

The Special Commission of Inquiry
into LGBTIQ Hate Crimes

TENDER BUNDLE HEARING OF 23 JUNE 2023

Concerning the deaths of Kenneth Brennan and James Meek

Submissions on behalf of the Commissioner of Police

Introductory

1. These submissions are prepared on behalf of the Commissioner of Police in response to the submissions made by Counsel Assisting on 23 June 2023 in relation to the deaths of Kenneth Brennan and James Meek.
2. The Commissioner separately filed submissions on 28 June 2023 in respect of Public Hearing 2 issues (**Parrabell Submissions**). These submissions necessarily touch upon some of the general matters to which those hearings relate, but they do not represent a comprehensive statement of the Commissioner's position on the issues considered during those hearings. These submissions should be read together with the Parrabell Submissions and the other "tender bundle" cases.

Kenneth Brennan

Circumstances of death

3. On the afternoon of Monday, 12 June 1995, Mr Brennan was found dead in his apartment in Elizabeth Bay.¹ The Monday was the Queen's Birthday public holiday. The Commissioner of Police agrees that Mr Brennan likely died between approximately 9pm and midnight on Sunday, 11 June 1995 in his apartment (CA, [2]).
4. Mr Brennan was lying naked on his left side in the lounge room. He had a pillow placed under his head. His legs were slightly bent. His head was positioned towards the kitchen and his left toes were touching the left side of the bedroom door jamb.²
5. Mr Brennan had a number of stab wounds, superficial cuts and scratches, defence injuries,

¹ Coronial Findings of Senior Deputy State Coroner John Abernethy dated 17 September 1996, 1 (SCOI.00009.00063).

² Statement of Detective Senior Constable Lyle Van Leeuwen dated 13 August 1996 at [14] (SCOI.45105).

head and facial injuries.³

6. Mr Brennan was gay. He was in a relationship with [NP215] at the time of his death. They had an open relationship. Mr Brennan regularly had sex with persons other than [NP215] [NP215].⁴
7. There was evidence to suggest Mr Brennan had engaged in sexual intercourse before his death and that his body had been sponged down. A dry, blood-stained cleaning sponge was located on Mr Brennan's right shoulder.⁵
8. A bloodstained bent and broken knife blade was located near the bathroom door. A piece of the knife handle was located between the bed and the blade.⁶ A brown damaged knife handle was located in the toilet bowl in the bathroom, together with two used condoms.⁷
9. Dr Peter Bradhurst conducted a post-mortem examination on Mr Brennan's body on Tuesday, 13 June 1995. Dr Bradhurst's report stated that⁸:
 - 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 heart.
 - b Mr Brennan's body exhibited defensive injuries on the left forearm and right hand.
 - c There was no evidence of any injury to Mr Brennan's perineum, anus, rectum, scrotum, penis or testes.
 - d The stab wounds, superficial cuts, and scratches were consistent with having been caused by the knife located at the scene (i.e. as referred to at [8] above).
10. Dr Bradhurst re-examined Mr Brennan's body on 16 June 1995 (ie 3 days after the initial post-mortem examination). Further bruising had developed on the right side of the face which, together with the abrasions identified in the initial examination, gave rise to a patterned injury resembling a shoe print. This injury extended down from the right eyebrow.⁹
11. An inquest into Mr Brennan's death was conducted on 17 September 1996. Deputy State Coroner John Abernethy found that Mr Brennan died on or about Sunday, 11 June 1995 at

³ Post-mortem report of Dr Peter Bradhurst dated 6 October 1995 at page 1 (SCOI.00009.00133).

⁴ Statement of [i282] dated 11 June 1995 at [6] (SCOI.00009.00021); Statement of [i301] dated 15 June 1995 at [26] (SCOI.10261.0004); Statement of [i271] dated 6 March 1996 at [4] (SCOI.10324.00051); Transcript of interview with [NP215] dated 12 June 1995 at page 7 (SCOI.00009.00015).

⁵ Statement of Detective Senior Constable Lyle Van Leeuwen dated 13 August 1996 at [9] (SCOI.45105).

⁶ Statement of Constable Laura Clare Thurtell dated 18 January 1996 at [12] (SCOI.00009.00008).

⁷ Statement of Constable Laura Clare Thurtell dated 18 January 1996 at [13] (SCOI.00009.00008).

⁸ Post-mortem report of Dr Peter Bradhurst, 6 October 1995 (SCOI.00009.00133).

⁹ Post-mortem report of Dr Peter Bradhurst dated 6 October 1995 at pages 10 and 11 (SCOI.00009.00133).

his apartment of stab wounds to the chest, inflicted by persons unknown.¹⁰

Persons of interest

12. Investigating police identified numerous lines of enquiry relating to various persons of interest. Counsel Assisting acknowledge (at CA, [27]) that the police investigation was extensive and considered the potential involvement of a significant number of persons of interest. The Commissioner agrees that the available evidence does not reach the required threshold for a positive finding, on the balance of probabilities, as to the involvement of any of the persons of interest in Mr Brennan's death (CA, [120]).

Adequacy of police investigations

13. Deputy State Coroner Abernethy described the initial police investigation as follows¹¹:

There has been a comprehensive investigation into his homicide. Detective Senior Constable Laura Thurtell has followed all reasonable leads and generally investigated the matter in her usual competent way

14. In addition, Deputy State Coroner Abernethy stated that the crime scene was competently and carefully examined and analysed.¹² As noted above, Counsel Assisting similarly describe the initial police investigation as "extensive and considered the potential involvement of a significant number of persons of interest" (CA, [27]).
15. However, Counsel Assisting make some criticisms of the original police investigation in the matter. These are addressed in turn below. As a global comment, the Commissioner notes that it appears that the police officers involved in the initial investigation have not been approached by the Inquiry regarding the bases for investigative steps taken / not taken (see CA, [31]). They are not separately represented, and to the knowledge of the Commissioner of Police, they have not been notified of their potential interest in the proceedings, or provided the opportunity to seek to appear before the Inquiry. They have not been afforded the opportunity to respond to the criticisms advanced in relation to their work.

Canvassing neighbours

16. Counsel Assisting state that "it may have been desirable for the NSWPF to complete more

¹⁰ Coronial Findings of Senior Deputy State Coroner John Abernethy dated 17 September 1996 (SCOI.00009.00063).

¹¹ Coronial Findings of Senior Deputy State Coroner John Abernethy dated 17 September 1996 at page 1 (SCOI.00009.00063).

¹² Coronial Findings of Senior Deputy State Coroner John Abernethy dated 17 September 1996 at page 2 (SCOI.00009.00063).

canvassing at [REDACTED] Onslow Avenue and the surrounding apartment blocks to obtain additional observations from neighbours and possible witnesses" (CA, [28a.]).

