



## Special Commission of Inquiry into LGBTIQ hate crimes

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### SUBMISSIONS OF COUNSEL ASSISTING

23 June 2023

#### IN THE MATTER OF KENNETH BRENNAN

##### Introduction

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

##### Summary of matter

###### *Date and location of death*

2. Kenneth Brennan died between approximately 9:00pm and midnight on Sunday, 11 June 1995 in his residence at [REDACTED] Onslow Avenue, Elizabeth Bay [REDACTED]. Mr Brennan was 53 years old at the time of his death.
3. Mr Brennan was reportedly last seen between 9:00pm and 10:00pm on Sunday, 11 June 1995 by Arturo Guijar at Oxford Street Cellars (located at 118 Oxford Street, Darlinghurst). Mr Guijar was the owner of Oxford Street Cellars at that time, and was working at the premises on the evening of 11 June 1995. He said that he saw Mr Brennan in the company of a young man who had messy blond hair and appeared to be between 16 and 18 years old.<sup>1</sup> Earlier that same evening, Mr Brennan had been seen alive by several people, as set out in [89], [90], and [92] below.

###### *Circumstances of death*

4. At around 5:20pm on Monday, 12 June 1995, Mr Brennan's body was discovered by his de facto partner [REDACTED] NP215 in [REDACTED].<sup>2</sup>

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<sup>1</sup> Statement of Arturo Guijar, 25 July 1995, 2 (SCOI.00009.00045).

<sup>2</sup> Coronial Findings of Senior Deputy State Coroner John Abernethy, 17 September 1996, 1 (SCOI.00009.00063).

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5. Mr Brennan was lying naked on his left side in the lounge room with a pillow placed under his head. His legs were slightly bent.<sup>3</sup> Mr Brennan's head was positioned towards the kitchen and his left toes were touching the left side of the bedroom door jamb.<sup>4</sup>
6. Mr Brennan suffered multiple stab wounds to his torso, several defensive wounds to his left forearm and right hand, and what appeared to be a blunt force injury to his face and head.<sup>5</sup> The double bed in the main bedroom was heavily bloodstained. There was blood throughout the unit, including on a circular mirror, an orange towel (located 0.8 metres south of the front door), a linen cupboard door, a full length mirror, the security intercom, the telephone in the bedroom, a chair in the lounge room, the kitchen bench, and various walls and floors.<sup>6</sup> There was evidence to suggest Mr Brennan had engaged in sexual intercourse before his death and that his body had been sponged down.<sup>7</sup> A dry, blood-stained cleaning sponge was located on Mr Brennan's right shoulder.<sup>8</sup>

### *Findings of post-mortem examination*

7. Dr Peter Bradhurst, a forensic pathologist, conducted the post-mortem examination on 13 June 1995 and prepared a post-mortem report dated 6 October 1995. The findings of the post-mortem examination were as follows:
  - a. death had taken place anytime between 5:00pm to midnight on Sunday, 11 June 1995 (possibly a little earlier or later), based on rectal temperature at 12:30pm on 13 June 1995;
  - b. death had taken place at [REDACTED]; and
  - c. the direct cause of death was stab wounds to the chest.<sup>9</sup>
8. The post-mortem report also documented that:
  - a. Mr Brennan suffered 15 stab wounds, mainly to the chest region. One lethal stab wound injured Mr Brennan's liver, diaphragm, lung, and the wall of the right atrium (heart). Mr Brennan also

<sup>3</sup> Transcript of interview with [REDACTED] NP215, 12 June 1995, 31-33 (SCOI.00009.00015); Coronial Findings of Senior Deputy State Coroner John Abernethy, 17 September 1996, 2 (SCOI.00009.00063); Statement of Constable Laura Thurtell, 18 January 1996, 4 (SCOI.00009.00008).

<sup>4</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 7 (SCOI.45105).

<sup>5</sup> Coronial Findings of Senior Deputy State Coroner John Abernethy, 17 September 1996, 2 (SCOI.00009.00063); Post-mortem report of Dr Peter Bradhurst, 6 October 1995 (SCOI.00009.00133).

<sup>6</sup> Statement of Constable Laura Thurtell, 18 January 1996, 4 (SCOI.00009.00008); Transcript of Inquest into the death Kenneth Brennan, 17 September 1996, 21 (SCOI.00009.00059); Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 2-9. (SCOI.45105).

<sup>7</sup> Coronial Findings of Senior Deputy State Coroner John Abernethy, 17 September 1996, 2 (SCOI.00009.00063).

<sup>8</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 4 (SCOI.45105).

<sup>9</sup> Post-mortem report of Dr Peter Bradhurst, 6 October 1995 (SCOI.00009.00133).



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suffered stab wounds through his right lateral and posterior parietal pericardium. The pericardial cavity contained a small volume of clotted blood;

- b. Mr Brennan suffered injuries to the thoracic cage, including a fracture of the second thoracic vertebra and a collapsed lung;
  - c. there was an intimal tear of the lower thoracic aorta and numerous smaller ladder intimal tears. The aorta was otherwise relatively free of atheroma;
  - d. Mr Brennan's body exhibited defensive injuries on the left forearm and right hand;
  - e. there was no evidence of any injury to Mr Brennan's perineum, anus, rectum, scrotum, penis or testes;
  - f. bruising had developed on the right side of Mr Brennan's face and, together with the abrasions, gave rise to a patterned injury resembling a shoe print; and
  - g. Dr Bradhurst considered that the stab wounds, superficial cuts, and scratches were consistent with having been caused by a knife such as the blood-stained one shown to him during the examination (190mm in length; 25mm at its widest point).<sup>10</sup>
9. Dr Linda Iles, a forensic pathologist, who was requested by the Inquiry to review the original post-mortem report, considered that Dr Bradhurst's estimate as to the time of Mr Brennan's death appeared reasonable, and that he was appropriately cautious about the limits of precision of this estimate.<sup>11</sup>

### *Persons of interest*

10. The case involved a significant number of persons of interest (referred to at [28(b)] and discussed further below at [100]-[115]) who could not be excluded by the NSWPF or the Inquiry from suspicion, or where the basis for exclusion leaves open the possibility of their involvement. In relation to almost all those individuals, there is little or no concrete evidence actually implicating them.

### *Indicators of LGBTIQ status or bias*

11. Mr Brennan was a gay man who was living with his de facto partner, [NP215], at the time of his death.<sup>12</sup> Mr Brennan and [NP215] had been in an intimate relationship for about four and a half

<sup>10</sup> Post-mortem report of Dr Peter Bradhurst, 6 October 1995 (SCOI.00009.00133).

<sup>11</sup> Expert report of Dr Linda Iles received 6 April 2023, 7 (SCOI.83005).

<sup>12</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 7, 33 (SCOI.00009.00059).

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years when Mr Brennan died.<sup>13</sup> They had resided together at [REDACTED] for approximately the last two years of Mr Brennan's life, after moving together to Sydney from Adelaide.<sup>14</sup>

12. Investigating police believed that the nature of the frenzied attack (which included possible stomping on the face/head), the positioning of Mr Brennan's body with a pillow underneath his torso, the sponging down of his body and the evidence of sexual intercourse may indicate that the offender or offenders were homosexual or homophobic.<sup>15</sup>
13. In the years preceding and following Mr Brennan's death, there were other attacks on gay men in the general vicinity of Elizabeth Bay. Some of these attacks involved a similar *modus operandi*, namely a victim would be assaulted (or threatened with assault), prior to and/or after sexual intercourse or being sexually assaulted.<sup>16</sup> This, in combination with the fact that no obvious items of value, such as Mr Brennan's wallet (containing credit cards), appeared to have been taken from the unit, may suggest (albeit not decisively) that Mr Brennan's death was motivated by LGBTIQ bias.<sup>17</sup>

### *Exhibits: availability and testing*

#### Strike Force Monardia

14. Mr Brennan's death was initially investigated by Kings Cross Local Area Command with the assistance of the Homicide Squad. Between 20 and 24 July 1995, Operation Monardia was conducted and involved a Mobile Police Station being set up outside the Darlinghurst District Court in Oxford Street, Darlinghurst. A suspect press release was issued on 20 July 1995 by the NSW Police Force (**NSWPF**), and several media outlets were notified of Operation Monardia.<sup>18</sup> Subsequently, on 15 October 1995, Strike Force Monardia was established as an ongoing investigative body to continue investigations into the death of Mr Brennan.<sup>19</sup>
15. During the initial investigation, Crime Scene Officers and investigating police seized a significant number of exhibits from the crime scene. From these exhibits, the following were forensically tested and yielded the following results in 1995 and 1996:

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<sup>13</sup> Statement of [REDACTED] NP215, 15 June 1995, 1 (SCOI.00009.00019).

<sup>14</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 33 (SCOI.00009.00059).

<sup>15</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 7 (SCOI.00009.00059).

<sup>16</sup> See, for example, Statement of [REDACTED] I280, 26 October 1995 (SCOI.10323.00043).

<sup>17</sup> It is possible some cash was taken from Mr Brennan's wallet. Mr Brennan made two withdrawals on 11 June 1995, including one at 9:46am (\$50) and one at 2:41pm (\$150). Mr Brennan's wallet was located in [REDACTED] but there was no cash in it: Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 22, 25 (SCOI.00009.00059).

<sup>18</sup> Statement of Constable Laura Thurtell, 18 January 1996, 36 (SCOI.00009.00008).

<sup>19</sup> Terms of Reference for Strike Force Monardia, 20 October 1997 (SCOI.10305.00061).

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- a. a condom on the rim of the toilet bowl (**condom 1**), which was found to contain a spermatozoon;<sup>20</sup>
- b. a pair of Yves Saint Laurent green gold and black underpants (size small) (**YSL underpants**), which contained traces of DNA (on Area 2) that originated from more than one person (other than Mr Brennan, **NP215**, **NP214** or **NP189**);<sup>21</sup>
- c. a distorted fry pan, located in the bedroom, was subject to DNA blood grouping tests;<sup>22</sup>
- d. a champagne flute with an unidentified fingerprint,<sup>23</sup> which was not considered by the NSWPF to belong to either **NP215** or Mr Brennan;<sup>24</sup>
- e. two fingerprints were located on the inside of the wardrobe door in the bedroom. In 1995, one of those fingerprints was identified as belonging to **NP215**. The other was unidentified (**the unidentified wardrobe fingerprint**). The unidentified wardrobe fingerprint was compared to **NP214**, **NP189**, **NP217**, **NP240**, **NP201** (also known as **NP201**) in 1995, and to **NP216** in 1999 without success.<sup>25</sup> In response to a request for information by the Inquiry, the NSWPF has confirmed **NP217**, **NP240**, **NP201** and **NP216** were considered persons of interest from 1995-1999. However, Counsel Assisting notes no other records produced by the NSWPF confirm this.<sup>26</sup>
- f. one fingerprint was located on the mirror in the hall, and another was located on the glass on the bedside table. In 1995, these fingerprints were compared to Mr Brennan with success;<sup>27</sup>
- g. three fingerprints were located on the inside of the front door. In 1995, these fingerprints were compared to **NP215** with success;<sup>28</sup>
- h. one fingerprint was located on the inside of the wardrobe. In 1995, this fingerprint was compared to **NP215** with success;<sup>29</sup>

<sup>20</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003).

<sup>21</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003).

<sup>22</sup> First report of Michele Franco, 24 January 1996, 3 (SCOI.10181.00003).

<sup>23</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 6 (SCOI.45105); Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 17 (SCOI.00009.00059).

<sup>24</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 17 (SCOI.00009.00059).

<sup>25</sup> Expert certificate of Kate Reid, 9 June 2023, 3 (NPL.0100.0017.0001).

<sup>26</sup> Expert certificate of Kate Reid, 9 June 2023, 3 (NPL.0100.0017.0001); NSWPF response to further letter, re: Fingerprint testing, 21 June 2023 (SCOI.84097).

<sup>27</sup> Expert certificate of Kate Reid, 9 June 2023, 3 (NPL.0100.0017.0001).

<sup>28</sup> Expert certificate of Kate Reid, 9 June 2023, 3 (NPL.0100.0017.0001).

<sup>29</sup> Expert certificate of Kate Reid, 9 June 2023, 3 (NPL.0100.0017.0001).

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- i. two fingerprints and one palm print were identified on the inside of the entrance door. In 1995, these prints were compared to [ NP215 ] with success;<sup>30</sup>
  - j. semen was not detected on the oropharyngeal swab and smear or the rectal swab and smear obtained from Mr Brennan, or on a pair of white underpants located in the bedroom;<sup>31</sup>
  - k. semen was not detected on either of the two condoms located in the toilet bowl water (**condoms 2 and 3**) and DNA testing of these condoms was unsuccessful;<sup>32</sup>
  - l. hair located in Mr Brennan's left hand and the bloodstain on the YSL underpants may have originated from Mr Brennan, but not [ NP215 ], [ NP214 ] or [ NP189 ];<sup>33</sup>
  - m. a sample of drain water located in the "S" bend from the kitchen and bathroom sinks, which did not contain blood;<sup>34</sup> and
  - n. two 'Mates' condom wrappers. Evidence of the testing on these exhibits is unclear. The NSWPF records indicate these condom wrappers were subject to magna powder examination,<sup>35</sup> and that this exhibit was fingerprinted.<sup>36</sup> However, recent records confirm no fingerprints were developed.<sup>37</sup>
16. In the days following Mr Brennan's death, [ NP215 ] located the following foreign items in [REDACTED], which were later seized by the NSWPF:
- a. a pair of underpants in the bedroom, which were not forensically tested in 1995;<sup>38</sup>
  - b. a packet of Strepsils, which the NSWPF tested using magna powder and ninhydrin. However, it appears that no fingerprints were developed;<sup>39</sup> and

<sup>30</sup> Expert certificate of Kate Reid, 9 June 2023, 3 (NPL.0100.0017.0001).

<sup>31</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003).

<sup>32</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003).

<sup>33</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003).

<sup>34</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003); Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 15 (SCOI.45105).

<sup>35</sup> Review of an Unsolved Homicide Case Screening Form, 6 August 2004, 5 (SCOI.44995).

<sup>36</sup> Exhibit Management Spreadsheet, 5 November 2012, 6 (SCOI.10182.00001).

<sup>37</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 9-10 (SCOI.45105); Expert certificate of Kate Reid, 9 June 2023, 3 (NPL.0100.0017.0001).

