



Special Commission of Inquiry into LGBTIQ hate crimes

24 August 2023

Mr William John Stephen Gribble

By email: [REDACTED]

Dear Mr Gribble,

Special Commission of Inquiry into LGBTIQ hate crimes – Peter Baumann

I assist the Honourable Justice John Sackar (“the Commissioner”) in the Special Commission of Inquiry into LGBTIQ hate crimes (“the Inquiry”).

The Inquiry

On 13 April 2022 the Governor of NSW, by Letters Patent, issued a commission to the Commissioner to inquire into and report on historical LGBTIQ hate crimes. Specifically, the Letters Patent require the Commissioner to inquire into and report to the Governor and Premier on the following matters by 15 December 2023:

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

Further information in relation to the background and conduct of the Inquiry can be found on the Inquiry’s website: www.specialcommission.nsw.gov.au.

Death of Peter Baumann

One of the matters the Commissioner is considering pursuant to category B of the Letters Patent is the death of Peter Baumann. Mr Baumann is recorded as having died on or sometime after 26 October 1983. The Inquiry understands that you were the officer in charge of the NSW Police Force (“NSWPF”) investigation into Mr Baumann’s death.

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Documentary tender

On 27 June 2023, the Inquiry conducted a public hearing in relation to the death of Peter Baumann. A bundle of documents was tendered into evidence in connection with the Inquiry's consideration of the matter. Those documents comprise Exhibit-42 and are publicly available at the following link: <https://www.specialcommission.nsw.gov.au/hearings/public-hearing-11-26-and-27-june-2023/>

Counsel Assisting made both written and oral submissions in relation to Mr Baumann's death. Those submissions address, amongst other things, the steps taken during the initial NSWPF investigation. A copy of Counsel Assisting's written submissions is **enclosed** and can also be found on the Inquiry's website.

On 10 July 2023, the Inquiry received written submissions on behalf of the Commissioner of the NSWPF in connection with the death of Mr Baumann. For ease of reference, a copy of those submissions is also **enclosed** and publicly available on the Inquiry's website. For completeness, I note that the submissions filed on behalf of the Commissioner of the NSWPF also address the deaths of Anthony Cawsey and Barry Jones, in which I understand you had no involvement.

Submissions

The NSWPF have advised the Inquiry they may not act for you, or *any* of the officers in charge of investigations that are being considered by the Inquiry pursuant to category A and B of the Letters Patent.

The *Special Commissions of Inquiry Act 1983* (NSW) ("*SCOI Act*") allows for a person who is substantially and directly interested in any subject-matter of the Inquiry to seek authorisation from the Commissioner to appear before the Inquiry, and to be represented by counsel or a solicitor should they wish (see s. 12 of the *SCOI Act*).

Accordingly, if you wish to make written submissions beyond those made by the NSWPF in respect of the death of Mr Baumann, please provide these to the Inquiry by no later than **4pm** on **14 September 2023**. You are not required to make such written submissions, or otherwise to participate in the Inquiry, if you do not wish to do so. However, if the Inquiry does not receive any contact from you by 14 September 2023, the Commissioner may proceed on the basis that you do not wish to make any submissions in relation to the death of Mr Baumann.

If you have any queries in relation to this matter, please do not hesitate to contact Aleksandra Jez at [REDACTED]

Yours faithfully,



Enzo Camporeale
Director, Legal
Solicitor Assisting the Inquiry



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SUBMISSIONS OF COUNSEL ASSISTING

27 June 2023

IN THE MATTER OF PETER KARL BAUMANN

Introduction

1. These submissions are filed on behalf of Counsel Assisting the Special Commission of Inquiry into LGBTIQ hate crimes (**Inquiry**).
2. The death of Peter Baumann has been determined to fall within 'Category B' of the Inquiry's terms of reference. That is, Mr Baumann's death is an unsolved suspected hate crime death in NSW that occurred between 1970 and 2010, where the victim was (or was perceived to be) a member of the LGBTIQ community and the death was the subject of a previous investigation by the NSW Police Force (**NSWPF**).