17. Counsel Assisting acknowledge that the initial investigation included a canvas of potential witnesses at the following addresses:
 - a [REDACTED] Onslow Avenue on 12 June 1995.
 - b [REDACTED] Greenknowe Avenue (directly opposite [REDACTED] Onslow Avenue) on 13 and 22 June 1995.¹³
 - c [REDACTED] Fullerton Street, Woollahra on 20 June 1995 (being the location where [NP215] was said to be at the time of Mr Brennan's death).
18. The initial investigation extended beyond those inquiries alluded to by Counsel Assisting. For example, the canvass on 12 June 1995 (ie the day Mr Brennan's body was found) extended to neighbouring buildings.¹⁴ The following day DSC Tayler conducted a canvass of the remaining units in the [REDACTED] Onslow Avenue building.¹⁵
19. It is not clear what additional canvassing Counsel Assisting suggest would have been desirable (ie whether it is suggested that further attempts to locate persons within the buildings which were canvassed ought to have been made and/or that additional buildings in the vicinity should have been, but were not, canvassed). In the circumstances, it appears that there is no sound basis – particularly in the absence of the evidence from the investigating officers – to conclude that the canvassing was deficient.

Failure to locate or investigate phone numbers on paper found in Mr Brennan's wallet

20. Counsel Assisting also suggest that during the initial investigation, police did not locate, or pursue inquiries in relation to, a piece of paper in Mr Brennan's wallet that was later found by Strike Force Skarratt in 2016 to 2019 (CA, [28k.]). That piece of paper recorded three phone numbers, which were subsequently traced to [NP210] and [NP209].¹⁶
21. It is not clear on the material presently available whether a thorough search of Mr Brennan's wallet was conducted during the initial investigation. It is similarly not clear whether the piece of paper was located or investigated at the time.

¹³ Statement of Constable Laura Clare Thurtell dated 18 January 1996 at [45] (SCOI.00009.00008).

¹⁴ Statement of Detective Sergeant Graham John Orchard dated 19 January 1996 at [6] (SCOI.00009.00011).

¹⁵ Statement of Detective Senior Constable Brad Edmund Tayler dated 29 January 1996 at [17] (SCOI.00009.00005).

¹⁶ Investigator's Note re: Phone number enquiries re [NP209] and [NP210] dated 12 August 2016, 1 (SCOI.45046).

22. The police officers involved in the initial investigation have not been approached by the Inquiry regarding this potential oversight in the initial investigation. They have therefore not been afforded the opportunity to respond to the criticisms advanced in relation to their work.
23. That said, the Commissioner agrees that (if such inquiries were not undertaken), police conducting the initial investigation should have searched Mr Brennan's wallet and traced the three phone numbers.
24. For completeness, the Commissioner notes that this apparent failure of the initial investigation appears to have had no substantive impact on the investigation, having regard to the result of the inquiries regarding the numbers made during the reinvestigation.

Taking of statements

25. Counsel Assisting assert (at CA, [28c]) that police failed to obtain a statement from a potentially important witness, Natalie Leonoff. Ms Leonoff reported to police on 26 June 1995 that she saw [NP215] outside of [NP214]'s apartment building in the early hours of Sunday, 11 June 1995. If true, this potentially contradicts [NP215] alibi.
26. Counsel Assisting acknowledge that police made multiple attempts to speak with Mrs Leonoff between 20 and 26 June 1995.¹⁷ Those attempts were unfortunately unsuccessful.
27. Counsel Assisting suggest that the Running Sheet created on 26 June 1995 indicated that Mrs Leonoff was reluctant to meet with police but not that she refused to speak with police. This appears to be a distinction without a difference. It is certainly not one that can safely be drawn in the absence of evidence from the relevant officers. Mrs Leonoff evaded multiple attempts by police to speak to her. Whether or not she said to police in so many words that she refused to speak with them is of no moment. The practical reality is that, by her conduct, she refused to assist further.
28. Counsel Assisting observe that 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".¹⁸
29. It is not clear whether the reference to Mrs Leonoff being "available for further questions" was a reference to her actually being available and willing to provide further information or if

¹⁷ Review of an Unsolved Homicide Case Screening Form dated 6 August 2004, 11, 18 (SCOI.44995); Running Sheet – Information from Natalie Leonoff dated 26 June 1995, 1 (SCOI.10276.00118).

¹⁸ Recommendation for Further Investigation Report dated 20 June 2007, 2 (SCOI.44995.00001).

it was a shorthand reference to the fact that further information from her may be of assistance to a potential further investigation of the case and/or that she was alive. Either way, there is nothing in the material to allow a positive conclusion to be reached that Mrs Leonoff was, in or around 2007, willing to assist police further.

30. Counsel Assisting otherwise comment that 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 (CA, [28d]). The Commissioner of Police agrees. However, it is noted that it is unlikely that this would have made a real difference, having regard to the fact that Mr Brennan was seen alive after the last of Mrs Leonoff's apparent sightings of [NP215] outside of [NP214]'s unit.
31. Counsel Assisting further state that statements ought to have been obtained from:
 - a Joan Henderson and Christopher Crook, who were neighbours of Mr Brennan who heard screaming on 11 June and 12 June 1995 respectively (CA, [28f.]).
 - b Christopher Thomas, who was a barman present at the Newtown Hotel on Sunday, 11 June 1995 ((CA, [28g.]).
32. Police interviewed Ms Henderson and Mr Crook¹⁹. Ms Henderson, who resided in a nearby apartment block, reportedly heard screaming between 1:00am to 2:00am on Sunday, 11 June 1995. Counsel Assisting notes that Mr Brennan died much later, between approximately 9:00pm and midnight on 11 June 1995. Counsel Assisting suggest that it is 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 Monday, 12 June 1995. While this observation is somewhat speculative, the Commissioner accepts this discrepancy in the investigation notes is unfortunate.
33. Neither Ms Henderson nor Mr Crook appear to have been prompted to proactively report the incidents of screaming to police.
34. Again, DSC Thurtell is not represented in these proceedings. She does not appear to have given evidence and does not appear to have been notified or approached by the Inquiry in respect of the criticisms levelled against her investigation.
35. It is not clear what obtaining a statement from Ms Henderson or Mr Crook would have added

¹⁹ Witness Canvassing Form of occupants at [REDACTED] Onslow Avenue, Elizabeth Bay (undated), 4 (SCOI.10316.00009).

to the initial investigation, having regard to their versions recorded in the running sheet notes.

