSWPF about these problems, by its letter of 8 September 2022. Since then, the performance of the NSWPF has improved in that regard.

The table below provides a chronology of each summons, noting the many occasions upon which the NSWPF has not complied with the due date for production of material or has been granted extensions of time to produce material.

Summons	Subject	Issue date	Return date	Extension/Production
NSWPF1		18 May 2022	1 June 2022	<p>On 25 May 2022, the summons was narrowed to material in relation to 30 deaths.</p> <p>On 8 June 2022, hard copy material was produced in relation to 22 of the deaths listed on the summons. In relation to two of the deaths, material for different persons with the same name was produced. No records were produced in relation to the remaining six deaths.</p> <p>On 15 June 2022, the NSWPF wrote to request an extension to produce further material to 29 June 2022.</p> <p>On 9 August 2022, a single additional document was produced.</p> <p>On 12 August 2022, electronic holdings were produced for five cases.</p>

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				<p>On 23 August 2022, additional hard copy material was produced for one case.</p> <p>There has been no material produced in relation to two of the cases.</p> <p>No application for an extension of time was made.</p>
<b>NSWPF3</b>		21 July 2022	5 August 2022	<p>On 9 August 2022, hard copy files were produced for 26 out of 28 cases.</p> <p>On 12 August 2022, electronic holdings were produced for 27 out of 28 cases.</p> <p>No investigative files have been produced for two cases. On 18 October 2022, the Inquiry wrote to the NSWPF to follow up on the outstanding material.</p> <p>No application for an extension of time was made</p>
<b>NSWPF4</b>		29 July 2022	8 August 2022	<p>On 12 August 2022, the NSWPF produced a first tranche of items in relation to this summons.</p> <p>On 26 August 2022, a second tranche of items was produced in relation to this summons.</p> <p>No application for an extension of time was made</p>
<b>NSWPF5</b>		28 July 2022	12 August 2022	<p>On 26 August 2022, the NSWPF produced items in response to items 1, 2 and 3, and advised that no material responsive to items 6 or 7 could be located.</p> <p>In relation to item 4, the NSWPF advised that this material had already been provided to the Inquiry. However, the relevant information is not in the specified box.</p>

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				<p>On 12 September 2022, the Inquiry wrote to follow up the outstanding material for item 5. Redacted material in relation to item 5 was produced to the Inquiry on 14 September 2022.</p> <p>No application for an extension of time was made</p>
<b>NSWPF6</b>		10 August 2022	24 August 2022	<p>On 26 August 2022, the NSWPF produced material in response to items 1, 2, 3, 4 and 12. No material responsive to items 5 to 11 was located.</p> <p>No application for an extension of time was made.</p>
<b>NSWPF7</b>		22 August 2022	2 September 2022	<p>On 2 September 2022, the NSWPF wrote to the Inquiry to advise that further time was required. No formal application for an extension of time was made.</p> <p>On 5 September 2022, the NSWPF produced complete records in relation to one case and limited records in relation to the remaining seven cases. Additional hard copy material was produced on 19 September 2022.</p> <p>On 19 October 2022, the Inquiry wrote to the NSWPF to follow up the outstanding production in relation to five cases.</p>
<b>NSWPF8</b>		22 August 2022	2 September 2022	<p>On 2 September 2022, the NSWPF wrote to the Inquiry to advise that further time was required. No formal application for an extension of time to produce material was made</p> <p>On 5 September 2022, the NSWPF produced material in relation to 266 of 278 persons specified in the summons. No indication was given as to why the remaining COPS entries were not provided.</p>

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				<p>On 5 September 2022, the Inquiry wrote to the NSWPF to follow up outstanding production in relation to 13 missing persons.</p> <p>On 20 October 2022, the NSWPF provided the remaining COPS events available. No missing persons report could be located for three persons of the 278 persons.</p>
<b>NSWPF9</b>		22 August 2022	2 September 2022	<p>On 2 September 2022, the NSWPF produced police facts in relation to four deaths. The NSWPF also advised that no police facts were available in relation to the remaining 12 deaths.</p> <p>On the same date, the NSWPF advised that no reports of death to the coroner could be located and directed the Inquiry to the Coroners Court of NSW.</p>
<b>NSWPF10</b>		24 August 2022	7 September 2022	<p>On 7 September 2022, the NSWPF directed the Inquiry to specific archive boxes previously provided. No relevant material was located in those boxes. The NSWPF otherwise made an application for an extension of time to obtain further ballistics records.</p> <p>On 14 September 2022, additional material unresponsive to the summons was produced.</p>
<b>NSWPF11</b>		24 August 2022	7 September 2022	<p>On 7 September 2022, the NSWPF made an application for an extension of time.</p> <p>On 14 September 2022, one document was produced. NSWPF advised that no other records responsive to the summons could be located.</p>
<b>NSWPF12</b>		25 August 2022	8 September 2022	<p>The NSWPF have produced 33 volumes of material in response to this summons in tranches as follows:</p>