Summary of matter

Date and location of death

3. Mr Baumann is recorded in a coronial finding as having died on or sometime after 26 October 1983.¹ Although that finding was consistent with material provided to the coroner, there is some doubt about the date Mr Baumann was last seen, as discussed below.
4. On 29 November 1983, a missing persons report was prepared by the NSWPF, recording a report by Mr Baumann's landlady, Ruth Binney.² However, there is evidence that the NSWPF were notified of Mr Baumann's disappearance as early as 5 November 1983.³ Mr Baumann was 25 years old at the time

¹ Finding of Deputy State Coroner Milovanovich, 4 August 2009 (SCOI.10850.00002); Death Certificate – Peter Baumann, 22 December 2022 (SCOI.82230).

² Statement of Ruth Binney, 16 November 1993 (SCOI.10850.00024); Missing Persons Report made by Ruth Binney, 29 November 1982 (SCOI.10850.00106).

³ Letter from ABC Welfare Officer to Peter Baumann, including file note re contact from Ruth Binney and Sharmalie Seneviratne, 7 November 1983, (SCOI.10850.00046).

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of his disappearance. On 4 August 2009, Deputy State Coroner Milovanovich found that Mr Baumann was deceased, but was unable to determine a precise date, place, or manner and cause of his death.⁴

Circumstances of death

5. Mr Baumann's last known contact was either with his ex-partner, Sharmalie Seneviratne (now Sharmalie Kotoga) or with another partner, Allan Smyth.⁵ Given that the police investigative file uses the name "Seneviratne", Ms Kotoga will be referred to as Ms Seneviratne in these submissions for convenience.
6. According to Ms Seneviratne, she spoke with Mr Baumann by telephone at his home on "one Friday" evening. During that conversation, "the telephone went dead in his mid sentence".⁶ Ms Seneviratne tried to ring Mr Baumann back "a number of times but the line was dead".⁷ Ms Seneviratne was worried something had happened to Mr Baumann, so she drove to his home and went inside. She noted that Mr Baumann's house was "very untidy" and it "looked as though there had been a struggle in the room". She also noticed that a small cushion had been burnt in the shower recess.⁸
7. Ms Seneviratne later telephoned Ms Binney who went to Mr Baumann's flat to find "the chair overturned and the door open... and his bed pillow was lying in the shower half burnt".⁹ Later, after reporting the incident to Waverley police, while looking through Mr Baumann's room, Ms Binney "saw that the word 'AIDS' had been written on a mirror".¹⁰ There is evidence to suggest that Ms Seneviratne saw (or knew about) the fact that 'AIDS' was written on a mirror in the flat "with chalk or felt-tip pen"¹¹ but also conflicting evidence suggesting that Ms Seneviratne did not know about this.¹²

⁴ Finding of Deputy State Coroner Milovanovich, 4 August 2009 (SCOI.10850.00002).

⁵ Statement of Sharmalie Seneviratne, 26 August 1993, [4]-[5] (SCOI.10850.00020).

⁶ Statement of Sharmalie Seneviratne, 26 August 1993, [5] (SCOI.10850.00020).

⁷ Statement of Sharmalie Seneviratne, 26 August 1993, [5] (SCOI.10850.00020).

⁸ Statement of Sharmalie Seneviratne, 26 August 1993, [6] (SCOI.10850.00020).

⁹ Statement of Ruth Binney, 16 November 1993, 1 (SCOI.10850.00024).

¹⁰ Statement of Ruth Binney, 16 November 1993, 2 (SCOI.10850.00024).

¹¹ Interpol request to Missing Persons Unit, 11 November 1999, 3 (SCOI.38957).

¹² Letter from Missing Persons Unit to NSWPF Services Section enclosing file and requesting decision re follow-up action, 4 March 1994, 7 (SCOI.38945).