36. In respect of Mr Thomas, who was the barman at the Newtown Hotel, Counsel Assisting point out that this evidence has potential relevance to the alibi of [NP186] (being a person of interest). A NSWPF running sheet includes a note that a report made by Mr Thomas stated²⁰ that:

*he had a conversation with [NP186] on the evening of Sunday, Queens Birthday Weekend. Spoke to **Ken** in the Newtown Hotel at about 8.00p.m and last seen about 11.00p.m. Stated that there were two drag shows on that night and he was socialising at the hotel with friends.*

(emphasis added)

37. There is good reason to think that the reference to “Ken” in this entry is a typographical error. The entry relates to the corroboration of the version of events provided by [NP186], albeit in the context of the murder investigation regarding Kenneth Brennan. There is no other reference to “Ken” or Mr Brennan in the note, which does not in general terms appear to relate to Mr Brennan. Having regard to the words surrounding the reference to ‘Ken’ in the entry (which refer to [NP186]’s whereabouts), it seems likely that the reference to “Ken” was meant to be a reference to [NP186].
38. There is no other reference in the material available to suggest that Mr Brennan attended the Newtown Hotel on the night of his murder. Indeed, it appears that Mr Brennan was seen at around that time at the bottle shop on Oxford Street.²¹
39. The Commissioner of Police accepts that this was an unfortunate typographical error, though notes that the error appears in an internal running sheet as compared to, for example, a document prepared for use in evidence in proceedings.
40. Whilst it would have been preferable for a statement to have been taken by Mr Thomas, the context of his evidence must be considered. As Counsel Assisting point out, the matter involved extensive inquiries into a large number of persons of interest. It appears that the version Mr Thomas provided to police simply corroborated the alibi [NP186] whose only link to Mr Brennan was a single previous sexual encounter with Mr Brennan and [NP215].²²

Exhibits

²⁰ Running Sheet – Corroboration for [NP186] dated 12 July 1995 (SCOI.10275.00077).

²¹ Statement of Arturo Guijar dated 25 July 1995, 2 (SCOI.00009.00045).

²² Statement of [NP186] dated 5 July 1995 (SCOI.00009.00037).

41. During the course of the investigation, police collected numerous exhibits. Counsel Assisting state that police did not retain, but ought to have retained, the following exhibits (which represent a relatively small proportion of the exhibits seized) (CA, [28m.]):
- a The champagne flute and/or the fingerprint located on it. It appears likely that this glass was fingerprinted at the scene but not seized due to no fingerprints being developed on the glass.²³
 - b The condom wrapper (located on the bedside table). It is not clear whether this item was seized initially or not.²⁴
 - c The vial of amyl nitrate. It is not clear whether this item was seized initially or not.²⁵
 - d The lubricant (located on the bed). It is not clear whether this item was seized initially or not.²⁶
 - e Two 'Mates' condom wrappers. It is not clear whether this item was seized initially or not.²⁷
 - f The packet of Strepsils. It is not clear whether this item was seized initially or not.²⁸
 - g The knife packaging. It is not clear whether this item was seized initially or not.²⁹
 - h The samples of drain water from the kitchen sink and bathroom sink 'S' bends. The records indicate that these samples were signed out on 3 January 1997 with the comment 'Returned to OIC'. It is not clear whether the samples were taken to SPC, FASS or another police station.³⁰
42. The failure to seize or retain these items must be considered in context. DNA testing was a relatively novel phenomenon as at June 1995. Indeed, the *Crimes (Forensic Procedures Act) 2000* (NSW), which introduced a regime for conducting forensic procedures on suspects in order to gather DNA for testing did not commence until 1 January 2001. It is important to ensure that the assessment of the investigating police officer's actions is not infected by hindsight bias.

²³ List of exhibits and location (undated) at page 2 (NPL.0176.0001.0026).

²⁴ List of exhibits and location (undated) at pages 2 to 3 (NPL.0176.0001.0026).

²⁵ List of exhibits and location (undated) at page 3 (NPL.0176.0001.0026).

²⁶ List of exhibits and location (undated) at pages 3 to 4 (NPL.0176.0001.0026).

²⁷ List of exhibits and location (undated) at pages 4 to 5 (NPL.0176.0001.0026).

²⁸ List of exhibits and location (undated) at page 4 (NPL.0176.0001.0026).

²⁹ List of exhibits and location (undated) at page 4 (NPL.0176.0001.0026).

³⁰ List of exhibits and location (undated) at pages 5 to 7 (NPL.0176.0001.0026).

Fingerprints on frypan

43. Counsel Assisting state that greater care ought to have been taken in relation to fingerprint evidence located on the frypan (CA, [28l.]). The frypan was potentially used as part of the assault on Mr Brennan.
44. Counsel Assisting's comment arises from the following extract from an email sent by Crime Scene Officer Michael Whyte to Detective Senior Constable Rowena Clancy on 29 March 2016³¹:

Now there was 1 partial print on the exterior curved section of the frypan however it appears that back in 1995, the Biologists have subsequently swabbed over a large area near this fingerprint and have removed half of the print and left it heavily degraded. Basically what this means is that you don't have enough information in the fingerprint in order to identify someone however there may be enough to possibly exclude someone (dependant on the quality of the Ten print). So if you have some possible suspects, you can email them to #FPMC (with the case reference 95/214) for this comparison to be carried out. I performed a DNA trace swab of this partial fingerprint in the hope there may be enough epithelial skin cells still present in the fingerprint impression to obtain a DNA profile.

45. Subsequent examination indicated the following in respect of the fingerprint on the frypan³²:

The frypan print has very little detail. Not suitable for searching on NAFIS at all. The amount of detail is not suitable for identification but can possibly be used for an inconclusive result if the points can be seen in the tenprints. Unfortunately I couldn't get a start on any of these persons.

46. The degradation of the fingerprint is regrettable. It is not clear whether the relevant "biologist" was an employee of the NSWPF or the NSW Division of Analytical Laboratories. The latter seems more likely as at 1995.

Lines of inquiry not fully explored

47. Counsel Assisting assert (at CA, 28b.) that a number of persons of interest were not adequately excluded. As a global observation, the potential connection of the persons

³¹ Email from Crime Scene Officer Michael Whyte to Detective Senior Constable Rowena Clancy re: Examination of Murder Exhibits (Operation Monardia) dated 29 March 2016 (SCOI.45006).

³² Email correspondence between Sergeant Mick Murray and DSC Clancy re: Results of fingerprint comparison dated 25 July 2016 (SCOI.45045).

identified by Counsel Assisting and Mr Brennan's death is relatively tenuous.

48. It is of course acknowledged that *if* any of these lines of inquiry were discounted out of hand by the investigating police, that would be regrettable. Again, and in any event, the reasoning behind the investigative decisions made have not been explored with the relevant officers.
49. Each of these persons are addressed in turn below.

NP199

50. **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. **NP199** was unable to confirm his whereabouts on the evening of 11 June 1995.³³
51. Counsel Assisting note that **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,³⁴ and did not give evidence at the Inquest into Mr Brennan's death (citing health concerns).³⁵
52. Counsel Assisting state that, from the police records, it does not appear that there was a proper basis for the investigating police to exclude **NP199** from the investigation (CA, [100h.]).
53. The Commissioner of Police agrees that it is not clear on the material presently available what the precise basis was for ruling out **NP199** as a person of interest. Again, that has not been explored with investigating police.