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				<ul style="list-style-type: none"> <li>• 1<sup>st</sup> tranche – 9/9/22 (electronic material for Item 18)</li> <li>• 2<sup>nd</sup> tranche – 14/9/22 (electronic material for Items 1-10)</li> <li>• 3<sup>rd</sup> tranche – 16/9/22 (electronic material for Items 13-22)</li> <li>• 4<sup>th</sup> tranche – 23/9/22 (electronic material from AC Crandell for Items 1-12)</li> <li>• 5<sup>th</sup> tranche – 30/9/22 (electronic material from AC Crandell for Items 1-12)</li> <li>• 6<sup>th</sup> tranche – 5/10/22 (electronic material from AC Crandell for Items 1-12)</li> <li>• 7<sup>th</sup> tranche – 6/10/22 (electronic material from part of tranche 2, but original production was unable to be opened by Inquiry)</li> <li>• 8<sup>th</sup> tranche – 21/10/22 (electronic material from AC Crandell, Superintendent Middleton and Jacqueline Braw)</li> </ul> <p>Applications for extensions of time to produce the material were made on:</p> <ul style="list-style-type: none"> <li>• 8 September 2022;</li> <li>• 14 September 2022;</li> <li>• 23 September 2022; and</li> <li>• 30 September 2022.</li> </ul>
<b>NSWPF13</b>		26 August 2022	9 September 2022	On 9 September 2022, the NSWPF advised the Inquiry that no material responsive to the summons could be located.
<b>NSWPF14</b>		2 September 2022	16 September 2022	On 14 September 2022, the NSWPF produced the relevant documents for 25 out of 26 persons specified in the summons.

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<b>NSWPF15</b>		6 September 2022	16 September 2022	<p>On 14 September 2022, the NSWPF directed the Inquiry to certain hardcopy archive boxes already provided. The boxes did not contain relevant material.</p> <p>On 16 September 2022, the NSWPF indicated that no further material responsive to the summons could be located.</p>
<b>NSWPF16</b>		6 September 2022	20 September 2022	<p>On 14 September 2022, the NSWPF directed the Inquiry to certain hardcopy archive boxes already provided. The boxes did not contain relevant material.</p> <p>On 16 September 2022, the NSWPF indicated that duty books responsive to item 1(f) had been located and would be provided. These duty books were produced on 19 September 2022.</p> <p>On 18 October 2022, the Inquiry wrote to the NSWPF to follow up the remaining items.</p>
<b>NSWPF17</b>		6 September 2022	20 September 2022	<p>On 14 September 2022, the NSWPF produced limited electronic documents in relation to 6 victims. No material was produced in relation to 5 victims.</p> <p>On 19 September 2022, the NSWPF produced a small amount of hard copy material.</p> <p>No material has still been produced in relation to 4 victims.</p>
<b>NSWPF18</b>		23 September 2022	7 October 2022	<p>On 6 October 2022, the NSWPF produced 23 documents in response to items 1 to 3 and sought an extension of time to provide additional material responsive to item 2 to 14 October 2022.</p>

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				No further material produced to date.
<b>NSWPF19</b>		26 September 2022	10 October 2022	On 7 October 2022, the NSWPF advised that the Missing Persons Registry does not hold any record of that report.
<b>NSWPF20</b>		26 September 2022	10 October 2022	On 6 October 2022, the NSWPF reproduced the seven photographs already contained in the investigative records provided to the Inquiry and advised that no further photographs could be located.
<b>NSWPF21</b>		28 September 2022	7 October 2022	On 6 October 2022, the NSWPF advised the Inquiry that [REDACTED] [REDACTED] [REDACTED]
<b>NSWPF22</b>		28 September 2022	12 October 2022	On 11 October 2022, the NSWPF advised the Inquiry that no material responsive to the summons could be located.
<b>NSWPF23</b>		29 September 2022	13 October 2022	On 11 October 2022, the NSWPF produced electronic records held and made an application for an extension of time to produce the hard copy files.  On 19 October 2022, the NSWPF produced five archive boxes of hard copy material to the Inquiry.