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8. The date that Mr Baumann was “last seen” was recorded by the NSWPF to be on or around 26 October 1983.¹³ However, the evidence available about Mr Baumann’s last known movements suggests that he was seen after that date. This evidence includes:
- a. Mr Baumann was recorded as having “walked off duty at about 11:30am on Thursday 27th October” at his place of employment, the Australian Broadcasting Commission (**ABC**), as it then was.¹⁴
 - b. Ms Seneviratne provided a statement to NSWPF in 1993 where, as noted above, she stated that the last time she spoke to Mr Baumann was a Friday, meaning that she likely spoke to him on 28 October 1983 (although it is possible that it was 21 October or conceivably 4 November).¹⁵
 - c. A statement given by Mr Smyth in 1993, whom Mr Baumann was in a relationship with at the time of his disappearance, might be construed as indicating that Mr Baumann was seen as late as Sunday 30 October 1983, or even the following Sunday 6 November 1983.¹⁶
 - d. Although some police documentation refers to Mr Baumann as having disappeared on 26 October 1983,¹⁷ other police documentation refers to 27 October 1983 as the relevant date, including documentation prepared closer to the date of Mr Baumann’s disappearance.¹⁸
9. The evidence surrounding Mr Baumann’s disappearance is discussed further below. However, what is clear is that Mr Baumann has not been seen since late October/November 1983 and his remains have never been found.

Findings of post-mortem examination

10. Mr Baumann’s body has never been found and as such a post-mortem examination has never been conducted.

Persons of interest

11. Although there is no evidence before this Inquiry to indicate that the NSWPF investigated Mr Baumann’s disappearance in its immediate aftermath, in subsequent years, police have spoken to

¹³ P79A Report of Death to Coroner, 25 June 2008, 1 (SCOI.10850.00012).

¹⁴ Letter from ABC Welfare Officer to Peter Baumann, including file note re contact with Ruth Binney and Sharmalie Seneviratne, 7 November 1983 (SCOI.10850.00046).

¹⁵ Statement of Sharmalie Seneviratne, 26 August 1993, [4]-[5] (SCOI.10850.00020).

¹⁶ Statement of Allan Smyth, 16 November 1993, 2 (SCOI.10850.00023).

¹⁷ See, for example, P79A Report of Death to Coroner, 25 June 2008 (SCOI.10850.00012).

¹⁸ Annexure A - Triage Form, undated, 1 (SCOI.38971); Missing Person Form – Ante Mortem Record, undated (SCOI.10850.00032).

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a select number of witnesses which included friends, intimate partners, and acquaintances of Mr Baumann. No persons of interest were identified in relation to his death.

12. Given the passage of time as well as the death or infirmity of certain key witnesses, there is no cogent evidence beyond what is outlined below to suggest that any identifiable person had any involvement in Mr Baumann's death.

Indicators of LGBTIQ status or bias

13. Mr Baumann was a gay or bisexual man.¹⁹ At the time of his disappearance, Mr Baumann was in a relationship with another man, Mr Smyth.²⁰ It appears that Mr Smyth was also in a long-term relationship with another man called Mervyn Oliver Keasberry (who went by 'Oliver') at the same time, although that relationship may not have been sexual.²¹ Mr Smyth and Mr Keasberry lived together in Edgecliff, Sydney.²²
14. Mr Baumann had at least two relationships with women. In June 1982, Mr Baumann married Cherie Foster. There is evidence to suggest that this marriage was arranged so that Mr Baumann, who was a German national, could get permanent residency in Australia. On 29 April 1983, Mr Baumann was granted permanent residency in Australia. Mr Baumann and Ms Foster filed for divorce in or around June or July 1983.²³ Mr Baumann had also previously been in a relationship with Ms Seneviratne. Mr Baumann met Ms Seneviratne in December 1981 when Ms Seneviratne was working in Colonnade Gift Shop in Sydney. In or around early 1982, Mr Baumann asked Ms Seneviratne to marry him, but she refused. According to Ms Seneviratne, she "was only seventeen or eighteen at the time" and she "was also a bit suspicious that he might be using the marriage to gain permanent residency in Australia".²⁴ Some time before July 1982, Ms Seneviratne ended the relationship.
15. The circumstances of and motivation for Mr Baumann's disappearance and suspected death are unclear. Given that Mr Baumann disappeared in suspicious circumstances and that Ms Binney saw the word 'AIDS' written on a mirror in Mr Baumann's flat, there is a reasonable and objective basis to suspect homicide with a hate/bias motive. Ms Seneviratne also told Mr Baumann's brother and sister that the word 'AIDS' was written on a mirror in Mr Baumann's flat with "chalk or felt-tip pen".²⁵ However, this fact is not contained in the statement she provided to police and conflicts with other

¹⁹ Missing Persons Unit Investigation Plan, 11 March 2006 (SCOI.34221).