<sup>38</sup> Statement of Detective Senior Constable Brad Tayler, 29 January 1996, 4 (SCOI.00009.00005).

<sup>39</sup> Statement of Detective Senior Constable Brad Tayler, 29 January 1996, 8 (SCOI.00009.00005); Review of an Unsolved Homicide Case Screening Form, 6 August 2004, 5 (SCOI.44995); Expert certificate of Kate Reid, 9 June 2023, 3 (NPL.0100.0017.0001)

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- c. a cardboard and plastic knife packaging (**knife packaging**),<sup>40</sup> which the NSWPF tested using ninhydrin. However, it appears that no fingerprints were developed.<sup>41</sup>
17. Additionally, the NSWPF seized the following exhibits from the crime scene. As at 1996, these exhibits had not been forensically examined:
- a. "Roller" brand walking boots;<sup>42</sup>
  - b. a pair of white blood smeared sports socks;<sup>43</sup>
  - c. fingernail clippings from Mr Brennan;<sup>44</sup>
  - d. the hair located in Mr Brennan's right hand;<sup>45</sup>
  - e. a pair of underpants (referred to at [16.a]) above);<sup>46</sup>
  - f. a black leather studded strap;<sup>47</sup>
  - g. a chrome metal ring (variously referred to as a 'butt ring'), lubricant, and a blood-stained pillow;<sup>48</sup>
  - h. a glass of water;<sup>49</sup>
  - i. a pair of blue jeans;<sup>50</sup>
  - j. a piece of brown plastic;<sup>51</sup>
  - k. a bent blood-stained knife blade of approximately 20.5cm to 25cm in length (missing the handle);<sup>52</sup>
  - l. a brown plastic knife handle located in the toilet bowl.<sup>53</sup> NSWPF records indicate that at the time of the initial investigation, Forensic and Analytical Science Service (**FASS**) advised the NSWPF

<sup>40</sup> Third statement of [NP214] 16 June 1995, 1-2 (SCOI.10261.00079).

<sup>41</sup> Expert certificate of Kate Reid, 9 June 2023, 3 (NPL.0100.0017.0001).

<sup>42</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 9 (SCOI.45105).

<sup>43</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 9 (SCOI.45105).

<sup>44</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003).

<sup>45</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003).

<sup>46</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 9 (SCOI.45105).

<sup>47</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 10 (SCOI.45105).

<sup>48</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 9 (SCOI.45105).

<sup>49</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 10 (SCOI.45105).

<sup>50</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 10 (SCOI.45105).

<sup>51</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 10 (SCOI.45105).

<sup>52</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 10 (SCOI.45105).

<sup>53</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 13 (SCOI.45105).



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that the possibility of obtaining a DNA trace from the knife handle would be non-existent due to its immersion in water;<sup>54</sup>

- m. a blood-stained right shoe print on the linoleum floor of the kitchen.<sup>55</sup> Police compared this shoeprint to identified persons, including Mr Brennan, [NP215], [NP214], [NP190] (also known as [NP190]), and [NP189], without success.<sup>56</sup> The NSWPF initially considered that the “Roller” boots may have had a similar tread pattern to this shoe print, but excluded them on the basis of the wear characteristics.<sup>57</sup> The NSWPF later confirmed that the shoeprint originated from a Windsor Smith boot,<sup>58</sup> and
- n. several bloody footprints on the carpet inside [REDACTED]. Two of these footprints were located on the carpet near the bathroom doorway and the north-eastern wardrobe.<sup>59</sup> One of these footprints appeared to be made by a foot with a high arch, whereas the other was comparatively wide.<sup>60</sup> Crime Scene Officers were of the view that these footprints originated from two different people.<sup>61</sup> The NSWPF attempted to repeat the method thought to have been used by the contributors to apply footprints on the carpet.<sup>62</sup> From the results of these methods, the NSWPF considered Mr Brennan to be the likely contributor of the high arched footprint.<sup>63</sup> Police were unable to identify the contributor of the wider footprint.<sup>64</sup>

### Strike Force Skarratt and the Unsolved Homicide Team

18. A re-investigation of Mr Brennan’s death was conducted by Strike Force Skarratt from 23 March 2016 to 16 July 2019. Upon its establishment, Strike Force Skarratt was allocated to the Unsolved Homicide Team (UHT).<sup>65</sup> This re-investigation involved a comprehensive review of the matter, a re-examination of exhibits and consideration of potential new lines of inquiry.

<sup>54</sup> Review of an Unsolved Homicide Case Screening Form, 6 August 2004, 10 (SCOI.44995).

<sup>55</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 5 (SCOI.45105).

<sup>56</sup> Review of an Unsolved Homicide Case Screening Form, 6 August 2004, 9 (SCOI.44995); Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 20 (SCOI.00009.00059).

<sup>57</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 20 (SCOI.00009.00059).

<sup>58</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 20 (SCOI.00009.00059); Statement of Stuart Jennings, 1 September 1995, 1 (SCOI.10183.00053).

<sup>59</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 10 (SCOI.45105); Statement of Constable Laura Thurtell, 18 January 1996, 5 (SCOI.00009.00008).

<sup>60</sup> Statement of Constable Laura Thurtell, 18 January 1996, 5 (SCOI.00009.00008).

<sup>61</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 20 (SCOI.00009.00059).

<sup>62</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 20 (SCOI.00009.00059).

<sup>63</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 20 (SCOI.00009.00059).

<sup>64</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 20 (SCOI.00009.00059).

<sup>65</sup> Post Operational Assessment for Strike Force Skarratt, 1 August 2019, 12 (SCOI.82997).

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19. Results from further DNA testing, conducted by FASS, identified a mixed profile containing a partial unknown DNA profile (referred to herein as the **Unknown Male 'B' profile**) on the following exhibits:
- condom 1; and
  - the inside front section of the YSL underpants.<sup>66</sup>
20. FASS informed investigating police that the mixed profile containing the Unknown Male 'B' profile was not suitable for familial searching, DNA phenotyping or Interpol searching, but was suitable for comparison with individual samples.<sup>67</sup> Comparison analysis was subsequently conducted and eliminated Mr Brennan, **NP215**, **NP214**, **NP189**, **NP190**, **NP204**, **NP188** and **NP200** as the contributor to the Unknown Male 'B' profile.<sup>68</sup> FASS uploaded a partial profile of the Unknown Male 'B' profile onto the National Criminal Investigation DNA database; however, to date the partial profile of Male 'B' has not yielded a match.<sup>69</sup>
21. FASS then forensically tested the following exhibits from the crime scene, which generated the following results:
- various blood swabs collected from the scene yielded a partial DNA profile which matched Mr Brennan;<sup>70</sup>
  - a swab from the interior of black leather studded strap yielded a DNA profile which matched Mr Brennan;
  - a tapelift administered to one side of the sponge yielded a partial DNA profile which matched Mr Brennan;<sup>71</sup>
  - a trace swab from a broken piece of knife handle yielded a mixed DNA profile that was weak/complex;<sup>72</sup>

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<sup>66</sup> Post Operational Assessment for Strike Force Skarratt, 1 August 2019, 2 and 12 (SCOI.82997); Investigator's Note re: Further contact with Virginia Friedman (FASS), 10 March 2017, 1 (SCOI.45075); Forensic report re: DNA testing results (items entered on EFIMS), 13 January 2017, 4 (SCOI.45065).

<sup>67</sup> Investigator's Note re: Email correspondence between DSC Clancy and Dr Bruce re possible DNA profile, 15 March 2019, 1 (SCOI.45094); Investigator's Note re: Familial DNA profiling unsuccessful, 4 September 2020, 1 (SCOI.45100); Post Operational Assessment for Strike Force Skarratt, 1 August 2019, 2 (SCOI.82997).

<sup>68</sup> Investigator's Note re: Clarification of forensic report of Dr Bruce, 18 April 2018, 1 (SCOI.45082); Statement of Constable Laura Thurtell, 18 January 1996, 14 (SCOI.00009.00008); Statement of **I268**, 16 April 1996 (SCOI.10307.00238); First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003); Second report of Michele Franco, 16 August 1996, 2 (SCOI.10181.00004); Third report of Michele Franco, 10 September 1999, 2 (SCOI.10181.00005).

<sup>69</sup> Email correspondence between Dr Bruce and DSC Clancy, 14 April-1 June 2016, 2 (SCOI.45017); Forensic report re: DNA testing results (items entered on EFIMS), 13 January 2017, 4 (SCOI.45065).

<sup>70</sup> Results summary of exhibits re-examined by DS Schibeci, 3 June 2015, 2-3 (SCOI.45023).

<sup>71</sup> Results summary of exhibits re-examined by DS Schibeci, 3 June 2015, 2-3 (SCOI.45023).

<sup>72</sup> Results summary of exhibits re-examined by DS Schibeci, 3 June 2015, 2-3 (SCOI.45023).

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- e. a tapelift administered to the tongue of the left “Roller” boot yielded a DNA profile which matched Mr Brennan. Other tapelifts administered to the “Roller” boots confirmed the presence of a mixed DNA profile that was weak/complex;<sup>73</sup>
  - f. the white underpants yielded DNA that matched Mr Brennan but also yielded evidence of mixtures of at least three persons which were not suitable for interpretation;<sup>74</sup>
  - g. trace swabs from the broken piece of knife handle yielded a mixed DNA profile, which was weak/complex;<sup>75</sup>
  - h. tapelifts administered to the interior/exterior of one sock yielded a mixed DNA profile which was weak/complex;<sup>76</sup>
  - i. tapelifts administered to one side of the orange towel yielded a mixed DNA profile which was weak/complex;<sup>77</sup> and
  - j. blood located on the fingernail clippings yielded a match to Mr Brennan.<sup>78</sup>
22. Further forensic testing confirmed the presence of a partial bloody fingerprint on the handle of the distorted frypan seized from the crime scene. In 2016, it was determined that this fingerprint was not sufficiently detailed to carry out a fingerprint comparison or searching on the National Automated Fingerprint Identification System (**NAFIS**).<sup>79</sup> The bloodstain on the base of the frypan was also too weak to produce a profile.<sup>80</sup> In 2016, the unidentified wardrobe fingerprint was compared to **NP190**, **NP188**, **NP188**, **NP189**, **NP215**, **NP214** and **NP200**, without success. In 2023, that fingerprint was once again compared to **NP215**, **NP190**, **NP214**, **NP189**, **NP188**, **NP200**, **NP206**, **NP206**.<sup>81</sup> This fingerprint remains unidentified.<sup>82</sup>
23. On 31 August 2022, Detective Senior Constable (**DSC**) Adam Noy was informed by the Forensic Evidence and Technical Services Command, NSWPF, that FASS had extensively re-examined the relevant exhibits from 2018 to 2019. Consequently, it was advised that in the absence of further

<sup>73</sup> Results summary of exhibits re-examined by DS Schibeci, 3 June 2015, 2-3 (SCOI.45023).

<sup>74</sup> Email correspondence between Dr Bruce and DSC Clancy, 14 April-1 June 2016, 2 (SCOI.45017).

<sup>75</sup> Forensic report re: DNA testing results, 13 January 2017, 5 (SCOI.45065).

<sup>76</sup> Results summary of exhibits re-examined by DS Schibeci, 3 June 2015, 5 (SCOI.45023).

<sup>77</sup> Forensic report re: DNA testing results (items entered on EFIMS), 13 January 2017, 3 (SCOI.45065).

<sup>78</sup> NSW Police Investigator’s Note, 7 June 2016, 3 (SCOI.45024).

<sup>79</sup> Email from Crime Scene Officer Michael Whyte to Detective Senior Constable Rowena Clancy re: Examination of Murder Exhibits (Operation Monardia), 29 March 2016, 1-2 (SCOI.45006); Investigator’s Note re: Exhibits examined by Crime Scene Officer Michael Whyte, 7 June 2016, 2-3 (SCOI.45027); Email correspondence between Sergeant Mick Murray and DSC Clancy re: Results of fingerprint comparison, 25 July 2016, 1 (SCOI.45045); Expert certificate of Kate Reid, 9 June 2023, 4 (NPL.0100.0017.0001).

<sup>80</sup> Investigator’s Note re: Exhibits examined by Crime Scene Officer Michael Whyte, 7 June 2016, 2 (SCOI.45027).

<sup>81</sup> Expert certificate of Kate Reid, 9 June 2023, 4 (NPL.0100.0017.0001).

<sup>82</sup> Expert certificate of Kate Reid, 9 June 2023, 7 (NPL.0100.0017.0001).

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investigative information (or a focus on a particular exhibit), further testing was not likely to yield additional results. On 29 September 2022, the NSWPF informed the Inquiry that the UHT had confirmed that all forensic and investigative opportunities had been explored and were unable to be advanced further at that time.<sup>83</sup>

24. The Inquiry has reviewed the relevant documentation relating to the re-investigation by Strike Force Skarratt and the correspondence from the NSWPF review team and is satisfied that the relevant exhibits were located and re-tested (or tested for the first time where no testing had yet occurred) from 2016 to 2019.

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

25. On 17 September 1996, Senior Deputy State Coroner John Abernethy found:

*... that Kenneth Richard Brennan died on or about 11 June, 1995 at [REDACTED] Onslow Avenue, Elizabeth Bay, of stab wounds to chest, inflicted then and there by persons unknown.*

*I am of the opinion that this matter warrants the posting of a reward and ask Detective Senior Constable Thurtell to make the appropriate application.<sup>84</sup>*

### *Criminal proceedings*

26. No criminal proceedings have ever been instituted against any person in relation to Mr Brennan's death.

### **Features of/concerns with original police investigation**

27. Senior Deputy State Coroner Abernethy praised the initial police investigation, noting that the officer in charge (**OIC**), Constable Laura Thurtell, had "followed all reasonable leads and generally investigated the matter in her usual competent way".<sup>85</sup> The police investigation was extensive and considered the potential involvement of a significant number of persons of interest.
28. However, although the investigating police followed many lines of inquiry and obtained initial reports from many witnesses, Counsel Assisting notes the following:
- a. it may have been desirable for the NSWPF to complete more canvassing at [REDACTED] Onslow Avenue and the surrounding apartment blocks to obtain additional observations from neighbours and possible witnesses. According to Constable Thurtell's statement, canvasses

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<sup>83</sup> Email from Officer of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, re contact from Mr Brennan's family, 29 September 2022 (SCOI.83001).

<sup>84</sup> Coronial Findings of Senior Deputy State Coroner John Abernethy, 17 September 1996 (SCOI.00009.00063).