NP191

54. **NP191** was considered a person of interest because he was reportedly one of the last people to see Mr Brennan alive. However, there is no evidence to suggest that Mr Brennan and **NP191** were known to each other (and, indeed, **NP191** states that he did not know who Mr Brennan was³⁶).
55. **NP191** reported that he left the Kingsteam Sauna at 11:00pm on Sunday, 11 June 1995, had a meal at Hungry Jacks on Oxford Street and then caught a bus home, arriving at about 12:30am.³⁷ **NP191** reportedly remained at home until 8:00am on Monday, 12 June 1995.

³³ Statement of Constable Laura Thurtell dated 18 January 1996, 33 (SCOI.00009.00008).

³⁴ Statement of Constable Laura Thurtell dated 18 January 1996, 33-34 (SCOI.00009.00008).

³⁵ Transcript of Inquest into the death of Kenneth Brennan dated 17 September 1996, 1 and 9 (SCOI.00009.00059).

³⁶ Statement of **NP191** dated 9 July 1995 at [3] (SCOI.00009.00032).

³⁷ Statement of **NP191**, 9 July 1995 at [7] (SCOI.00009.00032).

56. Counsel Assisting state that, from the police records, it does not appear that there was a proper basis for the investigating police to exclude [NP191] from the investigation.
57. There was, however, no suggestion that Mr Brennan and [NP191] had interacted other than the brief non-sexual encounter at the Kingsteam Sauna. Mr Brennan was seen alive subsequent to that encounter.

NP218

58. [NP218] was nominated as a person of interest by an informant.³⁸ The suggested motive was that Mr Brennan had unsuccessfully stood for election against [NP218] associated with the NSW Teachers Federation. This is an extremely tenuous link to Mr Brennan's murder. Police subsequently expressed doubt as to the reliability of the informant.³⁹
59. [NP218] informed investigating police that on the evening of 10 June 1995, he was assisting the AIDS Council of NSW (now known as ACON).⁴⁰ This was corroborated.⁴¹
60. Counsel Assisting point out that 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. The Inquiry has not explored this with investigating police.

NP206

61. [NP206] was a person of interest because he was admitted to Sydney Hospital on Monday, 12 June 1995 for an injury to his left hand.⁴² On 15 August 1996, [NP206] was interviewed by Western Australian police regarding Mr Brennan's death and was subsequently excluded from the investigation.⁴³
62. Counsel Assisting observe that, from the material available, it is not clear why [NP206] was excluded. Notably, it was conveyed during the inquest that [NP206] presented only with a sprained wrist on the night of Mr Brennan's suspected death.⁴⁴ It appears from Constable Thurtell's answers during the inquest that this may not have been the sole basis for excluding [NP206].

³⁸ Letter from [1293] to NSW Police dated 28 April 1997 (SCOI.10305.00044).

³⁹ Issue Paper re: Letter received from [1293] dated 16 May 1997 (SCOI.10305.00042).

⁴⁰ Statement of [NP218] dated 14 January 1998, 2 (SCOI.10305.00136).

⁴¹ Statement of [1296] dated 6 February 1998 (SCOI.10305.00139).

⁴² Running Sheet – Sydney Hospital Records Checked dated 15 June 1995 (SCOI. 10276.00089).

⁴³ Transcript of Inquest into the death of Kenneth Brennan dated 17 September 1996 at page 8 (SCOI.00009.00059).

⁴⁴ Transcript of Inquest into the death of Kenneth Brennan dated 17 September 1996 at page 8 (SCOI.00009.00059).

63. It is regrettable that more fulsome details are not available (to the extent they extend beyond the fact that [NP206]'s only apparent injuries were a sprained wrist). However, particularly in the absence of evidence from them, it should not be presumed that police dismissed [NP206] [NP206]'s potential involvement out of hand, noting that police arranged for Western Australia police officers to interview [NP206].

NP185

64. [NP185] was a person of interest because he had had two prior sexual encounters with Mr Brennan and [NP215]. [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 1995.⁴⁵
65. Counsel Assisting observe that police records do not indicate whether [NP185] communicated with Mr Brennan closer to 11 June 1995 by some method other than his mobile phone.
66. It is noted that investigating police obtained at least Mr Brennan's outgoing telephone records.⁴⁶ It is not clear on the material presently available whether records of incoming calls were obtained.

NP187

67. [NP187] was a person of interest because he had previously had a sexual encounter with Mr Brennan and [NP215] and he had made plans to meet Mr Brennan on 12 June 1995.⁴⁷ It appears that this was an arrangement to meet with Mr Brennan and [NP215] [NP215] jointly, not with Mr Brennan on his own.
68. [NP187] reported that he was at home with his ex-partner, [I303], on the evening of 11 June 1995.⁴⁸ Investigating police spoke to [I303], however, he was unable to corroborate [NP187]'s alibi, save that he confirmed that he resided with [NP187] in June 1995.⁴⁹
69. The Commissioner of Police agrees that it is not clear on the material presently available what the precise basis was for ruling out [NP187] as a person of interest. The evidence of any potential involvement of [NP187] is very limited and, again, the

⁴⁵ Statement of [NP185] dated 5 July 1995, 2 (SCOI.10275.00083).

⁴⁶ Statement of Constable Laura Thurtell dated 18 January 1996 at [43] (SCOI.00009.00008).

⁴⁷ Statement of [NP187] dated 19 June 1995, 3 (SCOI.10278.00037).

⁴⁸ Statement of [NP187] dated 19 June 1995 at 5 (SCOI.10278.00037).

⁴⁹ Running Sheet – Conversation with [I303] dated 9 January 1996 (SCOI.10307.00007).

decision-making processes of investigating police have not been explored with them.

NP196

70. [NP196] was a person of interest because he had a previous sexual encounter with Mr Brennan. [NP196] reported that he was clubbing at The Den on Oxford Street from 9:00pm on Saturday, 10 June to about 5:00am on Sunday, 11 June 1995, and then walked home. [NP196] said that he woke up on 11 June 1995 at about 10:00am and then was visited by a friend named 'Andre'.⁵⁰
71. Counsel Assisting observe that [NP196]'s whereabouts on the evening of Sunday, 11 June 1995 are not accounted for.
72. The Commissioner of Police agrees that it is not clear on the material presently available what the precise basis was for ruling out [NP196] as a person of interest. Again, however, any connection between [NP196] and the murder of Mr Brennan appears, on the available material, to have been very tenuous.

NP186

73. [NP186] was a person of interest because he had previously had a sexual encounter with Mr Brennan and [NP215]. [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, and then the Newtown Hotel in Newtown from about 11:00pm to midnight.⁵¹
74. Counsel Assisting observe that the reference to 'Sunday, 12 June 1995' appears to be an error because 12 June 1995 was a Monday. 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).
75. Constable Thurtell stated in her statement that [NP186]'s evidence was corroborated by Mr Tominson.⁵² Counsel Assisting note that police appear to have excluded [NP186] from the investigation on the basis of this corroborating evidence.⁵³
76. Counsel Assisting note that the record Mr Tominson's evidence does not appear to be available. As noted in the context of the lack of a statement from Mr Thomson discussed above, the context of the lack of a separate record of Mr Tominson's corroboration of [NP186]

⁵⁰ Statement of [NP196] dated 16 June 1995, 4 (SCOI.00009.00040).