²⁰ Statement of Detective Sergeant Darren Smith, 12 August 2008, [12] (SCOI.34345).

²¹ Statement of Detective Sergeant Darren Smith, 12 August 2008, [12] (SCOI.34345).

²² Statement of Allan Smyth, 16 November 1993, 1 (SCOI.10850.00023).

²³ Statement of Sharmalie Seneviratne, 26 August 1993, [4] (SCOI.10850.00020).

²⁴ Statement of Sharmalie Seneviratne, 26 August 1993, [6] (SCOI.10850.00020).

²⁵ Interpol request to Missing Persons Unit regarding review of matter, 11 November 1999, 3 (SCOI.38957).

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(indirect, hearsay) evidence provided to the Inquiry.²⁶ It may have been that Ms Seneviratne was passing on information she had learned from the police or Ms Binney. The evidence available to this Inquiry does not allow any positive conclusions to be drawn about whether Mr Baumann's death was occasioned as a result of an LGBTIQ hate/bias crime. It is also important to bear in mind that bias on the basis of sexuality and on the basis of HIV-status are distinct, although they may overlap, especially given social perceptions and attitudes to homosexuality at the time of Mr Baumann's disappearance.

Exhibits: availability and testing

16. Following Mr Baumann's disappearance, Ms Binney kept a "long knife" found in Mr Baumann's jacket pocket and his guitar.²⁷ Police subsequently seized these items, but they were never the subject of any forensic examination.²⁸ In 1994, these items were returned to Mr Baumann's family.²⁹

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

17. On 4 August 2009, an inquest was conducted by Deputy State Coroner Milovanovich. That same day, his Honour made the following finding in relation to Mr Baumann:

I am satisfied that Peter Karl Baumann is deceased. I find that he died some time on or after the 26th October, 1983. As to the precise date of death, place of death or manner and cause of death from the available evidence I am unable to say.³⁰

Criminal proceedings

18. No criminal proceedings were ever instituted against any person in relation to Mr Baumann's disappearance or death.

Features of /concerns with original police investigation

19. The aspect of the original NSWPF investigation into Mr Baumann's disappearance that is most concerning is the absence of any such investigation; there are no records of any investigation being conducted by the NSWPF into Mr Baumann's disappearance in 1983.³¹ Indeed, based on the material produced to this Inquiry it appears that a period of nine years elapsed from when Mr Baumann was

²⁶ Cf Letter from Missing Persons Unit to NSWPF Services Section enclosing file and requesting decision re follow-up action, 4 March 1994, 7 (SCOI.38945).

²⁷ Statement of Ruth Binney, 16 November 1993, 1 (SCOI.10850.00024).

²⁸ Miscellaneous Property Receipt A400194 – Gibson brand guitar and carving knife, 13 September 1993 (SCOI.34340).

²⁹ NSWPF Running Sheet, 26 May 1994 (SCOI.34256).

³⁰ Finding of Deputy State Coroner Milovanovich, 4 August 2009 (SCOI.10850.00002).

³¹ P79A Report of Death to Coroner, 25 June 2008, 1 (SCOI.10850.00012).

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reported missing to the time that the NSWPF took any substantive investigative steps in relation to his disappearance.