<sup>85</sup> Coronial Findings of Senior Deputy State Coroner John Abernethy, 17 September 1996 (SCOI.00009.00063).



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were completed at: (i) ██████ Onslow Avenue on 12 June 1995;<sup>86</sup> ██████ Greenknowe Avenue (directly opposite ██████ Onslow Avenue) on 13 and 22 June 1995;<sup>87</sup> and ██████ Fullerton Street, Woollahra on 20 June 1995;<sup>88</sup>

- b. a significant number of persons of interest were identified by Strike Force Monardia who were not excluded as suspects or were excluded only on a slender basis. Additional steps ought to have been taken to exclude persons of interest including ██████ NP203 (see [100(j)]), ██████ NP191 (see [100(i)]), ██████ NP218 (see [100(n)]), ██████ NP199 (also known as ██████ NP199 or ██████ NP199) (see [100(h)]), ██████ NP182 (see [100(m)]), ██████ NP208 (also known as ██████ NP208) and ██████ NP208 (see [100(q)]), ██████ NP183 (see [100(s)(i)]), ██████ NP187 (also known as ██████ NP187) (see [100(s)(vi)]), ██████ NP196 (also known as ██████ NP196 and ██████ NP196) (see [100(s)(vii)]), ██████ NP186 (also known as ██████ NP186) (see [100(s)(viii)]), ██████ NP195 (see [100(s)(ix)]), and ██████ NP193 (see [100(s)(xi)]). Neither Strike Force Monardia nor Strike Force Skarratt obtained convert DNA samples, or pursued the alibi evidence, from ██████ NP199, ██████ NP186, ██████ NP191, ██████ NP203, ██████ NP202, ██████ NP218, ██████ NP185, ██████ NP187, ██████ NP187, ██████ NP196 or ██████ NP193. That said, in fairness to the NSWPF, it is acknowledged that the wide-ranging nature of this investigation (and the weak connection between the deceased and several of the suspects) raises the question of what steps ought to be taken by police in circumstances where there are a great many possible leads and legitimate resourcing constraints may prevent police from pursuing every lead;
- c. police failed to obtain a statement from a potentially important witness, Natalie Leonoff, who reported to police on 26 June 1995 that she saw ██████ NP215 outside of ██████ NP214's apartment building in the early hours of 11 June 1995, contrary to ██████ NP215's alibi evidence. As explained below, the significance of this evidence is that, if reliable, it contradicted the evidence of ██████ NP215 and ██████ NP214 that ██████ NP215 did not leave ██████ NP214's apartment that day. In fairness, attempts were made by Probationary Constable Ross to speak with Mrs Leonoff between 20 and 26 June 1995,<sup>89</sup> which were unsuccessful. The Running Sheet created on 26 June 1995 suggests that Mrs Leonoff was reluctant to meet with police but not that she refused to speak with police. The last record in the Running Sheet is that police were to call later in the afternoon of 26 June 1995, but the Inquiry has found no record of the NSWPF attempting to contact Mrs

<sup>86</sup> Statement of Constable Laura Thurtell, 18 January 1996, 9 (SCOI.00009.00008).

<sup>87</sup> Statement of Constable Laura Thurtell, 18 January 1996, 11 (SCOI.00009.00008).

<sup>88</sup> Statement of Constable Laura Thurtell, 18 January 1996, 18 (SCOI.00009.00008).

<sup>89</sup> Review of an Unsolved Homicide Case Screening Form, 6 August 2004, 11, 18 (SCOI.44995); Running Sheet – Information from Natalie Leonoff, 26 June 1995, 1 (SCOI.10276.00118).



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- Leonoff again. In the unsigned Recommendation for Further Investigation Historical Unsolved Homicide Case dated 2007, the UHT recommended that police locate and invite Mrs Leonoff to an interview and indicated that she was “available for further questions”.<sup>90</sup> Strike Force Skarratt ought to have pursued this recommendation, and the reason for not doing so is unclear;
- d. regardless of Mrs Leonoff’s level of co-operation in relation to the initial investigation, it may have been appropriate for Senior Deputy State Coroner Abernethy to have summonsed Mrs Leonoff to appear as a witness at the inquest to ensure all relevant information was considered;
  - e. investigative steps ought to have been taken to confirm [NP215] would not have been able to leave and return to [NP214]’s apartment (as opposed to taking [NP214]’s word for it);
  - f. statements ought to have been obtained from Joan Henderson and Christopher Crook, who were neighbours of Mr Brennan and were documented in police notes as having heard screaming on 11 June and 12 June 1995 respectively;<sup>91</sup>
  - g. a statement ought to have been obtained from Christopher Thomas, who was a barman present at the Newtown Hotel on 11 June 1995 (for the significance of his evidence, see [100(s)(viii)] below);
  - h. in relation to some of the persons of interest, there may have been confusion regarding the specific time of Mr Brennan’s death and the time in respect of which an alibi was relevant, particularly because it was a long weekend: see [NP218] ([100(n)]) and [NP186] ([100(s)(viii)]). In these circumstances, police ought to have re-interviewed witnesses to ensure that their evidence was clear and relevant to the accurate time and date of Mr Brennan’s death;
  - i. police involved in the initial investigation ought to have ensured that the results obtained from analysis of the fingerprints located at the crime scene were reported consistently. The results of the fingerprints were reported differently on the following occasions:

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<sup>90</sup> Recommendation for Further Investigation Report, 20 June 2007, 2 (SCOI.44995.00001).

<sup>91</sup> Witness Canvassing Form of occupants at [redacted] Onslow Avenue, Elizabeth Bay (undated), 4 (SCOI.10316.00009). It should be noted that the Inquiry wrote to Mr Crook on 3 May 2023 and telephoned him on 10 May 2023 to see if he was willing to provide a statement. During the conversation on 10 May 2023, Mr Crook said that he never knew Mr Brennan and that it was “difficult to remember” the circumstances surrounding Mr Brennan’s death. Mr Crook said that he had resided in the apartment next to or near [redacted]. He recalled that Police had come to his apartment and asked him if he had heard anything, and he told Police that he had heard an argument. Mr Crook said that he would consider providing a statement to the Inquiry and would contact the Inquiry if he decided to do so. The Inquiry followed up with additional phone calls to Mr Crook on 16 and 19 May 2023, but these calls were unanswered.

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- i. during the inquest, Constable Thurtell gave evidence that only two fingerprints were taken from ██████████, and that both were identified as belonging to [NP215];<sup>92</sup> and
  - ii. DSC Brad Tayler and the Review of an Unsolved Homicide Case Screening Form from 2004 state that all fingerprints (being those located on the mirror, glass, front door, wardrobe, entrance, two condoms, the packet of Strepsils and the knife packaging) matched Mr Brennan.<sup>93</sup>
- j. police ought to have ensured that the exhibits referred to at [15(c)-(d)], [16(a)-(c)] and [17(a)-(n)] were forensically tested or fingerprinted as appropriate. Some of these exhibits, including the vial of amyl nitrate, the chrome metal ring and the two ‘Mates’ condom wrappers, appear to have been present during Mr Brennan’s sexual encounter before his death, and would, therefore, be considered important exhibits to have forensically tested;<sup>94</sup>
- k. it appears that in 1995, police did not locate, or did not pursue inquiries in relation to, a piece of paper in Mr Brennan’s wallet that was later found by Strike Force Skarratt in 2016-2019. That piece of paper had three phone numbers written down on it, which were subsequently traced to [NP210] and [NP209] (see [102]-[103] below).<sup>95</sup> Police in 1995 should have searched Mr Brennan’s wallet and traced the three phone numbers before the re-investigation from 2016 to 2019;
- l. greater care ought to have been taken in relation to fingerprint evidence located on the frypan. It is reported that biologists who initially examined the frypan in 1995 *may* have inadvertently swabbed away part of the fingerprint on this exhibit, leaving the remainder heavily degraded.<sup>96</sup> This is concerning because there is evidence to suggest that the frypan could have been used by the offender or offenders to hit Mr Brennan.<sup>97</sup> The removal of evidence on a critical exhibit, such as this frypan, may have limited the quality of the investigation; and

<sup>92</sup> Statement of Constable Laura Thurtell, 18 January 1996, 23 (SCOI.00009.00008).

<sup>93</sup> Review of an Unsolved Homicide Case Screening Form, 6 August 2004, 4-5 (SCOI.44995).

<sup>94</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 9-10 and 13 (SCOI.45105); First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003).

<sup>95</sup> Investigator’s Note re: Phone number enquiries re: [NP209] and [NP210], 12 August 2016, 1 (SCOI.45046).

<sup>96</sup> Email from Crime Scene Officer Michael Whyte to Detective Senior Constable Rowena Clancy re: Examination of Murder Exhibits (Operation Monardia), 29 March 2016, 1-2 (SCOI.45006).

<sup>97</sup> Expert report of Dr Linda Iles, 6 April 2023, 5 (SCOI.83005); Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 7 (SCOI.00009.00059).

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- m. police from the initial investigation did not retain, but ought to have retained, the following exhibits:<sup>98</sup>
- i. the champagne flute and/or the fingerprint located on it;<sup>99</sup>
  - ii. the condom wrapper (located on the bedside table);<sup>100</sup>
  - iii. the vial of amyl nitrate;<sup>101</sup>
  - iv. the lubricant (located on the bed);<sup>102</sup>
  - v. two 'Mates' condom wrappers;<sup>103</sup>
  - vi. the packet of Strepsils (located by [ NP215 ] );<sup>104</sup>
  - vii. the knife packaging (located by [ NP215 ] );<sup>105</sup>
  - viii. the sample of drain water from the kitchen sink 'S' bend;<sup>106</sup> and
  - ix. the sample of drain water from the bathroom sink 'S' bend.<sup>107</sup>
29. It should also be observed that the questioning of [ NP215 ] by police on 12 June 1995 was arguably conducted in a manner that was insensitive.<sup>108</sup> At the time, police were aware that [ NP215 ] had just lost his partner in a violent homicide and had also discovered Mr Brennan deceased in the apartment. Police ought to have conducted their questioning of [ NP215 ] in a manner that was more respectful and sensitive, particularly when issues related to sex and sexuality were discussed.<sup>109</sup> Related to this concern, [ NP215 ]' statement dated 15 June 1995, which is at Tab 40 of the Tender Bundle, contains significant detail about the sex lives and particular sexual activities engaged in between [ NP215 ] and

<sup>98</sup> Table of exhibits and current location (undated) (NPL.0176.0001.0026); EFIMS – Exhibits Summary, 1 June 2023 (NPL.0176.0001.0018).

<sup>99</sup> Post Operational Assessment for Strike Force Skarratt, 1 August 2019, 12 (SCOI.82997). Note, however, that Detective Senior Constable Van Leeuwen stated during the inquest that this fingerprint is located on "the fingerprint computer should anyone come along at some stage": Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 17 (SCOI.00009.00059); List of exhibits and location (undated), 2 (NPL.0176.0001.0026).

<sup>100</sup> Note, Detective Senior Constable Lyle Van Leeuwen stated there were two condom wrappers located at the crime scene: Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 9-10 (SCOI.45105); List of exhibits and location (undated), 2 (NPL.0176.0001.0026).

<sup>101</sup> List of exhibits and location (undated), 3 (NPL.0176.0001.0026).

<sup>102</sup> List of exhibits and location (undated), 2 (NPL.0176.0001.0026).

<sup>103</sup> List of exhibits and location (undated), 3 (NPL.0176.0001.0026).

<sup>104</sup> List of exhibits and location (undated), 3 (NPL.0176.0001.0026).

<sup>105</sup> List of exhibits and location (undated), 4 (NPL.0176.0001.0026).

<sup>106</sup> List of exhibits and location (undated), 4 (NPL.0176.0001.0026).

<sup>107</sup> List of exhibits and location (undated), 5 (NPL.0176.0001.0026).

<sup>108</sup> Transcript of interview with [ NP215 ], 12 June 1995 (SCOI.00009.00015).

<sup>109</sup> Transcript of interview with [ NP215 ], 12 June 1995, 14-15 and 53-54 (SCOI.00009.00015).

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Mr Brennan, or [NP215], Mr Brennan and others such as [NP214].<sup>110</sup> Even accepting that potential sexual partners were likely to be persons of interest in the investigation and it was appropriate to inquire into and record some aspects of their sexual activities, this might reasonably be regarded as prurient or intrusive, and many of the details appear to have little or no potential relevance to the investigation.<sup>111</sup>

### Strike Force Parrabell

#### *Use of the Bias Crimes Indicators Form*

30. Strike Force Parrabell did not consider Mr Brennan's death (referred to as 'Case 69') because at the relevant time, Mr Brennan's death was classified as being under active investigation with UHT.<sup>112</sup> The Inquiry is, therefore, unable to submit on Strike Force Parrabell in relation to this matter.

### Investigative and other steps undertaken by the Inquiry

31. The Inquiry's consideration of this matter has involved:
- a. attempts to locate and contact family members;
  - b. obtaining Coroners Court files in relation to the Inquest, which was held in 1996;
  - c. obtaining police investigative material including material from the original investigation and Strike Force Monardia (which commenced in 1995) and the re-investigation by UHT and Strike Force Skarratt (which commenced in 2016);
  - d. engaging inter-agency cooperation to locate specific persons;
  - e. obtaining a report from Dr Danny Sullivan, a forensic psychiatrist;
  - f. obtaining a report from Dr Iles, a forensic pathologist;
  - g. reviewing and analysing all of this material and considering whether any further investigative or other avenues are warranted;
  - h. conferencing and obtaining statements from potential witnesses;
  - i. further testing of specific exhibits located at the scene;

<sup>110</sup> Statement of [NP215], 15 June 1995, 2-4 (SCOI.00009.00019).

<sup>111</sup> Statement of [NP215], 15 June 1995, 1 (SCOI.00009.00019).

<sup>112</sup> Exhibit 1, Tab 2, Final Report of Strike Force Parrabell (undated), 69 (SCOI.74801).

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- j. obtaining police exhibit book references and EFIMS records for exhibits (including a knife, toilet paper and a black leather suit bag) obtained by police from [REDACTED] 1271's apartment in 1996 and forensic results from any testing conducted on those exhibits;
- k. attempts to locate all exhibits seized by police from [REDACTED]; and
- l. attempts to obtain information regarding the fingerprints located by police at [REDACTED] and whether those fingerprints have been uploaded onto the NAFIS.