⁵¹ Statement of [NP186] dated 5 July 1995, 3 (SCOI.00009.00037).

⁵² Statement of Constable Laura Thurtell dated 18 January 1996, 28 (SCOI.00009.00008).

⁵³ Statement of Constable Laura Thurtell dated 18 January 1996, 36 (SCOI.00009.00008).

[NP186]'s alibi must be considered. As Counsel Assisting point out, the matter involved extensive inquiries into a large number of persons of interest. The version of Mr Tominson which was apparently provided to police was to the effect of corroborating an alibi of a person whose only known possible connection to the murder was a single previous sexual encounter with Mr Brennan and [NP215]. That said, the Commissioner acknowledges that it would have been preferable for Mr Tominson's evidence to have been separately recorded.

NP195

77. [NP195] appears to have been a person of interest only because he responded to a personal advertisement placed by Mr Brennan. However, [NP195] informed police that he did not receive a response from either Mr Brennan or [NP215] in relation to the advertisement.
78. [NP195] informed police that on 11 June 1995 he attended work at Mascot airport with Andrew Henderson from 9:00pm on Sunday, 11 June 1995 to 4:00am on Monday, 12 June 1995, at which point he went home and slept until 9:00am.⁵⁴
79. Counsel Assisting note that, from the evidence available, it does not appear police conducted checks of [NP195]'s phone to confirm that [NP195] had not been in contact with Mr Brennan. However, the Commissioner of Police notes that this is of little moment in circumstances where [NP195] had a valid alibi at the time of Mr Brennan's death, namely that he was working at Mascot Airport.

Strike Force Parrabell review

80. The academic reviewers did not consider Mr Brennan's death because it was the subject of an investigation by the UHT at the time. The SF Parrabell case summary in relation to Mr Brennan noted that the "level of violence was extreme, however there was no other circumstantial indications of a bias motivated crime". Accordingly, SF Parrabell placed the case in the "Insufficient Information" category.⁵⁵
81. This conclusion is consistent with the observations made by Dr Danny Sullivan.⁵⁶

Anti LGBTIQ bias

82. Consistent with the position expressed by SF Parrabell, the Commissioner of Police agrees

⁵⁴ Statement of [NP195] dated 6 July 1995, 2 (SCOI.00009.00039).

⁵⁵ SF Parrabell Case Summaries, p. 34.

⁵⁶ Expert report of Dr Danny Sullivan, 24 October 2022, [24] – [26] (SCOI.83009).

that the evidence that Mr Brennan's death was motivated by LGBTIQ bias is inconclusive (CA, [117]).

83. The Commissioner also agrees that if [NP215] was the perpetrator, the motive was likely jealousy (CA, [117]). 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.
84. The Commissioner agrees with Counsel Assisting's assessment that, 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 (CA, [119]).
85. The conclusions of Counsel Assisting regarding the possible presence of anti-LGBTIQ bias align with the conclusion expressed by SF Parrabell.

Manner and cause of death

86. The Commissioner of Police supports the submissions made by Counsel Assisting as to the manner and cause of the death, namely that 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 (CA, [120]).

James Meek

Circumstances of death

87. On the afternoon of Wednesday, 8 March 1995, Mr Meek's body was found in his apartment in Surry Hills. The Commissioner of Police agrees that Mr Meek likely died in his apartment on Tuesday, 7 March 1995 (CA, [2]).
88. The unit was untidy but did not appear to have been ransacked. There were no signs of forced entry to the premises. Due to the lividity present to Mr Meek's face, and the impression of the carpet runner on the left side of his face, there were no obvious signs of abrasions.⁵⁷ Mr Meek's chest and back had no apparent injuries. In Constable Whybro's view, Mr Meek did not appear to be the subject of recent trauma.⁵⁸
89. Mr Meek was a gay man. Mr Meek's friends and neighbours knew would habitually bring

⁵⁷ Statement of Constable First Class Suzana Catherine Whybrow dated 2 April 1995 at [14] (SCOI.10001.00091).

⁵⁸ Statement of Constable First Class Suzana Catherine Whybrow dated 2 April 1995 at [14] (SCOI.10001.00091).

men home to his unit for casual sex. He was also known to seek sexual relationships with younger men.⁵⁹

90. Dr Christopher Lawrence conducted a post-mortem examination three days after Mr Meek was found. In his report, Dr Lawrence stated that Mr Meek, who by then had extensive bruising, died as a consequence of blunt force head injuries. The contused abrasion showed a pattern which was then yet to be identified, but Dr Lawrence noted that it may represent a shoe print. The pattern of the injuries was said to be consistent with an assault.⁶⁰
91. That day, police attended Mr Meek's apartment to conduct further investigations. This included the reattendance of crime scene unit officers and a Fingerprint Section officer.⁶¹ Police appear to have also begun canvassing witnesses on that date.⁶² Investigations continued over the following days.⁶³
92. An inquest into Mr Meek's death was listed for mention on 27 October 1995. There is no record of an inquest being held. It is likely that the inquest into Mr Meek's death was suspended because Michael Heatley was charged with Mr Meek's murder.
93. Mr Heatley, who admitted to having stayed at Mr Meek's place the night before his death, was ultimately committed for trial in respect of Mr Meek's murder, but a directed acquittal was ordered after the close of the prosecution case. As noted by Counsel Assisting, the evidence regarding when Mr Heatley left Mr Meek's premises on the morning of Tuesday, 7 March 1995 assumed great significance at Mr Meek's trial. Certain concessions made by witnesses as to the accuracy of their accounts underpinned the directed acquittal (CA, [5]). No other person has been charged in respect of Mr Meek's murder.

Adequacy of police investigations

94. Counsel Assisting state the initial police investigation "was thorough in several respects" (CA, [47]). Counsel Assisting also acknowledge that it was open to the possibility that Mr Meek's death was a hate crime (CA, [48]).
95. However, Counsel Assisting make some criticisms of the original police investigation in the matter. These are addressed in turn below. As is the position in relation to Mr Brennan's

⁵⁹ See for example Statement of Eric Eadie dated 21 March 1995 at [3] to [5] (SC01.10402.00072); Statement of Kevin Marsh dated 30 April 1995 at [5] (SC01.10002.00044); Statement of Jason Radford dated 23 March 1995 at [9] (SC01.10019.00011).

⁶⁰ Post-mortem Report of Dr Christopher Lawrence dated 1 June 1995 at page 8 (SC01.10004.00009).

⁶¹ Statement of Detective Senior Constable Neil Andrew Walker dated 20 September 1995 at [4] (SC01.83055).