20. The missing person's report by Ms Binney was apparently prepared on 29 November 1983. However, and as noted above, a contemporaneous file note indicates that the NSWPF were made aware of Mr Baumann's disappearance by 5 November 1983, when the Acting Welfare Officer at the ABC, "H.A.R. Gover", notified Waverley Police Station that he hadn't been seen or contacted the ABC since 27 October 1983, and that Mr Gover had been unable to find him.³² Ms Binney's evidence is also consistent with Ms Binney notifying the police much earlier in November than 29 November 1983.
21. Another NSWPF document indicates that Mr Baumann was reported missing on 27 October 1983, although given this document was prepared in 2016³³ it is submitted that the contemporaneous documentation should be preferred as the likely date or dates the NSWPF were notified about Mr Baumann's disappearance.
22. At some stage following the receipt of the report of Mr Baumann's disappearance, police officers from Waverley Police Station attended Mr Baumann's residence, apparently with Ms Binney. A note was made or a photograph taken of Mr Baumann's identity card or passport details (the evidence is not perfectly clear which), but no other investigative steps appear to have been taken.³⁴ Ms Binney in her 1993 statement said she kept Mr Baumann's clothes, personal possessions and papers at her house until 1992, when they were destroyed as they were rotting.³⁵ According to Ms Seneviratne in her statement in 1993, Ms Binney said that the police had taken his passport, wallet and personal papers,³⁶ but as second hand hearsay this evidence is not reliable and Ms Binney's first hand account is more reliable.
23. It was not until between 1992 and 1994 that an investigation into Mr Baumann's disappearance was conducted by the NSWPF Missing Persons Unit (**MPU**). This investigation appears to have been triggered by an inquiry made by Ms Seneviratne to the MPU. The NSWPF then undertook various investigative steps which are discussed further below. However, even these investigative steps were limited in their scope.

³² Letter from ABC Welfare Officer to Peter Baumann, including file note re contact with Ruth Binney and Sharmalie Seneviratne, 17 November 1983 (SCOI.10850).

³³ Request by Senior Constable Gribble to be assigned, 22 November 2016, [44] (SCOI.11010.00007).

³⁴ Request by Senior Constable Gribble to be assigned, 22 November 2016, [58] (SCOI.11010.00007).

³⁵ Statement of Ruth Binney, 16 November 1993, 2 (SCOI.10850.00024).

³⁶ Statement of Sharmalie Seneviratne, 26 August 1993, [8] (SCOI.10850.00020).

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24. The failure to properly investigate Mr Baumann's disappearance in 1983 created a situation where it was much more difficult, even by 1992, for subsequent investigators and other finders of fact to establish the manner and cause of Mr Baumann's death.

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

25. It is submitted that there are several key steps that could or should have been taken in this case but were not.
26. **First**, and obviously enough, the NSWPF should have conducted a proper investigation into Mr Baumann's disappearance in the immediate aftermath of receiving the missing persons report. Such an investigation should have entailed establishing a crime scene, taking photographs, and identifying and retaining any physical exhibits of forensic value. Furthermore, to the extent that the police did conduct enquiries in relation to Mr Baumann's disappearance (such as attending the Cross Street premises and obtaining information about Mr Baumann), no record of any such enquiries have been produced to this Inquiry.
27. If Ms Binney's recollection in 1993 is reliable, police attended the unit where they should have observed 'AIDS' written on a mirror. There were other grounds for suspicion as to Mr Baumann's absence, including the room being in disarray, a burnt pillow in the shower, and all Mr Baumann's personal effects apparently being left. By 29 November 1983, it appears both Mr Gover and Ms Binney had notified police. As explained below, Mr Gover had also received a telephone call from "Sharmalee" (presumably Ms Seneviratne)³⁷ and "William" who lived at "Artell (?) St Edgecliff".³⁸ Simple inquiries in November/December 1983 would likely have identified each of Ms Seneviratne, Mr Smyth and Mr Keasberry as persons who may have information about Mr Baumann's disappearance. At least by 1993, Ms Binney appears to have come to believe or suspect that Mr Baumann's disappearance was "a murder involving homosexuals",³⁹ although it is not presently known whether Ms Binney suspected this in 1983.
28. The Inquiry cannot draw any affirmative conclusion as to whether the failure to investigate further was actuated by bias, but it is a real possibility given (a) what was known or readily ascertainable to police, including 'AIDS' written on the mirror, and (b) the widespread bias in the police force and the wider community at the time. Even if the failure to investigate was not motivated by bias, there was enough

³⁷ Letter from ABC Welfare Officer (H.A.R Gover) to Peter Baumann, including file note re contact from Ruth Binney and Sharmalie Seneviratne, 7 November 1983, 1 (SCOI.10850.00046).