### *Attempts to locate and contact family members*

- 32. The Inquiry has been in contact with Mr Brennan's ex-wife's sister-in-law, Jan Ferguson (**Jan**), who has been the point of contact for Mr Brennan's ex-wife since September 2022. A conference was conducted with Jan, her husband, Christopher Ferguson (**Christopher**), and the Inquiry Team on 14 October 2022. A further conference was then conducted with Jan, Christopher, their children Dylan and Jemma Ferguson, and the Inquiry Team on 9 June 2023.
- 33. The Inquiry has engaged inter-agency support to obtain the contact details of Ronda Saler and Robert Brennan, whom the Inquiry understands to be Mr Brennan's surviving family members. The Inquiry was not able to identify contact details for Robert Brennan but was able to identify an address for Ms Saler. A letter was sent by the Inquiry to that address but as at the date of these submissions, no response has been received.<sup>113</sup>

### *Request for coronial file*

- 34. On 11 May 2022, the Inquiry issued a written request to the Registrar of the Coroners Court of NSW at Lidcombe to obtain the coronial file in relation to the death of Mr Brennan. On 26 May 2022, Mr Brennan's coronial file was provided to the Inquiry by the Coroners Court.

### *Summonses Issued*

- 35. On 18 May 2022, the Inquiry issued a summons to the NSWPF seeking production of all documents relating to the investigation of Mr Brennan's death by the NSWPF (summons NSWPF1). On 8 June 2022, the NSWPF produced material in response to this summons.
- 36. On 30 August 2022, following a request by the Inquiry on 16 August 2022, the NSWPF provided the Inquiry with a copy of the Post Operational Assessment of Strike Force Skarratt.

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<sup>113</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 2 (SCOI.83469).



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37. On 11 October 2022, the Inquiry issued a summons to the NSWPF seeking production of all material held or created by the UHT in connection with the review of exhibits relating to Mr Brennan (summons NSWPF30). The NSWPF produced this material on 19 October 2022.
38. On 8 December 2022, the Inquiry issued a summons to the NSWPF seeking production of the following documents relating to Strike Force Skarratt (summons NSWPF41):
- a. all running sheets and surveillance running sheets;
  - b. all occurrence pad entries;
  - c. all criminal incident reports, police incident reports, intelligence reports, crime information reports, "Crimestoppers" reports and Computerised Operational Policing System event entries;
  - d. all statements and reports made to or by police;
  - e. all police notebook entries;
  - f. all police duty book entries;
  - g. all handwritten notes made by police;
  - h. all photographs, sketch plans and videotapes;
  - i. all exhibit book entries;
  - j. any recordings (whether audio or video) of interviews, including transcripts thereof; and
  - k. all e@gle.i holdings.
39. On 19 December 2022, the NSWPF issued a letter to the Inquiry indicating that the entirety of the investigative material relating to Strike Force Skarratt was produced to the Inquiry on 18 August 2022.
40. On 22 December 2022, the Inquiry issued a letter to the NSWPF indicating that the Inquiry was unable to identify any record of receipt of the material relating to Strike Force Skarratt on 18 August 2022 and requesting an electronic copy of the full e@glei brief for Strike Force Skarratt as per summons NSWPF41. On 23 January 2023, the NSWPF produced material in response to summons NSWPF41. This material comprised the coronial file for Mr Brennan, as well as the steps taken and results of Strike Force Skarratt.
41. On 13 April 2023, the Inquiry issued a summons to the Registrar of Births, Deaths and Marriages (**BDM**) for, *inter alia*, death certificates in relation to Mr Brennan, Mrs Leonoff and Joan Henderson, who were neighbours of **NP214** and Mr Brennan at the relevant time. On 17 April 2023, BDM produced death certificates for Mr Brennan and Mrs Leonoff.

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42. On 8 May 2023, the Inquiry issued a further summons to BDM for death certificates in relation to members of Mr Brennan's family and various persons of interest (summons BDM31).<sup>114</sup>
43. On 10 May 2023, BDM produced death certificates for [NP187], [NP205], [NP202], [NP202] and [NP191]. BDM further confirmed there was evidence to suggest the following persons of interest are deceased: [NP198] and [NP188]. BDM was unable to provide results in relation to [NP189], [NP190], [NP204], [NP199], [NP203], [NP200], [NP182], [NP218], [NP212], [NP212], [NP208], [NP206], [NP183], [NP194], [NP211], [NP185], [NP184], [NP184], [NP196], [NP186], [NP195], [NP192], [NP193], [NP197] and [NP209].
44. On 22 May 2023, the Inquiry issued a further summons to the NSWPF seeking the location of physical exhibits (including a green and white handled knife and a black leather suit bag) seized from the residence of [I271] in early 1996 (summons NSWPF109). The green and white handled knife was discovered in a suit bag in [I271]'s apartment in early 1996, although [I271] said he did not know where the knife had come from. [NP215] had stayed with [I271] for some weeks in the period after Mr Brennan's death in 1995.
45. On 30 May 2023, the NSWPF produced material responsive to summons NSWPF109. This response confirmed that the knife (located in [I271]'s apartment) was subject to super glue fuming testing in 1996, however, such testing yielded nil results. The knife was subsequently destroyed, and the black leather suit bag was returned to [I271].<sup>115</sup>
46. On 30 May 2023, the Inquiry issued a summons to the NSWPF seeking the location of all physical exhibits in relation to the investigation into Mr Brennan's death (summons NSWPF114). On 7 June 2023, the NSWPF produced material responsive to summons NSWPF114.
47. On 31 May 2023, the Inquiry issued a summons to the South Australian Police (**SAP**) to obtain contact details for Robert Brennan and Ms Saler (summons SAP3). On 2 June 2023, the SAP advised the Inquiry that SAP could not identify any records in response to summons SAP3.<sup>116</sup>

<sup>114</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 2-3 (SCOI.83469).

<sup>115</sup> NSWPF response to summons NSWPF109, 30 May 2023 (SCOI.83344); Crime Scene Display, 7 March 1996, 2 (NPL.0170.0001.0004).

<sup>116</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 2 (SCOI.83469).

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48. On 31 May 2023, the Inquiry issued a summons to Queensland Police Service (**QLDPS**) seeking for holdings in relation to **NP189** (summons QLDPS8). On 2 June 2023, the QLDPS produced material in response to this summons.<sup>117</sup>
49. On 13 June 2023, following a request from the Inquiry on 31 May 2023, the NSWPF provided the Inquiry with an expert certificate from Senior Crime Scene Officer, Kate Reid, regarding the fingerprints located at the crime scene and testing conducted on those fingerprints.<sup>118</sup>

### *Interagency cooperation*

50. The Inquiry sought interagency cooperation to locate Mr Brennan’s family members, relevant witnesses and persons of interest, including the following persons: Robert Brennan, Ms Saler, **NP215**, **NP214**, Mrs Leonoff, Ms Henderson, Mr Crook, Mr Thomas, **NP189**, **NP190**, **NP204**, **NP199**, **NP203**, **NP200**, **NP182**, **NP218**, **NP212**, **NP208**, **NP206**, **NP183**, **NP194**, **NP211**, **NP185**, **NP184**, **NP196**, **NP186**, **NP195**, **NP192**, **NP193**, **NP197** and **NP209**.<sup>119</sup>

### *Further forensic examinations conducted*

51. On 30 March 2023, the Inquiry contacted Dr David Bruce of FASS to enquire as to the possibility of further forensic testing in relation to the Unknown Male ‘B’ profile located on key exhibits seized from the crime scene.
52. On 3 May 2023, the Inquiry conferenced with Dr Bruce and Michele Franco of FASS to discuss the possibility of advancing the partial Unknown Male ‘B’ profile. In short, despite the recent nature of the testing done at the request of the NSWPF, FASS considered the following steps could be taken:
- a. FASS could use updated “STRmix” software to attempt to identify further markers for the profile recovered from the condom and YSL underpants, labelled “Unknown Male B”; and
  - b. FASS could also explore “Yfiler” PCR amplification, which would allow for the uploading of the “Unknown Male B” profile on the national Y chromosome database with a view to identifying a relative (on the paternal line) of the profile contributor.

<sup>117</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 3 (SCOI.83469).

<sup>118</sup> NSWPF response to letter, re fingerprint testing, 13 June 2023 (SCOI.83975); Expert certificate of Kate Reid, 9 June 2023 (NPL.0100.0017.0001).

<sup>119</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 3 (SCOI.83469).

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53. Additionally, FASS indicated that DNA testing may also be possible on the bloodstained handle of the frypan.
54. On 11 May 2023, the Inquiry requested that FASS conduct further forensic analysis with the view to advancing the identification of the Unknown Male 'B' profile and obtaining a DNA profile from the partial bloody fingerprint on the handle of the frypan. The Inquiry requested that FASS provide an expert certificate to it by 25 May 2023.
55. On 24 May 2023, the Inquiry requested that FASS conduct further forensic analysis on the subsamples collected from the knife handle located at the crime scene.
56. On 20 June 2023, FASS provided the Inquiry with an expert certificate, which provides the following results from the further forensic analysis:<sup>120</sup>
- a. DNA testing was unsuccessful on the:
    - i. the partial bloody fingerprints located on the handle of the frypan;<sup>121</sup>
    - ii. the curved exterior of the frypan; and
    - iii. the swabs A, B and C of the knife handle.
  - b. the DNA profile located on the frypan was too weak for meaningful comparison;
  - c. the partial DNA profile located on the base of the frypan was consistent with Mr Brennan;
  - d. a partial mixed DNA profile was located on the broken piece of the knife handle and the Unknown Male 'B' profile cannot be excluded as a contributor to this mixture; and
  - e. no close relatives (i.e. parents, children or siblings) matched the Unknown Male 'B' profile on FASS's familial database.
57. On 20 June 2023, Dr Bruce provided an expert certificate to the Inquiry.<sup>122</sup>
58. The Inquiry sought and obtained a report from Dr Sullivan in which he addressed the following issues:
- a. whether there are any aspects of the manner of death and/or crime scene which may indicate that a homicide has occurred in the context of LGBTIQ hate/prejudice/bias;
  - b. the possible motivation/s of the unidentified perpetrator of Mr Brennan's injuries;

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<sup>120</sup> Expert certificate of Dr David Bruce, 12 June 2023, 1-2 (SCOI.84091).

<sup>121</sup> Note, no DNA profile was recovered from the sample.

<sup>122</sup> Expert certificate of Dr David Bruce, 12 June 2023, 1-2 (SCOI.84091).

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- c. aspects of victimology that may be relevant to Mr Brennan’s death;
  - d. any recommendations for further investigations with respect to determining the manner and cause of the person’s death; and
  - e. any other matters within Dr Sullivan’s expertise that he considered may assist the Inquiry.
59. The opinion of Dr Sullivan is discussed further below at [62]-[64].
60. The Inquiry sought and obtained a report from Dr Iles in which she addressed the following issues:
- a. any additional areas of medical investigation or expert opinion considered necessary or appropriate;
  - b. the adequacy of the post-mortem investigations conducted with respect to Mr Brennan;
  - c. information about the crime that can be ascertained from Mr Brennan’s injuries, including:
  - d. the likely sequence of Mr Brennan’s injuries;
  - e. the possibility that Mr Brennan was injured by two or more assailants; and
  - f. any other matters she considered relevant to the manner and cause of Mr Brennan’s death.
61. The opinion of Dr Iles is discussed further below at [65]-[69].

### *Opinion of Dr Sullivan*

62. Dr Sullivan did not consider that there was any information from a psychiatric perspective relevant to the circumstances of death.<sup>123</sup> Dr Sullivan observed that the possible motivations for the perpetrator of Mr Brennan’s injuries included robbery, anger, or distress if the unknown person was conflicted about their sexuality. Dr Sullivan considered that the absence of a pre-arranged liaison, and the use of a weapon or weapons obtained from the residence were indicative of the offending being opportunistic to some degree. Pathological interpretations of the injuries note a “struggle and significant number of injuries, suggesting marked anger, hatred or overkill”.<sup>124</sup>
63. Dr Sullivan did not consider that there were any specific aspects of victimology relevant to Mr Brennan’s death, nor any indication of any mental disorder or clinically significant substance abuse in Mr Brennan.<sup>125</sup> Although there were reports of some relationship problems between Mr Brennan and **NP215**, Dr Sullivan noted that there was no evidence of overt acrimony or violence.<sup>126</sup> He

<sup>123</sup> Expert report of Dr Danny Sullivan, 24 October 2022, 4 (SCOI.83009).

<sup>124</sup> Expert report of Dr Danny Sullivan, 24 October 2022, 4 (SCOI.83009).

<sup>125</sup> Expert report of Dr Danny Sullivan, 24 October 2022, 4 (SCOI.83009).

<sup>126</sup> Expert report of Dr Danny Sullivan, 24 October 2022, 4 (SCOI.83009).



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considered that there was no other information from a forensic psychiatric perspective of relevance to Mr Brennan's character or behaviour which could be assessed as an element in this offence.<sup>127</sup>

64. Dr Sullivan did not provide any suggestions as to recommendations for further investigations with respect to determining the manner and cause of Mr Brennan's death and did not have any further matters to raise with the Inquiry.<sup>128</sup>

### *Opinion of Dr Iles*

65. Dr Iles considered that Mr Brennan's death was caused by both sharp and blunt force injuries, quite possibly due to implements located at the scene (for example, a knife and a fry pan) in addition to a possible stomping injury. Dr Iles did not consider that a blood pattern analysis expert would be able to further illuminate the cause of Mr Brennan's injuries for the Inquiry.<sup>129</sup>
66. Dr Iles considered that Dr Bradhurst's post-mortem examination was thorough and comprehensive, and agreed with the cause of death statement. Dr Iles noted that the quality and number of post-mortem photographs falls significantly short of contemporary standards (although they likely reflect the standard of practice in 1995). She indicated that the relatively small number of photographs provided limited her ability to review elements of the post-mortem examination.<sup>130</sup>
67. Dr Iles was unable to comment on whether: (i) the apparent head stomping injury matched the bloody boot print in linoleum at the scene; or (ii) the thoracic injury and aortic laddering were due to hyperextension injury. This was said to be due to the lack of photographic evidence from the re-examination that took place on 16 June 1995.<sup>131</sup>
68. Dr Iles stated that the level of description for each stab wound, and the absence of individually photographed stab wounds, is not what would be expected in contemporary practice. However, Dr Iles indicated that this did not impact the conclusions reached regarding the nature of the injuries, or cause of death. Dr Iles opined that, according to contemporary practice standards (and adopting conventional wound description practice), the total number of stab wounds is accurately described as 13 stab injuries (because some of the individual stab wounds described represent exit and re-entry wounds from the same knife track).<sup>132</sup>

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<sup>127</sup> Expert report of Dr Danny Sullivan, 24 October 2022, 4 (SCOI.83009).