⁶² Statement of Detective Senior Constable Neil Andrew Walker dated 20 September 1995 at [4] and [5] (SC01.83055).

⁶³ Statement of Detective Senior Constable Neil Andrew Walker dated 20 September 1995 at [6] to [8] (SC01.83055).

death (and, indeed, the bulk of the tender bundle cases), it appears that the the police officers involved in the initial investigation have not been approached by the Inquiry regarding the bases for investigative steps taken (or not). They have therefore not been afforded the opportunity to respond to the criticisms advanced in relation to their work.

96. Further, Counsel Assisting state that aspects of the investigation of Mr Meek's death will be considered in the context of a private hearing which will take place following the public hearing concerning Mr Meek's death. Counsel Assisting foreshadow that further submissions may be made concerning the adequacy of the police investigation at a later time (CA, [50]). The Commissioner of Police will consider any further submissions and, if necessary, seek to respond in due course.

Release of crime scene at early stage

97. Counsel Assisting observe that a crime scene was established on 8 March 1995 (being the day Mr Meek's body was found) and then released on the same day after the Crime Scene Unit left the premises (CA, [52]). It appears that police at this time were not treating Mr Meek's death as suspicious, as reflected in the report to the coroner of the same date and in Constable Whybro's observation that "[h]e did not appear to be the subject of recent trauma".
98. Mr Meek's daughter, Mrs Griffin asserted via her solicitor that when she saw Mr Meek's body at the Glebe Morgue on 10 March 1995, she was immediately aware of injuries which were extensive and which she believed were inconsistent with a cause of death attributed by the police officers who initially attended the scene as a heart attack.⁶⁴ There is no evidence before the Inquiry regarding the rate at which injuries such as extensive bruising would have developed in the aftermath of Mr Meek's death. However, it is noted that, in the context of Mr Brennan's death discussed above, further bruising had developed on Mr Brennan's face which during the three-day period between the initial post-mortem examination and the re-examination.⁶⁵ It is possible that a similar process occurred in relation to Mr Meek's death.
99. The following evidence supports this:
- a Constable Whybro described during Mr Heatley's trial that she saw deep dark lividity in Mr Meek's face. Constable Whybro explained that by 'lividity', she meant discolouration which, on her understanding, is mainly blood that has just settled due

⁶⁴ Letter from Blessington Judd to Commissioner of Police dated 29 August 1995 (SCOI.02729.00026),

⁶⁵ Post-mortem report of Dr Peter Bradhurst dated 6 October 1995 at pages 10 and 11 (SCOI.00009.00133)..

to gravity.⁶⁶

- b At the time that police found Mr Meek's body, his face was a deep purple / grey colour and appeared distended and slightly bloated.⁶⁷

100. During the criminal trial against Mr Heatley, Constable Kaelene Michelle Richmond gave evidence that when she viewed Mr Meek's body, she did not observe any injuries other than blood underneath Mr Meek's nose.⁶⁸ Constable Richmond also gave evidence that nobody else in her presence drew attention to any injuries to Mr Meek.⁶⁹
101. It is regrettable that the matter was not treated as a potential homicide investigation at the earlier stages of the investigation. The evidence considered above suggests that it is likely that this was due to the fact that the bruising to Mr Meek was not visible at the time of police's initial attendance.
102. The Commissioner of Police acknowledges that it would have been preferable for the used condom to be seized as a precaution, regardless of whether the matter was then being treated as a suspected homicide or not. The reasons this did not occur have not been explored with investigating police.

Phone records

103. Counsel Assisting acknowledge at (CA, [64]) that police sought to obtain records showing the details of calls made by Mr Meek on the morning of his death, including:
- a On 17 March 1995, police made a request to the Crime Data Centre for call charge records relating to Mr Meek's phone number. The Crime Data Centre provided information that there were no call charge records.⁷⁰
 - b On 8 July 1995, police requested that the Crime Data Centre provide "telephone patterns of calls made out of Meek's residence".⁷¹
104. It appears from the records presently available that the records were not provided to police.
105. Counsel Assisting suggest at (CA, [68]) that there were other steps that could, perhaps, have been taken to obtain Mr Meek's call records.

⁶⁶ R v Michael Alan Heatley Trial Transcript, 16-25 November 1996 at pages 102 to 103 (SCOl.82969).

⁶⁷ Statement of Constable Saeran Humphreys (incorrectly) dated 12 March 1994 at [5] (SCOl.10001.00005).

⁶⁸ R v Michael Alan Heatley Trial Transcript, 16-25 November 1996 at page 27 (SCOl.82969).

⁶⁹ R v Michael Alan Heatley Trial Transcript, 16-25 November 1996 at page 28 (SCOl.82969).

⁷⁰ Running Sheet 9/3/2, 20 March 1995 (SCOl.10002.00104).

⁷¹ Running Sheet 10/18/1, 10 July 1995 (SCOl.10011.00217).

106. It is not clear on the material available whether attempts were made to obtain the records. As Counsel Assisting point out, it appears that the officers investigating Mr Meek's death were aware of the potential utility of these records and that they took positive steps in an attempt to obtain them (at CA, [69]). Again, evidence has not been sought from those officers.
107. Counsel Assisting state that if there were some difficulty obtaining these call records, this should have itself been recorded, given their potential significance to any prosecution or future investigation. The Commissioner of Police agrees that it would have been prudent for any further steps taken by investigating police to obtain these records to have been recorded.

The failure to further investigate: NP219

108. If her evidence is correct, NP219 was the last person to see Mr Meek alive. He was seen walking his dogs between 11:30am and midday on Tuesday, 7 March 1995.⁷² NP219 said that she saw Mr Meek outside the window of her unit in the park.⁷³
109. NP219 had a history of animosity and violence towards Mr Meek. The Commissioner of Police agrees with Counsel Assisting's characterisation (at CA, [71]) that it would not be safe to conclude on this evidence alone that NP219 was homophobic.
110. NP220 told the NSWPF that NP219 had told NP220 that she knew who had killed Mr Meek but didn't "want to say anything because she doesn't want to get involved."⁷⁴ If that is true, then NP219 does not appear to have conveyed this information to police.
111. Counsel Assisting state that there is no evidence that the NSWPF made enquiries concerning NP219's alibi. NP219 was a resident of the apartment building.
112. The basis on which NP219 was ruled out as a person of interest is not clear on the material presently available. There is no record that her alibi was checked. However, it is noted that neither the prosecution nor Mr Heatley's counsel sought to address that issue with her when she gave evidence at Mr Heatley's trial. Further, the police officers involved in the initial investigation have not been approached by the Inquiry regarding the steps taken / not taken to corroborate NP219's alibi. They have therefore not been afforded the opportunity to respond to the criticisms advanced in relation to their work.

Exhibits

⁷² Statement of NP219 dated 28 March 1995 at [10] (SC01.10002.00037).