³⁸ Letter from Inspector Morton to V Rimoldi (ABC) regarding Peter Baumann, 26 November 1993, 3 (SCOI.38894).

³⁹ Letter from Missing Persons Unit to NSWPF Services Section enclosing file and requesting decision re follow-up action, 4 March 1994, [5] (SCOI.38945).

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information available to suggest that Mr Baumann's disappearance was suspicious, calling for immediate investigation. The earliest written policy or procedure produced to the Inquiry by the NSWPF in relation to missing persons is dated 1985.⁴⁰ Accordingly, it is not known whether the failure was a breach of any applicable policy or procedure, but it would be open to the Inquiry to conclude, in the absence of other evidence, that the apparent failure to investigate was a material oversight or deficiency in the NSWPF response to Mr Baumann's disappearance.

29. **Second**, the NSWPF should have sought to speak with Mr Baumann's associates as soon as practicable after Mr Baumann disappeared. There are some inconsistencies in the evidence provided by some of the witnesses to Mr Baumann's disappearance, and the details around particular events are vague, if not dubious. Based on the documents produced to this Inquiry, the NSWPF did not take any steps to test the veracity of the accounts provided to them by various witnesses, even when they conflicted. There were also a number of investigative leads, generated by the information provided by these witnesses, that were also never tested, either in 1983 or in the investigatory steps taken in 1992 to 1994. For example, the NSWPF never made further enquiries about the "protectors" of Ms Foster who were allegedly threatening Mr Baumann, and nor did the police seek to interview Mr Keasberry. Some of the inconsistencies and evidence raising lines of inquiry that were not pursued is canvassed further below.
30. It cannot be inferred that by the time the police investigated Mr Baumann's disappearance they had spoken to all his friends and acquaintances. For example, it is likely police would have been able to locate and speak to Mr Baumann's neighbour, Hiroshi Hamasaki, who they were subsequently unable to locate. There is also no evidence that the NSWPF spoke to any of Mr Baumann's colleagues at the ABC. This may have opened further lines of inquiry.
31. The failure to establish a crime scene and/or identify or retain any exhibits of forensic value, and the failure to identify and locate relevant witnesses, has limited the ability of subsequent investigators and other finders of fact to establish the manner and cause of Mr Baumann's death. With the passage of time, the ability to identify and obtain evidence from any relevant witnesses has greatly diminished. In this case, it is understandable that the ability of the witnesses a decade later to identify the dates and/or times on which specific events took place has been compromised by the passage of time. Indeed, when the police contacted Mr Gover in 1994, he appeared to have no recollection of Mr Baumann's disappearance at all.⁴¹ Likewise, the failure to identify and retain exhibits means that it

⁴⁰ Crime Information and Intelligence System – Introduction of New Procedures Respecting Missing Persons, Unidentified Bodies and Unidentified Persons, 1986 (NPL.0100.0003.0001).

⁴¹ Report of Senior Constable J P Emery, Missing Persons Unit, 17 June 1994 (SCOI.38939).

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is not possible to utilise developments in forensic science to collect additional evidence that could assist with resolving the question of the manner and cause of Mr Baumann's death.