<sup>128</sup> Expert report of Dr Danny Sullivan, 24 October 2022, 4 (SCOI.83009).

<sup>129</sup> Expert report of Dr Linda Iles, 6 April 2023, 5 (SCOI.83005).

<sup>130</sup> Expert report of Dr Linda Iles, 6 April 2023, 5 (SCOI.83005).

<sup>131</sup> Expert report of Dr Linda Iles, 6 April 2023, 6 (SCOI.83005).

<sup>132</sup> Expert report of Dr Linda Iles, 6 April 2023, 6 (SCOI.83005).

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69. The photo documentation was inadequate for Dr Iles to express an opinion as to how Mr Brennan acquired the blunt force injuries to his head. Noting that Mr Brennan only had minor scalp bruising and no intracranial injury, Dr Iles considered that the blunt force head injuries could have occurred at any time during the incident.<sup>133</sup> Dr Iles did not consider it possible to determine the order of the stab wounds inflicted on Mr Brennan. However, the characteristics of the wounds support the possible case theory that Mr Brennan was moving about the apartment whilst the injuries were being inflicted or after the injuries had been sustained. Based on the post-mortem findings, Dr Iles considered Mr Brennan's injuries could have been inflicted by a single person.<sup>134</sup>

### *Persons of interest as at 2022-2023*

70. The submissions at [10] above are repeated.

### *Other sources of information and statements obtained*

71. On 21 April 2023, the Inquiry received a voicemail from Ms Henderson, in response to a letter issued to her on 18 April 2023, in which she stated that she could not provide any further information in relation to Mr Brennan's death. Ms Henderson also said that she did not believe that she had heard any disturbances or observed any matters of note in relation to Mr Brennan, which is contrary to contemporary police canvassing notes. The contemporary police canvassing notes suggested that Ms Henderson had heard screaming between 1:00am and 2:00am on 11 June 1995 (noting that Mr Brennan most likely died much later, between approximately 9:00pm and midnight on 11 June 1995).<sup>135</sup>
72. On 4 May 2023, Ms Henderson attended a conference with members of the Inquiry's legal team. During this conference, Ms Henderson confirmed that, although she is unable to recall specific details, if police records indicate that she reported to police that she heard screaming on 11 June 2023, that would have been correct. Ms Henderson signed a statement on 11 May 2023 to this effect.<sup>136</sup>
73. Ms Henderson also stated that she first heard "something terrible" had happened at [REDACTED] Onslow Avenue on or around 13 June 1995, when she received a telephone call from her friend, Kieran Moran, who lived on the third floor of [REDACTED] Greenknowe Avenue, Elizabeth Bay. The Inquiry obtained a statement from Mr Moran on 23 May 2023,<sup>137</sup> who confirmed that he resided at [REDACTED]

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<sup>133</sup> Expert report of Dr Linda Iles, 6 April 2023, 6-7 (SCOI.83005).

<sup>134</sup> Expert report of Dr Linda Iles, 6 April 2023, 7 (SCOI.83005).

<sup>135</sup> Witness Canvassing Handwritten Notes (undated) (SCOI.10316.00022).

<sup>136</sup> Statement of Joan Henderson, 11 May 2023 (SCOI.83222).

<sup>137</sup> Statement of Kieran Moran, 30 May 2023 (SCOI.83342).

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Greenknowe Avenue at the relevant time. Mr Moran’s sunroom looked directly into Mr Brennan’s apartment. Mr Moran recalled that police had canvassed his apartment building for information, and an officer had knocked on his door on or around Tuesday 13 June 1995 to ask if he had heard or seen anything unusual on the evening of 11 June 1995. Mr Moran told the police officer that he had not. Once the police officer had left his apartment, Mr Moran telephoned Ms Henderson and she visited him at his apartment. Both Mr Moran and Ms Henderson recalled looking through the windows in Mr Moran’s sunroom and into Mr Brennan’s apartment and seeing blood on the walls and people wearing white forensic suits.<sup>138</sup>

### *Further DNA testing*

74. Noting forensic technological advancements, which now allow for further amplification of mixed DNA profiles (which are otherwise unsuitable for sequencing and phenotyping testing), the Inquiry requested that FASS attempt to utilise software including “STRmix” to attempt to amplify the identity of the major and minor profiles of the DNA located on the YSL underpants. The Inquiry also requested FASS to conduct further “Yfiler” PR amplification, which may allow for uploading on the national Y chromosome database with a view to a familial match.
75. As referred to above at [21(d)], FASS forensically tested trace swabs from the broken piece of knife handle. These results indicated the presence of a mixed DNA profile, which was weak and complex.<sup>139</sup> As noted at [55], the Inquiry requested FASS conduct further forensic analysis on the subsamples collected from the broken knife handle located at the crime scene.

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

76. Although the investigating police followed many lines of inquiry and obtained initial reports from many witnesses, the steps outlined at [28(a)-(m)]-[29] ought to have been taken, but were not.

### **Submissions as to the evidence and other investigative steps taken by the Inquiry**

77. This part of the submissions sets out key matters arising from the Inquiry’s consideration of the evidence and the conclusions that it is suggested can be drawn from that evidence. That evidence consists of the police investigative material, the Coroners Court file and any material obtained as a result of the further investigative steps taken by the Inquiry. These are largely consistent with the conclusions reached by Strike Force Skarratt.

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<sup>138</sup> Statement of Joan Henderson, 11 May 2023 (SCOI.83222); Statement of Kieran Moran, 30 May 2023 (SCOI.83342).

<sup>139</sup> Forensic report re: DNA testing results (items entered on EFIMS), 13 January 2017, 5 (SCOI.45065).

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### *Kenneth Brennan's background*

78. Mr Brennan was born on 6 October 1941 and was 53 years old when he died.
79. At the time of his death, Mr Brennan was employed as a history teacher at the Open High School in Redfern, Sydney.<sup>140</sup>
80. Mr Brennan was previously married to Rosemary Ferguson. During their relationship they resided in Adelaide, South Australia. Mr Brennan and Ms Ferguson separated in 1989 but remained friends after their separation.<sup>141</sup>
81. After separating from Ms Ferguson, Mr Brennan commenced a relationship with **NP215** in 1991.<sup>142</sup> Sometime after the relationship commenced, the two relocated in Sydney.<sup>143</sup>
82. Upon arrival in Sydney, Mr Brennan and **NP215** resided with **I282** for approximately six months.<sup>144</sup> Mr Brennan and **NP215** then resided together at **[REDACTED]** for approximately two years before Mr Brennan's death.<sup>145</sup>
83. Throughout their relationship, Mr Brennan frequently and actively sought out other sexual partners, and expressed a particular preference to have sex with "Asian sort of men".<sup>146</sup> Mr Brennan was known to frequent the Pleasure Chest and Kingsteam Sauna for sexual encounters with men.<sup>147</sup> Mr Brennan advertised for sexual encounters through the Capital Q Weekly, which was a Sydney based gay publication. He was also a member of the Country Network, which was a program that provided intra and interstate accommodation and opportunities for sexual encounters with men.<sup>148</sup>
84. Mr Brennan and **NP215**' relationship reportedly deteriorated somewhat over the last six months of Mr Brennan's life.<sup>149</sup> The cause of this deterioration was in part because **NP215** wanted their relationship to be an exclusive one, whereas Mr Brennan wanted to have an open relationship.<sup>150</sup>

<sup>140</sup> Statement of Constable Laura Thurtell, 18 January 1996, 8 (SCOI.00009.00008).

<sup>141</sup> Statement of Rosemary Ferguson, 3 August 1995, 1 (SCOI.00009.00051).

<sup>142</sup> Statement of **NP215**, 15 June 1995, 1 (SCOI.00009.00019).

<sup>143</sup> Transcript of interview with **NP215**, 12 June 1995, 2 (SCOI.00009.00015).

<sup>144</sup> Transcript of interview with **NP215**, 12 June 1995, 5 (SCOI.00009.00015).

<sup>145</sup> Transcript of interview with **NP215**, 12 June 1995, 7 (SCOI.00009.00015).

<sup>146</sup> Transcript of interview with **NP215**, 12 June 1995, 8, 9 and 41 (SCOI.00009.00015).

<sup>147</sup> Statement of Constable Laura Thurtell, 18 January 1996, 9 (SCOI.00009.00008).

<sup>148</sup> Statement of **NP189**, 16 June 1995, 1 (SCOI.00009.00020); Statement of **NP215**, 15 June 1995, 6 (SCOI.00009.00019).

<sup>149</sup> Statement of Constable Laura Thurtell, 18 January 1996, 8-9 (SCOI.00009.00008).

<sup>150</sup> Statement of Constable Laura Thurtell, 18 January 1996, 13 (SCOI.00009.00008).



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### *Events prior to Mr Brennan's death*

85. During the days preceding Mr Brennan's death, Mr Brennan had sexual encounters with the following people: **NP196** (on 6 June 1995), **NP189** (8 June 1995), **NP214** (on 3 and 10 June 1995) and **NP215** (on 3 and 10 June 1995). Mr Brennan also received 12 voice mailbox responses to an advertisement he had placed in Capital Q Weekly on 12 May 1995.<sup>151</sup>
86. On 10 June 1995, Mr Brennan paid for his and **NP215**'s rent. Later that evening, he travelled by taxi with **NP215** to the apartment of **NP214**. **NP214** lived at [REDACTED] Fullerton Street, Woollahra. Mr Brennan and **NP215** had met **NP214** around two weeks earlier, having been introduced by a mutual friend. At about 10:00pm on 10 June 1995, Mr Brennan left **NP214**'s apartment, saying he was tired and that he intended to go home.<sup>152</sup>
87. **NP215** reportedly remained at **NP214**'s apartment until 12 June 1995.<sup>153</sup>
88. At 2:46pm on 11 June 1995, Mr Brennan was photographed at the National Australia Bank ATM on Darlinghurst Road withdrawing \$150.<sup>154</sup> At 5:15pm and again at 5:30pm that evening, Mr Brennan's sister, Ms Saler, spoke briefly to him on the telephone.<sup>155</sup> At approximately 6:15pm, **NP191** reportedly attempted to approach Mr Brennan at Kingsteam Sauna; however, Mr Brennan ignored him.<sup>156</sup>
89. At 6:30pm, **NP190** reportedly spoke to Mr Brennan at Kingsteam Sauna.<sup>157</sup> **NP190** and Mr Brennan commenced foreplay, but they did not proceed.<sup>158</sup> **NP190** indicated in his evidence that he had first met Mr Brennan in an adult bookshop on Pitt Street, approximately one year prior to Mr Brennan's death. On that occasion, **NP190** and Mr Brennan had engaged in sexual intercourse in a room provided at the book shop.<sup>159</sup> Mr Brennan had given his telephone number to **NP190** at that time with a view to further sexual encounters.<sup>160</sup> Over the next year, **NP190** and Mr Brennan met for sexual encounters at both of their residences. On one occasion, **NP215** joined them for a threesome.<sup>161</sup>

<sup>151</sup> Running Sheet – Voice Box of Brennan Recreated Relative to Advertisement in Capital Q and Tele Pacific Communications, 16 June 1995 (SCOI.10321.00003).

<sup>152</sup> Transcript of interview with **NP215**, 12 June 1995, 18-20 (SCOI.00009.00015); Statement of Constable Laura Thurtell, 18 January 1996, 10 (SCOI.00009.00008).

<sup>153</sup> Transcript of interview with **NP215**, 12 June 1995, 19 (SCOI.00009.00015); First statement of **NP214**, 12 June 1995 (SCOI.00009.00018); Second statement of **NP214**, 16 June 1995 (SCOI.00009.00022).

<sup>154</sup> Statement of Constable Laura Thurtell, 18 January 1996, 16 (SCOI.00009.00008); Statement of Detective Senior Constable Brad Tayler, 29 January 1996, 3 (SCOI.00009.00005).

<sup>155</sup> Statement of Ronda Saler, 3 August 1995, 3 (SCOI.00009.00028).

<sup>156</sup> Statement of **NP191**, 9 July 1995, 2 (SCOI.00009.00032).

<sup>157</sup> Statement of **NP190**, 20 June 1995, 4 (SCOI.00009.00029).

<sup>158</sup> Statement of **NP190**, 20 June 1995, 4 (SCOI.00009.00029).

<sup>159</sup> Statement of **NP190**, 20 June 1995, 2 (SCOI.00009.00029).

<sup>160</sup> Statement of Constable Laura Thurtell, 18 January 1996, 19 (SCOI.00009.00008).

<sup>161</sup> Statement of **NP190**, 20 June 1995, 2 (SCOI.00009.00029).



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90. Sometime between 9:00pm and 10:00pm that evening, shop attendant Mr Guijar observed Mr Brennan entering Oxford Street Cellars, Darlinghurst, in the company of a younger male, approximately 16 to 18 years of age with messy blonde hair.<sup>162</sup> Mr Guijar subsequently provided police with his observations of the younger male, and police arranged for a Facial Image Portrait to be drawn based on Mr Guijar's description.<sup>163</sup> Mr Brennan's movements after 10:00pm are not known.

### *Evidence of Mr Brennan's neighbours*

91. As noted above at [71]-[73], contemporary NSWPF records indicate that Ms Henderson, who resided in a nearby apartment block, heard screaming from 1:00am to 2:00am on 11 June 1995.<sup>164</sup> Counsel Assisting notes that Mr Brennan most likely died much later, between approximately 9:00pm and midnight on 11 June 1995.<sup>165</sup> It is also possible that there was some confusion regarding dates, which was perhaps exacerbated because it was a long weekend, and Ms Henderson ought to have been recorded as having heard screaming between 1:00am and 2:00am in the early morning hours of 12 June 1995.
92. Pamela Boyer-Gooche, a neighbour who resided in Mr Brennan and [NP215] apartment building, provided a statement to the NSWPF on 18 June 1995 in which she stated that a man had greeted her in the foyer of the building at about 4:30pm on 11 June 1995. She believed this man to be Mr Brennan.<sup>166</sup> Ms Boyer-Gooche reported Mr Brennan was wearing a white shirt, black trousers and potentially a tie when she saw him.<sup>167</sup>
93. The NSWPF witness canvassing notes (undated) also indicate that a neighbour by the name of "C.D Crook" heard a male scream between 8:00am and 9:00am on 12 June 1995.<sup>168</sup>

### *The police theory at the time of the original investigation*

94. The original OIC, Constable Thurtell, gave evidence at the inquest into Mr Brennan's death that investigating police believed that, after leaving Kingsteam Sauna on the evening of 11 June 1995, Mr Brennan met a person (or persons) either: (i) at an unknown location; or (ii) by arrangement upon returning to his apartment.<sup>169</sup> Mr Brennan had sexual intercourse with that such person or persons.