⁷³ R v Michael Alan Heatley Trial Transcript, 16-25 November 1996, T377.8 (SCOI.82969).

⁷⁴ Transcript of ERISP with NP220 dated 23 March 1995 at Q176-Q177 (SCOI.10012.00008).

113. Counsel Assisting identify the following items which were located at Mr Meek's apartment at the time of which either were not seized or were seized but not tested.
114. First, cigarette butts were collected from ashtrays in the kitchen and dining room, but do not appear to have been subject to forensic testing. These have not since been able to be located by the NSWPF. Counsel Assisting state that forensic testing of these cigarette butts should have been conducted (CA, [74]). It is accepted that the unavailability of the cigarette butts is unfortunate.
115. Second, photos show a large shifting spanner on top of the dresser. In circumstances where Mr Meek died of injuries inflicted via blunt force trauma, the spanner should also have been taken into evidence (CA, [74]). That said, there is no suggestion in the material available that Mr Meek's injuries – particularly the pattern of bruising – was consistent with him being struck by an object such as a spanner.
116. Third, crime scene photographs show two open sachets of lubricant and a crumpled handkerchief on the bedside table' (CA, [75]). Counsel Assisting state that the handkerchief should have been taken into evidence. If the handkerchief had been disposed of in the period between 8 and 11 March, then the premature release of the crime scene led to the loss of the opportunity to forensically test the handkerchief. It is accepted that this is regrettable.

Complaint by Mr Meek's daughters

117. Mr Meek's daughters raised complaints about the conduct of the police officers with whom they dealt (CA, [76]).
118. It is not clear what was said to have been said to Mr Meek's daughters. It is also not clear who is said to have made such a comments or comments.
119. It is, as noted by Counsel Assisting, uncontroversial that victims of crime and their family members should be treated with respect, and that any failure to do so is not only "disappointing" (CA, [77]), but entirely unacceptable.
120. Counsel Assisting suggest that there is evidence that "at least" one of the police officers involved in the investigation may have held homophobic views (CA, [78]). In this respect, Counsel Assisting point to the reference by Detective Constable Callanan during an interview with [NP220] to the "gay or paedophile movement."⁷⁵
121. Counsel Assisting acknowledge that Detective Constable Callanan "may have been posing

⁷⁵ Transcript of ERISP with: [NP220] dated 23 March 1995 at Q171-A172 (SC01.10012.00008).

these two possibilities as discrete alternatives”, but goes on to opine that the language is also “consistent with him treating the two as coterminous or overlapping to a significant degree” (CA, [78]).

122. In asserting that the language is consistent with DC Callanan treating paedophilia and homosexuality as ‘coterminous or overlapping to a significant degree’, Counsel Assisting does not appear to have had sufficient regard to the context in which this comment was made.
123. The following reflects the exchange which immediately precedes the comment referred to by Counsel Assisting:

Q169 *Do you agree with me that - it's alleged that Jimmy may be well involved in the paedophile movement.*

A *Yeah. Well, there was a lot of - I mean, like, him and Bob used to always go out together and there was a lot of rumours that he was a paedophile and - I mean, like, [1319], that's one of them - you know, he's 50 something years old and [1319] was only 15, 16.*

Q170 *And do you agree that the conversation we had earlier that you stated that it's common knowledge that [NP219] being [redacted] - - -*

A *Mm.*

Q170 *- - - or, did you say?*

A *[redacted]*

Q171 *[redacted]. Hates paedophiles and that that - - -*

A *Hates gays, I said.*

Q172 *And that - okay. Can you clarify the relation between and the gay or paedophile movement, can you explain that?*

124. The question by DC Callanan was asked in circumstances where [NP220] was conflating hatred of paedophiles and hatred of homosexuals. DC Callanan asked the question about what, in [NP220]'s mind, the relation between the two was.
125. This is the only evidence to which Counsel Assisting refers in making the submission that “at least” one of the police officers involved in the initial investigation may have held homophobic views.

126. It is acknowledged that there were undoubtedly police officers in the mid-1990s who held homophobic views. Such views were, unfortunately, commonplace in the broader community at that time. Commonplace or not, such views were (and are) deplorable. They have no place in either the police force or broader society.
127. Nevertheless, the evidence referred to by counsel assisting is manifestly insufficient to ground a positive finding that either DC Callanan (or other unstated officers involved in the investigation of Mr Meek's death) held homophobic views.
128. That is particularly the case in circumstances where none of those officers have been afforded the opportunity to give evidence or to seek to be represented before the Inquiry (or to otherwise respond to the allegation).

Strike Force Parrabell review

129. SF Parrabell concluded that it "appears unlikely that sexuality or other bias was involved in Mr Meek's death." The academic review team categorised the case as "insufficient information". Counsel Assisting ultimately reach a similar conclusion, albeit Counsel Assisting suggest that if Mr Heatley killed Mr Meek, then it is *possible* then LGBTIQ bias may have been a factor in Mr Meek's death (CA, [191] to [196]).

BCIF

130. Counsel Assisting suggest that the statement in the Bias Crime Indicators Form (BCIF) that "[t]here is no information to suggest HEATLEY had any issue with MEEK's sexuality" is incorrect (CA, [82]). Counsel Assisting point to a comment in Mr Woodward's statement. That statement relevantly reads as follows in context⁷⁶:

I don't know Michael that well and didn't have anything to do with him. I only tolerated him because of his sister. Michael was hyperactive and would fight with his sisters all the time, abusing them in front of them no matter who was there. I haven't seen Michael .taking any drugs but I believe that it would .account for his behaviour sometimes. To my knowledge he knew Jim was gay, but whenever anyone mentioned gays or homosexuals,. Michael would take offence and say things like "I'm not a dirty poof".

131. It is noted that the statement in the BCIF which Counsel Assisting seek to impugn is directed towards Mr Meek's sexuality, not to Mr Heatley's attitude to homosexuality generally (though

⁷⁶ Statement of Robert Woodward dated 10 July 1995 at [11] (SCOI.10005.0017).

plainly, an inference is open, if this evidence is accurate, that Mr Heatley held negative attitudes towards homosexuality, which may have impacted on his views of Mr Meek's sexuality).