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NSWPF24		30 September 2022	14 October 2022	On 12 October 2022, the NSWPF advised that no fact sheet was available as the charge was pre-COPS and produced a Crime Information Report.
NSWPF25		4 October 2022	5 October 2022	On 4 October 2022, the NSWPF produced all material responsive to this summons.
NSWPF26		7 October 2022	14 October 2022	On 14 October 2022, the NSWPF produced a policy document for the period 2005 to date.  On the same date, the NSWPF made an application for an extension of time to 21 October 2022 to allow further enquiries to be made as to pre-2005 material.
NSWPF27		7 October 2022	14 October 2022	On 14 October 2022, the NSWPF confirmed that all documents responsive to this summons had previously been produced in relation to summons NSWPF14.
NSWPF28		11 October 2022	19 October 2022	On 18 October 2022, the NSWPF requested and was provided with copies of the statement of [REDACTED] and a note referring to the review of photographs by [REDACTED], mistakenly omitted from the correspondence enclosing the summons.  On 19 October 2022, the NSWPF advised it had made a request to State Archives for the photographs

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				<p>referred to by [REDACTED]. It further advised that it had only been able to locate the five photographs reviewed by [REDACTED] already provided to the Inquiry under Summons NSWPF12, but had made urgent enquiries with him as to his knowledge of any further photographs.</p> <p>Accordingly, the NSWPF made an application for an extension of time to produce records to 26 October 2022.</p>
NSWPF29		11 October 2022	25 October 2022	Production not yet due.
NSWPF30		11 October 2022	19 October 2022	<p>On 19 October 2022, the NSWPF produced correspondence between [REDACTED] and FASS relating to the review, including a forensic results summary. The NSWPF confirmed there was no summary document akin to a case screening form produced by the UHT to record the outcome of that review.</p> <p>Contact details were also provided for several members of [REDACTED] family.</p>
NSWPF31		14 October 2022	26 October 2022	Production not yet due.

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NSWPF32		17 October 2022	24 October 2022	Material produced on 21 October 2022.
NSWPF33		17 October 2022	31 October 2022	Production not yet due.

The Inquiry is currently reviewing the material recently provided by the NSWPF (with respect to summons NSWPF12 in particular and more generally) and will advise if there is any identifiable material which appears not to have been produced or has been provided in a way that is inaccessible.

### Production of material

The Commissioner is very concerned about the delays by the NSWPF in producing material, and about the manner in which material has been and is still being produced, particularly given the limited timeframe he has to deliver his final report.

The mode of production of material by the NSWPF to date is not satisfactory. Among other things:

- Hardcopy material has been provided without any schedule or covering letter outlining the material produced.
- At times, material produced electronically has been transferred without a clear indication of the item number of the summons to which the material is responsive.
- Emails have also been produced without attachments at all, or with attachments provided separately.
- Hyperlinks contained within documents have been unable to be accessed.

It is requested that for all future productions, all material (including hardcopy material) should be provided with a detailed covering letter or email outlining the following:

1. Whether the material represents complete or partial production (including, when material is produced in tranches, whether there are further tranches to be produced);
2. A clear cross-referencing of the item number and summons to which the material is responsive; and
3. An account of the searches undertaken by the NSWPF to locate information, where items sought pursuant to the summons are unable to be produced.

All electronic material should also be produced in its native format and material non-responsive to the summons should be removed from bundles provided by your instructing officers prior to production.

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I will be writing to you again shortly with some further information regarding electronic production to ensure the material is compatible with the electronic court processes utilised by the Inquiry.

### **NSWPF resourcing**

I note that the NSWPF retained senior and junior counsel at a very early stage, and that the Commissioner and Senior Counsel Assisting the Inquiry, Peter Gray SC, met with Mr Tedeschi KC in the initial months following the establishment of the Inquiry.

As you will recall, at the private hearing of the Inquiry on 6 and 7 June 2022, the Commissioner raised with Mr Mykkelveldt, junior counsel for the NSWPF, the need to identify the deaths falling within Category B of the Inquiry's terms of reference, as well as any deaths the subject of active current review or investigation, in an expedient manner.