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<sup>162</sup> Statement of Arturo Guijar, 25 July 1995, 2 (SCOI.00009.00045).

<sup>163</sup> Facial Image Portrait (undated) (SCOI.00009.00126).

<sup>164</sup> Witness Canvassing Handwritten Notes (undated) (SCOI.10316.00022).

<sup>165</sup> Witness Canvassing Handwritten Notes (undated) (SCOI.10316.00022).

<sup>166</sup> Statement of Pamela Boyer-Gooche, 18 June 1995, 1-2 (SCOI.10324.00038).

<sup>167</sup> Statement of Pamela Boyer-Gooche, 18 June 1995, 1-2 (SCOI.10324.00038).

<sup>168</sup> Witness Canvassing Form of occupants at [REDACTED] Onslow Avenue, Elizabeth Bay (undated), 4 (SCOI.10316.00009).

<sup>169</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 7 (SCOI.00009.00059).

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Afterwards, a struggle ensued in the bedroom and hallway.<sup>170</sup> Mr Brennan was stabbed during the struggle, possibly in the bathroom and in other areas of the apartment, with the knife blade located at the crime scene.<sup>171</sup> Investigating police were also of the opinion that Mr Brennan was hit in the face with a metal frypan and that his body had been sponged down.<sup>172</sup>

95. Crime Scene Officer DSC Lyle Van Leeuwen considered that Mr Brennan may have been stabbed in the bedroom and tried to escape his assailant/s by moving towards the bathroom, where he may have again been stabbed and rendered unconscious or deceased. The assailant/s then dragged Mr Brennan to the location where he was found.<sup>173</sup>
96. This theory reflects a significant body of evidence that there was at least one unknown male person in the apartment with Mr Brennan on 11 June 1995, and that this person was a sexual partner. Evidence supporting this includes the condoms and condom wrappers, the vial of amyl nitrate, the YSL underpants (which were too small to fit either Mr Brennan or [NP215]), the presence of the Unknown Male 'B' profile on those exhibits, and the black leather studded strap found beside the bed, which [NP215] identified as Mr Brennan's "cock ring".<sup>174</sup>
97. This theory is also consistent with there being no signs of forced entry.<sup>175</sup> However, this is not conclusive, noting that the person (or persons) responsible for Mr Brennan's death may have been in possession of keys to the property.<sup>176</sup> This is because the internal lock on the apartment door required a key to open it from the inside,<sup>177</sup> and Mr Brennan's own keys (as well as the spare keys kept in the apartment) were accounted for in the apartment when Mr Brennan was discovered.<sup>178</sup> This means that if the perpetrator did not have their own keys it would have been necessary to prop open the front door, return the keys used to open the door from the inside, and then leave the apartment.
98. It was the opinion of DSC Van Leeuwen that Mr Brennan was stabbed in the bedroom and tried to escape to the bathroom, where he may have again been stabbed and rendered unconscious or deceased. The assailant/s then dragged Mr Brennan to the location in which he was found.<sup>179</sup>

<sup>170</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 7 and 21 (SCOI.00009.00059).

<sup>171</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 7 (SCOI.00009.00059).

<sup>172</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 7 and 24 (SCOI.00009.00059).

<sup>173</sup> Coronial Findings of Senior Deputy State Coroner John Abernethy, 17 September 1996, 1 (SCOI.00009.00063); Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 22 (SCOI.00009.00059).

<sup>174</sup> Transcript of interview with [NP215], 12 June 1995, 52 (SCOI.00009.00015).

<sup>175</sup> Statement of Detective Senior Constable Lyle Van Leeuwen, 13 August 1996, 7 (SCOI.45105).

<sup>176</sup> Coronial Findings of Senior Deputy State Coroner John Abernethy, 17 September 1996, 2 (SCOI.00009.00063).

<sup>177</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 46-47 (SCOI.00009.00059).

<sup>178</sup> Transcript of interview of [NP215], 12 June 1995, 42-43 and 50 (SCOI.00009.00015).

<sup>179</sup> Coronial Findings of Senior Deputy State Coroner John Abernethy, 17 September 1996, 1 (SCOI.00009.00063); Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 22 (SCOI.00009.00059).

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99. By the time of the inquest, police had been unable to identify a clear suspect, leading to the coronial finding that the injuries causing Mr Brennan's death had been inflicted by a person or persons unknown.<sup>180</sup> This finding remains a real possibility, and is consistent with much of the currently available evidence.

### *Persons of interest identified by Strike Force Monardia*

100. Investigating police made various inquiries in relation to a significant number of other persons of interest, including the following:
- a. **NP215** was considered a person of interest because of his recent relationship difficulties with Mr Brennan and somewhat peculiar evidence. Further information regarding **NP215** status as a person of interest is included at [105]-[115]. **NP215** was excluded from the investigation because his DNA did not match the Unknown Male 'B' profile of the DNA located on the YSL underpants.<sup>181</sup>
  - b. **NP214** was considered a person of interest because of his recent association with **NP215** and Mr Brennan. **NP214** stated that at the time of Mr Brennan's death, he was asleep at his apartment in Woollahra. **NP214** was excluded from the investigation because his DNA did not match the Unknown Male 'B' profile of the DNA located on the YSL underpants.<sup>182</sup>
  - c. **NP188** was nominated by a confidential source in custody after reportedly boasting about killing a man named 'Kenneth'.<sup>183</sup> [REDACTED]  
[REDACTED]<sup>184</sup> **NP188** was excluded from the investigation after police confirmed that **NP188** was in Byron Bay with **NP207** from 10 to 12 June 1995,<sup>185</sup> and because his DNA did not match the Unknown Male 'B' profile located on the YSL underpants.<sup>186</sup> BDM confirmed that **NP188** died on 3 August 2013.<sup>187</sup>

<sup>180</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 7 (SCOI.00009.00059).

<sup>181</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003); Second report of Michele Franco, 16 August 1996, 2 (SCOI.10181.00004).

<sup>182</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003); Second report of Michele Franco, 16 August 1996, 2 (SCOI.10181.00004).

<sup>183</sup> Transcript of interview with **I298**, 11 November 1995 (SCOI.10291.00065).

<sup>184</sup> Review of an Unsolved Homicide Case Screening Form, 6 August 2004, 8 (SCOI.44995); Statement of Constable Laura Thurtell, 18 January 1996, 48, 50 (SCOI.00009.00008).

<sup>185</sup> Statement of Robert Ivey, 6 January 1996, 1-2 (SCOI.00009.00056); Statement of **NP188**, 23 October 1995, 2 (SCOI.10291.00093).

<sup>186</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003); Second report of Michele Franco, 16 August 1996, 2 (SCOI.10181.00004).

<sup>187</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 2 (SCOI.83469).

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- d. **NP189** was considered a person of interest because he had recently had sexual encounters with Mr Brennan via the Country Network.<sup>188</sup> On 8 June 1995, **NP189** stayed with Mr Brennan and **NP215**.<sup>189</sup> **NP215** provided the guest with a spare key to **I301**.<sup>190</sup> **I301**, a friend of **NP189**, reported to police that while **NP189** was staying at **I301**, he told **I301** that he wanted to leave there because Mr Brennan would “continually pester him **NP189** for sex”.<sup>191</sup> **I301** told **NP189** that he could stay with him instead, and later that evening **NP189** returned the spare keys to Mr Brennan.<sup>192</sup> **NP189** was excluded from the investigation after **I282** confirmed that **NP189** stayed with him on the evening of 11 June 1995,<sup>193</sup> and after forensic results confirmed that his DNA did not match the Unknown Male ‘B’ profile located on the YSL underpants.<sup>194</sup>
- e. **NP190** was considered a person of interest because he was one of the last people to see Mr Brennan alive and because he had engaged in several sexual encounters with him (see [89] above). Additionally, on 20 June 1995, when DSC Tayler spoke to **NP190**, he noticed **NP190** had injuries to his hands.<sup>195</sup> Police took photographs of these injuries.<sup>196</sup> However, from the evidence available to the Inquiry it does not appear that **NP190** was questioned about these injuries, and the photographs have not been provided to the Inquiry. **NP190** was excluded from the investigation after investigators compared his underwear and shoes to evidence located at the scene,<sup>197</sup> and because his DNA did not match the Unknown Male ‘B’ profile located on the YSL underpants.<sup>198</sup>
- f. **NP204** was nominated as a person of interest because, in August 1995, he offended in a similar manner. **NP204**’s de facto partner, **I268**, confirmed that **NP204**

<sup>188</sup> Review of an Unsolved Homicide Case Screening Form, 6 August 2004, 9 (SCOI.44995).

<sup>189</sup> Statement of **NP215**, 15 June 1995, 6 (SCOI.00009.00019).

<sup>190</sup> Statement of **NP215**, 15 June 1995, 6 (SCOI.00009.00019).

<sup>191</sup> Statement of **I301**, 15 June 1995, 4 (SCOI.10261).

<sup>192</sup> Statement of **I301**, 15 June 1995, 4 (SCOI.10261); Statement of **NP189**, 16 June 1995, 8 (SCOI.00009.00020); Statement of **NP215**, 15 June 1995, 7 (SCOI.00009.00019).

<sup>193</sup> Statement of Constable Laura Thurtell, 18 January 1996, 14 (SCOI.00009.00008).

<sup>194</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003); Second report of Michele Franco, 16 August 1996, 2 (SCOI.10181.00004).

<sup>195</sup> Statement of Detective Senior Constable Brad Tayler, 29 January 1996, 8 (SCOI.00009.00005).

<sup>196</sup> Statement of Detective Senior Constable Brad Tayler, 29 January 1996, 8 (SCOI.00009.00005).

<sup>197</sup> Statement of Constable Laura Thurtell, 18 January 1996, 19 (SCOI.00009.00008).

<sup>198</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003); Second report of Michele Franco, 16 August 1996, 2 (SCOI.10181.00004).



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was in Canberra at the relevant time.<sup>199</sup> Additionally, [NP204] was excluded from the investigation because his DNA did not match the Unknown Male 'B' profile.

- g. [NP200] was nominated as a person of interest by an individual who was assaulted by [NP200] [I302]<sup>200</sup> [NP200] unexpectedly arrived at [I302]'s house in Maclean on 13 June 1995 under somewhat suspicious circumstances.<sup>201</sup> In 1995, [NP200] was reportedly a sex worker in and around the Elizabeth Bay area.<sup>202</sup> [NP200] was excluded from the investigation in 1999 after DNA testing confirmed that his DNA did not match the Unknown Male 'B' profile on the YSL underpants.<sup>203</sup>
- h. [NP199] was considered a person of interest because he was a sexual acquaintance of [NP215] and Mr Brennan, and because he introduced [NP214] to them.<sup>204</sup> [NP199] was unable to confirm his whereabouts on the evening of 11 June 1995.<sup>205</sup> [NP199] did not sign his statement to police, refused to supply police with samples of blood or hair (head and pubic), refused to supply police with footprints or fingerprints,<sup>206</sup> and did not give evidence at the Inquest into Mr Brennan's death (citing health concerns).<sup>207</sup> From the police records, it does not appear that there was a proper basis for the investigating police to exclude [NP199] from the investigation. [NP199] was not further investigated during Strike Force Skarratt. The Inquiry has received information confirming that [NP199] died on 9 April 2014.<sup>208</sup>
- i. [NP191] was considered a person of interest because he was reportedly one of the last people to see Mr Brennan alive (see [88] above). [NP191] reported that on 11 June 1995, he left the Kingsteam Sauna at 11:00pm, had a meal at Hungry Jacks on Oxford Street and then caught a bus and arrived home at about 12:30am.<sup>209</sup> [NP191] reportedly remained at home until 8:00am on 12 June 1995, at which time he took his dog for a walk in Queens and Centennial Parks.<sup>210</sup>

<sup>199</sup> Statement of Detective Senior Constable Brad Tayler, 29 January 1996, 15 (SCOI.00009.00005); Statement of [I268] 16 April 1996 (SCOI.10307.00238).

<sup>200</sup> Note, the Inquiry is not aware of any other link between [I302] and Mr Brennan.

<sup>201</sup> Statement of Robert Ivey, 6 January 1996, 3 (SCOI.00009.00056); Transcript of interview with [I302], 12 March 1998, 10 (SCOI.10305.00004).

<sup>202</sup> Statement of Robert Ivey, 6 January 1996, 6-8 (SCOI.00009.00056).

<sup>203</sup> First report of Michele Franco, 24 January 1996, 4 (SCOI.10181.00003); Third report of Michele Franco, 10 September 1999, 2 (SCOI.10181.00005).

<sup>204</sup> Statement of [NP199], 24 August 1995, 1-2 (SCOI.10261.00034).

<sup>205</sup> Statement of Constable Laura Thurtell, 18 January 1996, 33 (SCOI.00009.00008).

<sup>206</sup> Statement of Constable Laura Thurtell, 18 January 1996, 33-34 (SCOI.00009.00008).

<sup>207</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 1 and 9 (SCOI.00009.00059).

<sup>208</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 3 (SCOI.83469).

<sup>209</sup> Statement of [NP191], 9 July 1995, 2 (SCOI.00009.00032).

<sup>210</sup> Statement of [NP191], 9 July 1995, 2 (SCOI.00009.00032).