132. In respect of the broader characterisation of Mr Woodward's evidence which Counsel Assisting is seeking to make, it is noted that Mr Woodward's evidence was that he did not have "anything to do with" Mr Heatley. This suggests that Mr Woodward's ability to comment on Mr Heatley's views on homosexuality was somewhat limited relative to other witnesses who were closer to Mr Heatley. The officer who completed the BCIF has not been called to give evidence. That officer SF Parrabell may well have considered Mr Woodward's comment in this context and against the backdrop of evidence of other persons who indicated that Mr Heatley did not have any issues with Mr Meek's sexuality.⁷⁷
133. Counsel Assisting also suggest that the statement in the BCIF that "HEATLEY is not known to have been involved in other bias related crimes or incidents that may have caused him to murder MEEK"⁷⁸ was incorrect. Counsel Assisting point to the fact that Mr Heatley subsequently committed another homicide which Counsel Assisting assert "is likely to have been a bias crime, and which had marked similarities to the death of Mr Meek" (CA, [83]).
134. Counsel Assisting state that the statement in the BCIF can only be correct if Strike Force Parrabell "chose not to conduct basic further searches concerning Mr Heatley" (CA, [84]). Reviewing that judgment would have revealed that Mr Heatley had been involved in another crime which may have been a bias crime.
135. In response, the Commissioner makes two points.
136. First, it is not clear whether the subsequent murder of Craig Behr committed by Mr Heatley (which occurred 9 years after Mr Meek's murder) was, in fact, a bias crime. Whilst one version provided by Mr Heatley regarding his motive for the murder of Mr Behr is undoubtedly consistent with a bias crime, this needs to be considered among the various conflicting versions Mr Heatley provided. These conflicting versions are expressly acknowledged by Whealy J in the sentencing remarks in respect of that subsequent murder.⁷⁹ Those observations were made by Whealy J with the benefit of a number of forensic psychiatric reports regarding Mr Heatley's state of mind. To the extent that Counsel Assisting suggest

⁷⁷ See for example Transcript of Recorded Interview with Karen Heatley dated 22 June 1995 at page 5 (SCOI.10012.00105).

⁷⁸ Strike Force Parrabell Bias Crime Indicators Review Form —James Meek, undated, 8 (NPL0115.0002.1375).

⁷⁹ *R v Heatley* [2006] NSWSC 1199 at [59] (per Whealy J) (SCOI.11283.00001).

that SF Parrabell was misplaced by reaching a similar conclusion, such criticism should be rejected.

137. Second, the scope of SF Parrabell has been canvassed in detail in the Parrabell Submissions. For present purposes, it suffices to note that SF Parrabell was intended to be, and was, confined to a review of the existing holdings.
138. Counsel Assisting point out that the statement in the BCIF that: "There is no evidence that suggests any previous existence or incidents of bias related crime having occurred towards MEEK" is incorrect (CA, [85]). The Commissioner of Police agrees with this observation, having regard to the evidence of Ms Franks that Mr Meek had told her that in early 1994, he was walking his dogs in the park when a young guy who had called him a "gay bastard and a pooffer etc." pushed Mr Meek to the ground and bashed him up.⁸⁰
139. Finally, Counsel Assisting state that whilst the BCIF refers to the existence of the used condom, it "appears that Strike Force Parrabell uncritically accepted Mr Heatley's claims⁸¹ that there had been no sexual activity or sexual advance" (CA, [86]). Counsel Assisting overstate SF Parrabell's conclusion here. The BCIF records Mr Heatley's denial of any sexual activity. This was in the context of a statement that there no clear motive was established during the investigation. The BCIF does not record that it accepted Mr Heatley's denials. That was not SF Parrabell's role.

Case Summary

140. Counsel Assisting state that the Strike Force Parrabell Case Summary for this matter describes this matter as unsolved, in contrast to the BCIF. This is not correct. The BCIF covering page lists the case as Unsolved which aligns with the Case Summary
141. Counsel Assisting identify two inaccuracies in the Case Summary (CA, [92]) (which do not appear in the BCIF).
142. First, Mr Heatley did not stay at Mr Meek's flat "two days prior to his death", as the Case Summary claims. The BCIF correctly recorded that Mr Meek died on 7 March 1995 and that Mr Heatley stayed at Mr Meek's flat "two days prior to him being discovered deceased" (which was not until 8 March 1995)."
143. The Commissioner of Police notes that the length of Mr Heatley's stay ultimately has no

⁸⁰ Statement of Karen Franks dated 12 March 1995 at [10] (SC01.10001.00131).

⁸¹ Strike Force Parrabell Bias Crime Indicators Review Form —James Meek, undated, 11-12 (NPL.0115.0002.1368).

impact on the characterisation of whether Mr Meek's death was a bias crime, beyond the question of whether Mr Heatley was the perpetrator.

144. Second, the Case Summary incorrectly stated that it was determined that Mr Meek had been struck to the head by his killer using a ceramic bowl. The Commissioner accepts that this appears to be incorrect. The Commissioner of Police notes the correct information regarding Mr Meek's injuries and the possible murder weapon was noted in the BCIF. The Case Summary was not used as part of the review process – rather, it recorded the results of it. Accordingly, while this error is unfortunate, it was ultimately immaterial.
145. Counsel Assisting ultimately submit that SF Parrabell was incorrect to conclude that there was no evidence of bias crime. The evidence available to Strike Force Parrabell was sufficient, at the least, to support a conclusion "suspected bias crime" (CA, [96]). The Commissioner of Police does not disagree with this characterisation based on the evidence available to the Inquiry and the analysis conducted regarding that evidence. However, it must be borne in mind that SF Parrabell was only conducting a review of the records held for in relation to Mr Meek's death. It was not, as has been addressed in the SF Parrabell submissions, a re-investigation on the matter.
146. In general terms, the analysis of Counsel Assisting regarding the types of factors potentially relevant to the question of bias aligns with the factors the BCIF prompted reviewing officers to consider.

Anti-LGBTIQ bias

147. The Commissioner of Police agrees that if Mr Meek was killed by someone other than Mr Heatley, there is no evidence concerning a likely motive for the perpetrator. Whilst it is possible that such a perpetrator may have been motivated by LGBTIQ bias, this is presently a matter of speculation (CA, [191]).
148. The evidence regarding the extent to which bias may have played a part in any violence Mr Heatley directed towards Mr Meek is, as considered above, somewhat less clear than suggested by Counsel Assisting. Nevertheless, it is accepted that if Mr Heatley was, in fact, the perpetrator, bias *may* have played a role in Mr Meek's death.
149. The Commissioner of Police agrees that if Mr Meek was killed by [NP219], it would not be safe to make a finding on the basis of this evidence that [NP219] was homophobic. The more likely cause of any violence by [NP219] was her animosity towards Mr Meek because of her belief that Mr Meek was responsible for the death of her dog (CA, [195]).

Manner and cause of death

150. The Commissioner of Police agrees that the Inquiry should find that Mr Meek died in his home on Tuesday, 7 March 1995 between 11:30am and midday as a result of blunt force injuries to his head consistent with being bashed or kicked (CA, [190]).
151. The Commissioner of Police does not disagree with the submissions made by Counsel Assisting in the confidential submissions dated 22 June 2023 (save for the matters which are common to the open submissions which are addressed above).
152. The Commissioner of Police may file further submissions, if appropriate, upon review of any further submissions Counsel Assisting make in relation to the legal issue foreshadowed in the confidential submissions.



Mark Tedeschi KC
Wardell Chambers



Anders Mykkeltvedt
Maurice Byers Chambers



Mathew Short
13th Floor St James Hall

7 July 2023

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