32. **Third**, and to the extent that the NSWPF did conduct an investigation into Mr Baumann's disappearance, it should have ensured that its understanding of events was as accurate as possible, particularly in relation to understanding the chronology around Mr Baumann's disappearance. In some of the NSWPF documentation, particularly those produced in more recent years, little regard appears to have been paid to contemporaneous documentation and there is a lack of precision in relation to the date that Mr Baumann was thought to have disappeared. It is submitted that investigations, particularly when a long period of time has elapsed between the relevant event/s and the investigation, need to be mindful of the unreliability of reconstructions based on a recollection many years later, and the primacy of whatever objective contemporaneous records can be obtained⁴²
33. In addition, there is evidence to suggest that by June 1994, there was tension between Senior Constable (SC) Gribble and Senior Constable (SC) Emery about the NSWPF response to Mr Baumann's disappearance, including about the fact that it had apparently taken over 10 years to notify Mr Baumann's family that he had been reported missing.⁴³ SC Gribble appears to have been frustrated or angry that not enough was being done in relation to this particular case, with SC Emery informing him that "Waverly Dets were satisfied that all avenues of inquiry have been exhausted and Waverly Dets would not make any further inquiries".⁴⁴ Elsewhere, at the same time, SC Emery noted that "every attempt to locate Peter Baumann" had been made.⁴⁵ In this respect it is both notable and laudable that SC Gribble continued to agitate for this case to be reinvestigated as recently as 2016.⁴⁶ It is submitted that the failure of the NSWPF to identify the fact that there were still several significant avenues of inquiry available to them, including as at 1994, was a material oversight or deficiency in the police investigation.

Later UHT reviews

34. The Inquiry has been provided with an undated form entitled "Annexure A Triage Form Review of an Unsolved Homicide" which purports to be a triage assessment of Mr Baumann's case by the Unsolved Homicide Team (UHT).⁴⁷

⁴² *R v Warwick (No. 93)* [2020] NSWSC 926.

⁴³ Running Sheet, 25 May 1994 – 1 June 1994, 3 (SCOI.34256).

⁴⁴ NSWPF Running Sheet, 26 May 1994 (SCOI.34256).

⁴⁵ Report of Senior Constable J P Emery, Missing Persons Unit, 17 June 1994 (SCOI.38939).

⁴⁶ Request by Senior Constable Gribble to be assigned, 22 November 2016, [44] (SCOI.11010.00007).

⁴⁷ Annexure A – Triage Form, undated (SCOI.38971).

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35. This form appears to be incomplete, and it has not been signed. Nonetheless, to the extent that the form has been populated, it is curious that it states that a post-mortem was conducted by a “Dr Paul Botterill” and that the cause of death was determined to be “[h]omicidal violence of undetermined aetiology”.⁴⁸ In circumstances where Mr Baumann’s remains have never been recovered (and therefore no post-mortem has been able to be performed) it can be assumed this entry relates to another case.

36. On 13 April 2017, Detective Inspector (DI) Leggat from the UHT finalised an ‘Issue Paper’ in response to a request from SC Gribble and dated 21 November 2016 to conduct a further investigation into the disappearance of Mr Baumann. DI Leggat concluded that the UHT should not conduct an investigation into Mr Baumann’s disappearance. DI Leggat wrote that:

*The matter has been adequately investigated by the Eastern Suburbs LAC and in the absence of fresh information a further investigation by the Unsolved Homicide Team is not warranted.*⁴⁹

37. DI Leggat ultimately recommended that the investigation remain with Eastern Suburbs LAC to finalise the outstanding issues identified by SC Gribble in his correspondence to the UHT that had not already been performed by other police officers.⁵⁰

Investigative and other steps undertaken by the Inquiry

38. In the course of investigating Mr Baumann’s case, the Inquiry took a number of investigative and other steps. These included:

- a. requesting the coronial file; and
- b. issuing a summons for the police investigative file.

39. The Inquiry reviewed and analysed a considerable volume of material provided by NSWPF and the Coroners Court, and the material obtained by summons, and considered whether any further investigative steps or other avenues were warranted. These investigative steps included:

- a. issuing summonses to the NSW Registry of Births, Deaths and Marriages (BDM) and the equivalent agency in Western Australia to obtain information about key witnesses;

⁴⁸ Annexure A – Triage Form, undated, 3 (SCOI.38971).

⁴⁹ Response of Detective Inspector Leggat to request by Senior Constable Gribble, 13 April 2017, 3 (SCOI.11010.00003).

⁵⁰ Response of Detective Inspector Leggat to request by Senior Constable Gribble, 13 April 2017, 3 (SCOI.11010.00003).