At that hearing, Detective Chief Inspector Leggat gave evidence as to the existence and nature of data captured in the Tracking File maintained by the Unsolved Homicide Team (**UHT**). Mr Mykkelveldt informed the Commissioner (from the bar table) that three officers of the UHT had been allocated to the task of preparing case summaries for the approximately 477 deaths (as then referred to, although that number has been subsequently revised upwards by the NSWPF) within the relevant period on the Tracking File. Mr Mykkelveldt said that a great deal of work was already being done on this task and that the summaries would be provided to the Inquiry the following week. His Honour indicated that he was prepared to allow the NSWPF two to three weeks to complete the summaries.

On 10 June 2022, the Inquiry wrote to the NSWPF to formalise the requests for information and documents which had arisen in the course of the private hearing, taking into account the indications and assurances given by DCI Leggat and Mr Mykkelveldt, and asked that the information and documents be provided by 22 June 2022. That did not occur.

On 7 July 2022, the Inquiry wrote to the NSWPF to follow up the requests for information and documents referred to above, much of which still remained outstanding. The Inquiry reduced the scope of what was being sought.

Finally, on 18 July 2022, the NSWPF replied to the Inquiry's 10 June letter. That reply included the following:

"It has not been possible to make provision for full-time designated police resources to respond to the requisitions of the Inquiry. We suggest that the exercise of preparing short form case summaries should be undertaken by the team assisting the Inquiry. The Commissioner of Police has not received any funding or additional resources in relation to the Inquiry. Many of the case files for the "undetected" deaths are voluminous. While it is acknowledged that your letter of 7 July 2022 substantially reduces the scope of the work requested, the preparation of summaries in respect of the remaining deaths would likely be a substantial undertaking. In order to complete this task, it may be necessary for the Commissioner to re-allocate significant resources away from ongoing active investigations by the UHT. The precise scope of the task will depend on the amount of material in each of the relevant files. Even accounting for the recent reduction in its scope, the task is likely to be a demanding one."

In other words, the NSWPF now effectively said, in late July, that it would not be able to do what it had expressly indicated in early June it would do, and proposed that the Inquiry do the relevant sifting of material itself.

Similar concerns in relation to resourcing were outlined by the NSWPF in an email to James Herrington dated 29 July 2022 in response to a request for information regarding long term missing persons.

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The Commissioner notes the contents of paragraphs [4] – [7] of your letter in relation to resourcing. However, it is entirely a matter for the Commissioner of NSWPF to determine how resources are deployed within the NSWPF, and whether additional resources are needed, and to make any request to the relevant Minister for additional funding if that is necessary. As is apparent from the correspondence referred to above, the need for adequate NSWPF resourcing in connection with the Inquiry has been obvious to the NSWPF for many months.

### Paragraph 6 of your letter

In paragraph [6] of your letter, you appear to assert that the entirely proper requirements on the part of the Inquiry, that necessary documents be produced to it by the NSWPF, is the cause of live investigations and reviews by the UHT being “stalled”.

Any such allegation is completely inappropriate, is flatly rejected, and should be withdrawn. If any such impact on the work of the UHT has occurred, that is entirely attributable to resourcing decisions taken, or not taken, by the NSWPF.

The Inquiry which the Commissioner is conducting is one which has been instituted by the Government of NSW, following recommendations made by a Standing Committee of the NSW Parliament. The relevant legislation specifically provides powers to issue summonses for the production of documents. By reason of the large number of deaths or suspected deaths, and the unique position of the NSWPF in relation to the holding of records relating to those deaths, it is and always was inevitable that a large amount of material will be called for from the NSWPF. I note that the NSWPF has at no stage objected to the production of any material, or advanced any suggestion that the material sought was not properly called for.

### Further investigations by the Inquiry

The Inquiry is of the utmost importance to the Parliament and Government of NSW, and to the community. The Commissioner will continue to pursue all proper avenues of investigation with respect to the deaths of persons falling within the Inquiry’s terms of reference.

Accordingly, in response to paragraphs [1], [8] and [9], the NSWPF should proceed on the basis that the Commissioner will issue any summons he considers necessary and appropriate, both to advance his inquiry into the relevant deaths, and to discharge the obligation cast upon him by the Inquiry’s terms of reference to “have regard to” previous inquiries and reports, including the final report of Strike Force Parrabell.

Please do not hesitate to contact Enzo Camporeale at [enzo.camporeale@specialcommisison.nsw.gov.au](mailto:enzo.camporeale@specialcommisison.nsw.gov.au) if you have any queries in relation to this matter.

Yours faithfully,



Enzo Camporeale  
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for Crown Solicitor