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From the police records, it does not appear that there was a proper basis for the investigating police to exclude [NP191] from the investigation. [NP191] was not further investigated during Strike Force Skarratt. BDM confirmed [NP191] died on 17 November 2005.<sup>211</sup>

- j. [NP203] was nominated as a person of interest as a result of the Facial Image Portrait exercise (referred to at [90]), and because police intelligence indicated that [NP203] was regularly seen in Darlinghurst in the early 1990s.<sup>212</sup> Investigators as part of Strike Force Monardia excluded [NP203] from the investigation on account of a statement provided by his employer [I291] [I291], which confirmed that [NP203] was in Victoria on 13 June 1995.<sup>213</sup> [I291] was, however, unable to comment on [NP203]'s whereabouts over the long weekend because no employees worked over the Queen's birthday long weekend in 1995.
- k. [NP198] was also nominated as a person of interest as a result of the Facial Image Portrait exercise (referred to at [90]) and because he was responsible for threats of a similar nature (involving a knife and a gay man) one month following Mr Brennan's death.<sup>214</sup> [NP198] was eliminated from the investigation on the basis that he was residing in Victoria at the relevant time and phone records confirmed he had not been in contact with Mr Brennan.<sup>215</sup> BDM confirmed that [NP198] died on 10 May 1996.<sup>216</sup>
- l. [NP202] was nominated as a person of interest by an informant known to the NSWPF. The informant reported that [NP202] was allegedly molested by a teacher named 'Mr Brennan' and vowed revenge.<sup>217</sup> [NP202] was interviewed by police and, although he was unable to confirm his whereabouts on 11 June 1995, he stated that he was likely at home in the Blacktown area.<sup>218</sup> [NP202]'s former de-facto partner, [I288], confirmed that [NP202] was residing with her in Blacktown from 5 June until 4 July 1995, however she was unable to recall his precise movements during this period.<sup>219</sup> Further police inquiries confirmed [NP202] was

<sup>211</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 3 (SCOI.83469).

<sup>212</sup> Statement of Constable Laura Thurtell, 18 January 1996, 40 (SCOI.00009.00008).

<sup>213</sup> Statement of [I291], 28 November 1995, 1-2 (SCOI.10307.00222).

<sup>214</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 9 (SCOI.00009.00059).

<sup>215</sup> Review of an Unsolved Homicide Case Screening Form, 6 August 2004, 10 (SCOI.44995); Statement of [I289], 5 October 1995, 1 (SCOI.10278.00050); South Region – Situation Report: No. 9, 13 October 1995 (SCOI.10324.00041); Transcript of Inquest into the death of Kenneth Brennan, 17 September 1995, 9-10 (SCOI.00009.00059); Running Sheet Telecom Australia Bill for mobile phone owned by [NP198], 14 September 1995 (SCOI.10307.00167); Statement of [I289], 5 October 1995, 1 (SCOI.10278.00050).

<sup>216</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 3 (SCOI.83469).

<sup>217</sup> Statement of [I299], 25 July 1995 (SCOI.00009.00046); Statement of Constable Laura Thurtell, 18 January 1996, 18 (SCOI.00009.00008); Running Sheet – Information from Detective Dennis Bray, 19 June 1995 (SCOI.10307.00055).

<sup>218</sup> Statement of [NP202], 27 December 1995, 3 (SCOI.10307.00077).

<sup>219</sup> Statement of Constable Laura Thurtell, 18 January 1996, 18 (SCOI.00009.00008).

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- never a registered student of Mr Brennan.<sup>220</sup> Police did not consider [NP202] was involved in Mr Brennan's death and he was excluded from the investigation.<sup>221</sup> BDM confirmed that [NP202] died on 14 May 2020.<sup>222</sup>
- m. [NP182] was nominated as a person of interest as a result of the Facial Image Portrait exercise (referred to at [90]).<sup>223</sup> [NP182] informed investigating police that on the afternoon and evening of 11 June 1995 he was at a house in Pearl Beach with several friends, including [I295].<sup>224</sup> This evidence was corroborated by a statement from [I295].<sup>225</sup>
- n. [NP218] was nominated as a person of interest by an informant.<sup>226</sup> Police subsequently expressed doubt as to the reliability of the informant.<sup>227</sup> [NP218] informed investigating police that on the evening of 10 June 1995, he was assisting the AIDS Council of NSW (now known as ACON).<sup>228</sup> This was corroborated by [I296].<sup>229</sup> It is not clear why investigating police questioned [NP218] about the evening of 10 June 1995 (rather than the evening of 11 June 1995), given what was understood about Mr Brennan's time of death.
- o. [NP205] was considered a person of interest because he was admitted to St Vincent's Hospital on 11 June 1995 for a head injury.<sup>230</sup> Despite [NP205] being unable to recall his whereabouts on 11 June 1995, he was excluded from the investigation because his movements were accounted for by a person who was in his company that day.<sup>231</sup> BDM confirmed that [NP205] died on 1 September 2018.<sup>232</sup>
- p. [NP212] was considered a person of interest because he was admitted to St Vincent's Hospital on 11 June 1995 for abrasions.<sup>233</sup> [NP212] was excluded from the investigation

<sup>220</sup> Running Sheet – Request to [I293] 26 July 1995 (SCOI.10307.00061).

<sup>221</sup> Running Sheet – Statement of [NP202], 1 January 1996 (SCOI.10307.00076).

<sup>222</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 3 (SCOI.83469).

<sup>223</sup> Running Sheet – Statement of [NP182] 26 December 1995 (SCOI.10307.00226).

<sup>224</sup> Statement of [NP182] 18 January 1996, 1-2 (SCOI.10183.00084).

<sup>225</sup> Statement of [I295] 19 January 1996, 1-2 (SCOI.10323.00016).

<sup>226</sup> Letter from [I293] to NSW Police, 28 April 1997 (SCOI.10305.00044).

<sup>227</sup> Issue Paper re: Letter received from [I293], 16 May 1997 (SCOI.10305.00042).

<sup>228</sup> Statement of [NP218] 14 January 1998, 2 (SCOI.10305.00136).

<sup>229</sup> Statement of [I296] 6 February 1998 (SCOI.10305.00139).

<sup>230</sup> Statement of Constable Laura Thurtell, 18 January 1996, 35-36 (SCOI.00009.00008); Statement of [NP205] 19 January 1996, 1-2 (SCOI.10323.00015); Running Sheet – Sydney Hospital Records Checked, 15 June 1995 (SCOI.10276.00089).

<sup>231</sup> Statement of Constable Laura Thurtell, 18 January 1996, 36 (SCOI.00009.00008).

<sup>232</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 3 (SCOI.83469).

<sup>233</sup> Running Sheet - St Vincent's Hospital, Check for Injury, 15 June 1995 (SCOI.10276.00088).



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because his movements were also accounted for by a person who was in his company that day.<sup>234</sup>

- q. [NP208] was considered a person of interest because he was admitted to St Vincent's Hospital on 11 June 1995 for face abrasions.<sup>235</sup> Investigating police were unable to locate [NP208] because the address provided to St Vincent's Hospital was incorrect. The Police Intelligence System does not contain any information in relation to [NP208].<sup>236</sup>
- r. [NP206] was admitted to Sydney Hospital on 12 June 1995 for an injury to his left hand.<sup>237</sup> On 15 August 1996, [NP206] was interviewed by Western Australian Police Force regarding Mr Brennan's death and was subsequently excluded from the investigation.<sup>238</sup> From the records produced by the NSWPF, it is not clear why [NP206] was excluded.
- s. The following persons were considered persons of interest because they each responded to Mr Brennan's advertisement dated 12 May 1995 in the Capital Q Weekly:
- i. [NP183] reported that on 11 June 1995, he was at home with his friends Gary and Justin watching a video hired from Video Ezy, Ingleburn. Investigating police excluded [NP183] from the investigation after confirming with Video Ezy, Ingleburn that [NP183] had hired two videos and returned one of them at midday on 12 June 1995.<sup>239</sup>
  - ii. [NP194] was excluded from the investigation after police confirmed that he was working as a flight attendant for Qantas and was not in Sydney at the relevant time.<sup>240</sup>
  - iii. [NP211] was excluded from the investigation after the Australian Customs Department confirmed that he was not in Australia on 11 June or 12 June 1995.<sup>241</sup>
  - iv. [NP185] appears to have been excluded from the investigation on the basis that his mobile phone records confirmed he had not contacted Mr Brennan since 2 June 1995.<sup>242</sup> Police records do not, however, indicate whether [NP185] communicated with Mr Brennan closer to 11 June 1995 by some method other than his mobile phone.

<sup>234</sup> Statement of Constable Laura Thurtell, 18 January 1996, 36 (SCOI.00009.00008).

<sup>235</sup> Running Sheet – St Vincent's Hospital, Check for Injury, 15 June 1995 (SCOI.10276.00088).

<sup>236</sup> Statement of Constable Laura Thurtell, 18 January 1996, 36 (SCOI.00009.00008).

<sup>237</sup> Running Sheet – Sydney Hospital Records Checked, 15 June 1995 (SCOI. 10276.00089).

<sup>238</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 8 (SCOI.00009.00059).

<sup>239</sup> Running Sheet – Corroboration for [NP183] 17 August 1995 (SCOI.10307.00046); Statement of Constable Laura Thurtell, 18 January 1996, 29 (SCOI.00009.00008).

<sup>240</sup> Statement of [NP194] 26 June 1995 (SCOI.00009.00036); Statement of Constable Laura Thurtell, 18 January 1996, 27 (SCOI.00009.00008).

<sup>241</sup> Statement of Constable Laura Thurtell, 18 January 1996, 31 (SCOI.00009.00008).

<sup>242</sup> Statement of [NP185] 5 July 1995, 2 (SCOI.10275.00083).



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- v. [NP184] was excluded from the investigation after stating that he was visiting a friend named Jeff Rogers on 11 June 1995.<sup>243</sup> BDM was unable to locate a registration of death for [NP184] and the Inquiry is unable to locate him.<sup>244</sup>
- vi. [NP187] reported that he was at home with his ex-partner, [I303] [I303] on the evening of 11 June 1995.<sup>245</sup> Investigating police spoke to [I303], however, he was unable to corroborate [NP187]'s alibi.<sup>246</sup> It may be important to note that [NP187] had made plans to meet Mr Brennan on 12 June 1995.<sup>247</sup> BDM confirmed that [NP187] died on 23 February 2004.<sup>248</sup>
- vii. [NP196] reported that he was clubbing at The Den on Oxford Street from 9:00pm on 10 June to about 5:00am on 11 June 1995, and then walked home.<sup>249</sup> [NP196] said that he woke up on 11 June 1995 at about 10:00am and then was visited by a friend named 'Andre'.<sup>250</sup> His whereabouts on the evening of 11 June 1995 are not accounted for.
- viii. [NP186] reported that on "Sunday, 12 June 1995", he attended the Clock Hotel in Newtown with Peter Tominson between 8:30pm and about 11:00pm,<sup>251</sup> and then the Newtown Hotel in Newtown from about 11:00pm to midnight.<sup>252</sup> The reference to Sunday, 12 June 1995 appears to be an error because in 1995, 12 June fell on a Monday. From the records, it is not clear whether this is a reference to Sunday, 11 June 1995 or Monday, 12 June 1995. Counsel Assisting consider that Sunday, 12 June may have been a reference to Sunday, 11 June 1995 (noting that date was the date of Mr Brennan's death). According to police, [NP186]'s evidence was corroborated by Mr Tominson, but the Inquiry has not seen this evidence.<sup>253</sup> Police appear to have excluded [NP186] from the investigation on the basis of this corroborating

<sup>243</sup> Statement of Constable Laura Thurtell, 18 January 1996, 30 (SCOI.00009.00008); Running Sheet – Statement of [NP184], 8 December 1995 (SCOI.10275.00103).

<sup>244</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 4 (SCOI.83469).

<sup>245</sup> Statement of [NP187], 19 June 1995, 5 (SCOI.10278.00037).

<sup>246</sup> Running Sheet – Conversation with [I303], 9 January 1996 (SCOI.10307.00007).

<sup>247</sup> Statement of [NP187], 19 June 1995, 3 (SCOI.10278.00037).

<sup>248</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 3 (SCOI.83469).

<sup>249</sup> Statement of [NP196], 16 June 1995, 4 (SCOI.00009.00040).

<sup>250</sup> Statement of [NP196], 16 June 1995, 4 (SCOI.00009.00040).

<sup>251</sup> Statement of [NP186], 5 July 1995, 3 (SCOI.00009.00037).

<sup>252</sup> Statement of [NP186], 5 July 1995, 3 (SCOI.00009.00037).

<sup>253</sup> Statement of Constable Laura Thurtell, 18 January 1996, 28 (SCOI.00009.00008).

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evidence.<sup>254</sup> However, NSWPF records include a report made by a barman at the Newtown Hotel, Mr Thomas, that on 11 June 1995, [NP186] was either in the company of or had spoken to a man named ‘Ken’ at the Newtown Hotel from 8:00pm to 11:00pm that evening.<sup>255</sup> BDM was unable to locate a registration of death for [NP186]. As noted above at [28(g)], no statement was obtained from Mr Thomas. The Inquiry has been informed that Mr Thomas died on 29 May 2020.<sup>256</sup>

- ix. [NP195] informed police that on 11 June 1995 he attended work ([REDACTED] with [REDACTED] from 9:00pm on 11 June 1995 to 4:00am on 12 June 1995, at which point he went home and slept until 9:00am.<sup>257</sup> [NP195] informed police that he did not receive a response from either Mr Brennan or [NP215] in relation to the advertisement.<sup>258</sup> From the evidence available, it does not appear police conducted checks of [NP195]’s phone to confirm this.
- x. [NP192] was excluded from the investigation after police confirmed that he was having dinner with [REDACTED] on 11 June 1995 from 7:00pm to 11:00pm.<sup>259</sup> BDM was unable to locate a registration of death for [NP192] and the Inquiry has been unable to locate current contact details for him.<sup>260</sup>
- xi. [NP193] was unable to confirm his whereabouts on 11 June 1995.<sup>261</sup>
- xii. [NP197] responded to Mr Brennan’s advertisement dated 12 May 1995 in the Capital Q Weekly and his name and number were located on a piece of paper on the dining table at [REDACTED]. [NP197] informed investigating police that Mr Brennan may have had his number because [NP197] was [REDACTED] and Mr Brennan may have been interested in an apartment in Kings Cross. The Inquiry does not have any

<sup>254</sup> Statement of Constable Laura Thurtell, 18 January 1996, 36 (SCOI.00009.00008).

<sup>255</sup> Running Sheet – Corroboration for [NP186], 12 July 1995 (SCOI.10275.00077).

<sup>256</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 4 (SCOI.83469).

<sup>257</sup> Statement of [NP195], 6 July 1995, 2 (SCOI.00009.00039).

<sup>258</sup> Statement of [NP195], 6 July 1995, 1 (SCOI.00009.00039).

<sup>259</sup> Statement of Detective Senior Constable Brad Tayler, 29 January 1996, 12 (SCOI.00009.00005); Statement of [NP192], 24 June 1995 (SCOI.00009.00034).

<sup>260</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 3 (SCOI.83469).

<sup>261</sup> Statement of [NP193], 10 July 1995, 2 (SCOI.00009.00035); Statement of Constable Laura Thurtell, 18 January 1996, 27 (SCOI.00009.00008).

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evidence that suggests [NP197] was questioned in relation to that explanation.<sup>262</sup>

[NP197] was subsequently excluded from the investigation because he was visiting family and friends in [REDACTED] over 11 and 12 June 1995.<sup>263</sup>

101. As it evident from this list, there was a significant number of persons of interest who could not be excluded, or where the basis for exclusion leaves open the possibility of their involvement. However, in relation to almost all these individuals, there was little (or no) concrete evidence actually implicating those persons.

### *Further investigations in relation to other persons of interest – Strike Force Skarratt and UHT*

102. In addition to the forensic testing conducted by Strike Force Skarratt, referred to above at [18]-[24], investigating police examined paper in Mr Brennan’s wallet and found three phone numbers on a piece of paper. Police identified the users of the numbers in 1995 as being [NP210] (one number) and [NP209] [NP209] (two numbers).<sup>264</sup> Police inquiries confirmed that [NP210] was gay<sup>265</sup> and that he died on 5 June 2011.<sup>266</sup> Police subsequently requested a DNA sample from [NP210]’s nephew, [I294] (also known as [REDACTED]), to attempt to conduct familial testing against the Unknown Male ‘B’ profile. [I294], however, declined to provide a DNA sample.<sup>267</sup>

103. Investigating police located [NP209] and [REDACTED]  
[REDACTED]<sup>268</sup> [REDACTED]  
[REDACTED]<sup>269</sup> Counsel Assisting is unable to confirm why the NSWPF [REDACTED] but did not pursue the same course for any of the other persons of interest (who had not or could not have been excluded from the investigation).

104. In March 2018, investigating police contacted [NP214] who re-iterated he was at home in Woollahra with [NP215] on the weekend of Mr Brennan’s death. [NP214] again confirmed that [NP215] could not have left his home without his knowledge and was confident that [NP215] was with him the entire weekend.<sup>270</sup>

<sup>262</sup> Statement of Detective Senior Constable Brad Tayler, 29 January 1996, 6. (SCOI.00009.00005).

<sup>263</sup> Statement of [NP197], 22 June 1995, 2 (SCOI.00009.00041).

<sup>264</sup> Post Operational Assessment for Strike Force Skarratt, 1 August 2019, 2 (SCOI.82997).

<sup>265</sup> Investigator’s Note re: Meeting with Paul Ten-Bruggen-Cate, 19 January 2017, 2-3 (SCOI.45068).

<sup>266</sup> Death Certificate of [NP210], 13 October 2016, 2 (SCOI.45061).

<sup>267</sup> Investigator’s Notes re: Further contact with [I294], 24 March 2017, 1 (SCOI.45076); Post Operational Assessment for Strike Force Skarratt, 1 August 2019, 2 (SCOI.82997).

<sup>268</sup> Investigator’s Note re: [REDACTED], 11 January 2017, 1 (SCOI.45063).

<sup>269</sup> Investigator’s Note re: [REDACTED], 11 January 2017 (SCOI.45063).

<sup>270</sup> Post Operational Assessment for Strike Force Skarratt, 1 August 2019, 2-3 (SCOI.82997).

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### NP215 *Motive and Suspicious Characteristics*

105. Over the last six months of his life, Mr Brennan told friends that his relationship with NP215 was tumultuous and that he desired more independence from NP215.<sup>271</sup> A friend of Mr Brennan's, Graham Duckett, reported that NP215 would have "tremendous highs and lows, massive mood swings [and] moments of heavy binge drinking".<sup>272</sup> According to another mutual friend, I271, Mr Brennan attempted to end the relationship with NP215 on multiple occasions, but NP215 refused.<sup>273</sup> In his statement dated 15 June 1995, NP215 states that he was very angry that Mr Brennan had engaged in sexual relationships with other men, and that on occasion NP215 would "walk down the street and cry and ring [his] friends".<sup>274</sup> NP215 was aware that Mr Brennan would frequent Kingsteam Sauna for casual sexual encounters, and on occasion they would go together.<sup>275</sup>
106. Throughout the investigations into Mr Brennan's death, NP215 evidence has been that on 10 June 1995, he and Mr Brennan attended NP214's apartment in Woollahra where they had dinner and then had sex. At about 10:00pm that evening, Mr Brennan stated that he was tired and decided to go home, while NP215 remained at NP214's apartment. NP215 reported that he telephoned Mr Brennan on 11 June 1995 and left a voicemail on the answering machine.<sup>276</sup>
107. NP214 gave evidence that he observed NP215 on the telephone again on two occasions on the morning of 12 June 1995, and that NP215 told him that Mr Brennan was not answering the phone. NP214 reported that NP215 informed him that Mr Brennan may have gone to the Blue Mountains to visit friends.<sup>277</sup>
108. NP215 and NP214 maintained that NP215 did not leave NP214's apartment for the entire day on 11 June 1995, and at least the morning on 12 June 1995.
109. This alibi evidence is at odds with the observations of one of NP214's neighbours, Mrs Leonoff. Mrs Leonoff reported to police that she observed NP215 outside NP214's apartment complex on 11 June 1995 on the following two occasions.<sup>278</sup>

<sup>271</sup> Further letter to John Sullivan from Kenneth Brennan (undated), 1 and 3 (SCOI.10278.00064); Letter to John Sullivan from Kenneth Brennan, 24 May 1995, 3 (SCOI.10278.00063); Statement of John Sullivan, 4 October 1995, 2-5 (SCOI.10278.00062).

<sup>272</sup> Statement of Graham Duckett, 3 August 1995, 2 (SCOI.00009.00052).

<sup>273</sup> Statement of I271, 6 March 1996, 2-3 (SCOI.10324.00051).

<sup>274</sup> Statement of NP215, 15 June 1995, 2 (SCOI.00009.00019).

<sup>275</sup> Statement of NP215, 15 June 1995, 4-5 (SCOI.00009.00019).

<sup>276</sup> Statement of NP215, 15 June 1995, 11 (SCOI.00009.00019); First statement of NP214, 12 June 1995, 2 (SCOI.00009.00018).

<sup>277</sup> Second statement of NP214, 16 June 1995, 2 (SCOI.00009.00022).

<sup>278</sup> Running Sheet – Information from Natalie Leonoff, 26 June 1995, 1 (SCOI.10276.00118).



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- a. at about 3:00am, Mrs Leonoff observed [NP215] standing outside her apartment block. Mrs Leonoff had forgotten her security key to access the building and began to make noise to wake her son up so that he could let her inside. Mrs Leonoff reported that, at that point, [NP215] [NP215] became agitated and angry towards her.<sup>279</sup> It should be noted that Mrs Leonoff's evidence is untested, and it is not known whether she had been drinking alcohol prior to 3:00am when she believed she observed [NP215]. The reliability of her identification evidence is therefore unclear, particularly given the evidence that [NP215] had stayed with [NP214] for at least a few days after Mr Brennan's body was discovered, and the fact that Mrs Leonoff was not interviewed by police until the following Monday on 19 June 1995; and
- b. at about 8:00pm, Mrs Leonoff observed [NP215] in the company of a girl and an older man with grey hair. Mrs Leonoff said that the group was walking from the carpark towards the apartment building. Counsel Assisting notes it might be regarded as odd that [NP215] was seen in the company of anyone other than [NP214]. Moreover, if Mr Guijar's evidence is accurate, Mr Brennan was seen alive later in the evening, 9:00pm and 10:00pm on 11 June 1995.
110. The Inquiry investigated the status and whereabouts of Mrs Leonoff and obtained evidence that she died on 13 December 2022.<sup>280</sup>
111. Throughout the investigation into Mr Brennan's death, police observed other suspicious features of [NP215] evidence that raised potential inconsistencies. These include:
- whether it was plausible or likely that [NP215] had failed to notice Mr Brennan's body immediately upon entering [REDACTED] on the evening of 12 June 1995;<sup>281</sup>
  - whether it was plausible or likely that [NP215] had been able to observe the answering machine off its podium in the main bedroom (even if in dim light);<sup>282</sup>
  - the fact there appeared to be no messages recorded on the answering machine, although this would be consistent with Mr Brennan having deleted them;<sup>283</sup>

<sup>279</sup> Running Sheet – Information from Natalie Leonoff, 26 June 1995, 1 (SCOI.10276.00118).

<sup>280</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 4 (SCOI.83469).

<sup>281</sup> Statement of Constable Laura Thurtell, 18 January 1996, 11 (SCOI.00009.00008).

<sup>282</sup> Statement of Constable Laura Thurtell, 18 January 1996, 11 (SCOI.00009.00008); Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 45 (SCOI.00009.00059).

<sup>283</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 50 (SCOI.00009.00059).

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- d. that Mr Brennan's body appeared to have been partially sponged down after his death (which may be indicative of a level of remorse or compassion after the event causing death, but may equally be explicable as a stranger attempting to remove DNA);<sup>284</sup>
- e. that the apartment was secure with external and internal locks. Police recorded that all keys to the apartment were accounted for and that there were no signs of forced entry or use of the windows.<sup>285</sup> As noted above, it would have been necessary for a stranger to open the apartment door from the inside, prop the door open, put the keys back in their place in the apartment and leave or alternatively have cut a key for themselves;<sup>286</sup> and
- f. that [I271] and [I281] located a knife with the blade wrapped in toilet paper hidden in a black leather suit bag months after [NP215] resided with him after Mr Brennan's death.<sup>287</sup>
112. [NP215] evidence was tested in relation to many of the matters described above (but not in relation to Mrs Leonoff's recollection or the knife found at [I271]'s premises) at the inquest on 17 September 1996.<sup>288</sup> As noted above, Senior Deputy State Coroner Abernethy's finding was that Mr Brennan died on or about 11 June 1995 at [REDACTED] of stab wounds to chest, inflicted then and there by persons unknown.<sup>289</sup>
113. [REDACTED]
114. There is at least one possible scenario which would explain the evidence of Mr Brennan having at least one unknown male sexual partner in the apartment on 11 June 1995. Mr Brennan may have had sex with the unknown male sexual partner in the apartment, after which [NP215] may have returned home, become jealous and killed Mr Brennan in anger. While this possible scenario is consistent with some of the evidence, it is inconsistent with [NP214]'s alibi evidence.

<sup>284</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 15 (SCOI.00009.00059).

<sup>285</sup> Statement of Detective Senior Constable Brad Tayler, 29 January 1996, 2-4 (SCOI.00009.00005); Statement of Constable Laura Thurtell, 18 January 1996, 4 (SCOI.00009.00008).

<sup>286</sup> Transcript of Inquest into the death of Kenneth Brennan, 17 September 1996, 51 (SCOI.00009.00059).

<sup>287</sup> Statement of [I281], 1 March 1996, 2 (SCOI.10261.00101); Statement of [I271], 6 March 1996, 5-6 (SCOI.10324.00051).

<sup>288</sup> Transcript of inquest into the death of Kenneth Brennan, 17 September 1996 (SCOI.00009.00059).

<sup>289</sup> Coronial Findings of Senior Deputy State Coroner John Abernethy, 17 September 1996 (SCOI.00009.00063).

<sup>290</sup> Review of an Unsolved Homicide Case Screening Form, 6 August 2004, 8 and 7 (SCOI.44995).

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115. Furthermore, it might be regarded as inherently surprising that **NP214** would lie for someone whom he had only known for about two weeks, especially in a context where that person might be responsible for a violent murder. It would be even more surprising to maintain the lie in 2018. Given the significant number of other persons of interest who were not excluded, the Inquiry could not draw a conclusion based on the balance of probabilities that **NP215** was involved in Mr Brennan's death.

### *Status and whereabouts of witnesses*

116. The Inquiry investigated the status and whereabouts of Mrs Leonoff, Ms Henderson, Mr Crook and Mr Thomas. Mrs Leonoff is deceased (see [41] above). The Inquiry was unable to locate Mr Crook's precise address but has been advised that he is residing in Queensland.<sup>291</sup> Mr Thomas, who worked at the Newtown Hotel, is deceased (see [100(r)(viii)] above).

### **Conclusions as to bias**

117. The evidence that Mr Brennan's death was motivated by LGBTIQ bias is inconclusive. If **NP215** was the perpetrator (and, on the evidence before the Inquiry, this possibility cannot be excluded), the motive was likely jealousy. It follows that on the evidence before the Inquiry, it is not possible to find, on the balance of probabilities, that Mr Brennan's death was an LGBTIQ hate crime.
118. Nor is the Inquiry able to find that Mr Brennan was killed by an unknown male whom he brought into his apartment for sex. However, if this were how Mr Brennan was killed, there is a distinct possibility (arguably rising to the level of a probability) that the crime was a hate crime. On this hypothesis, the attack on Mr Brennan by a recent sexual partner (with no other apparent motive, such as theft) would be a very violent one conducted in the absence of any other obvious motive.
119. Given the competing hypotheses, and the insufficiency of evidence to make a finding on the balance of probabilities between them, the Inquiry should not make an affirmative finding that Mr Brennan's death was a hate crime.

### **Submissions as to manner and cause of death**

120. The Inquiry should make the following finding:

*Mr Brennan died between approximately 9:00pm and midnight on 11 June 1995, or possibly a little earlier or later, as a result of around 13 stab wounds to his chest, inflicted by persons unknown.*

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<sup>291</sup> Statement of Hermione Nicholls, Senior Solicitor Assisting the Inquiry, re: Inquiries made in relation to the death of Kenneth Brennan, 21 June 2023, 4 (SCOI.83469).

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**Submissions as to recommendations**

121. Counsel Assisting proposes the following further recommendations for future investigations:

- a. Recommend that FASS takes steps to:
  - i. further enhance the “Unknown Male B” profile as technological developments allow;  
and
  - ii. run the “Unknown Male B” profile against state and national DNA databases on a regular basis, so that the NSWPF will be notified in the event that there is an individual or familial match with the “Unknown Male B” profile.
- b. Recommend that the NSWPF take steps, including by DNA analysis, to eliminate suspects who may have been prematurely excluded from the investigation.

**James Emmett SC**

**Claire Palmer**

Counsel Assisting