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- b. issuing summonses to New South Wales Health (**NSW Health**) and St Vincent's Hospital (**St Vincent's**) to obtain any medical records relating to Mr Baumann;
- c. requesting information from Services Australia in relation to Mr Baumann;
- d. contacting key witnesses;
- e. contacting the Forensic and Analytical Science Service (**FASS**) as to requesting that the DNA profiles of Mr Baumann's relatives be run against all unidentified bodies in New South Wales; and
- f. contacting Mr Baumann's family.

Request for coronial file

40. On 15 June 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 Baumann. The Coroners Court answered the request and provided the coronial file on 1 August 2022.⁵¹

Summonses and requests issued to NSWPF

41. A summons to the NSWPF (NSWPF3) was issued on 21 July 2022 for, *inter alia*, all documents in relation to the investigations by NSWPF into the death of Mr Baumann, and any other material held by the UHT in relation to Mr Baumann's death. Material in relation to Mr Baumann was provided to the Inquiry in two tranches on 9 and 12 August 2022, respectively.⁵² A further tranche of material was provided to the Inquiry on 22 June 2023, which consisted of 401 pages of documents.
42. On 31 January 2023, a letter was sent to the NSWPF seeking further information about the production of documents which indicated that the Northern Territory Police Force (**NTPF**) notified NSWPF MPU of an unidentified body that they believed might have been Mr Baumann and seeking to compare the DNA profile obtained from Mr Baumann's mother with the unidentified body.⁵³
43. On 6 and 21 March, the NSWPF informed the Inquiry that the DNA comparison that was conducted does not support the conclusion that the unidentified remains were those of Mr Baumann.⁵⁴
44. On 5 June 2023, a summons to the NSWPF (summons NSWPF119) was issued seeking intelligence material in relation to various witnesses. That material was produced on 8 June 2023.

⁵¹ Statement of Aleksandra Jez, 24 June 2023, [4]-[5].

⁵² Statement of Aleksandra Jez, 24 June 2023, [6]-[7].

⁵³ Letter from Caitlin Healey-Nash to Aurhett Barrie, 31 January 2023 (SCOI.84117).

⁵⁴ Correspondence between the Inquiry and NSWPF re Northern Territory remains, 6 March 2023 – 21 March 2023 (SCOI.84116).

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Other summonses issued

45. On 21 December 2022, the Inquiry issued a summons to the Registry of Births, Deaths and Marriages (BDM) for records of, inter alia, Mr Baumann (summons BDM8). On 22 December 2022, BDM produced these records to the Inquiry.⁵⁵
46. On 21 December 2022, the Inquiry issued a summons to NSW Health to obtain any medical records relating to Mr Baumann, including in relation to any HIV/AIDS diagnosis (summons NSW11).⁵⁶ On 11 January 2023, NSW Health advised that it held no records responsive to the summons. NSW Health further advised that HIV/AIDS became a “notifiable condition” in NSW in 1984 and suggested that the Inquiry approach St Vincent’s Hospital (St Vincent’s) in relation to any HIV/AIDS diagnoses made between 1982 and 26 October 1993.⁵⁷
47. On 10 March 2023, the Inquiry issued a summons to St Vincent’s to obtain any medical records relating to Mr Baumann (summons SVH2).⁵⁸ On 15 March 2023, St Vincent’s advised that it held no records responsive to the summons and that it was unable to be of any further assistance.⁵⁹
48. On 10 March 2023 and 19 June 2023, further summonses were issued to the Western Australia Registry of Births, Deaths and Marriages, for the records of various witnesses (summonses WBDM4 and WBDM6). These records were produced on 16 March 2023 and 20 June 2023 respectively. Those records include a death certificate which records that Mr Smyth died on 6 October 2016, aged 96 years.⁶⁰ There is evidence before the Inquiry which suggests that Mr Smyth’s memory was failing him as early as 2007, due to his age.⁶¹
49. On 1 June 2023, a summons was issued to the Western Australia Police Force seeking records in relation to various witnesses (summons WAP3). Those records were produced in two tranches, on 7 June 2023 and 19 June 2023 respectively.

⁵⁵ Statement of Aleksandra Jez, 24 June 2023, [9].

⁵⁶ Summons to NSW Ministry of Health (NSWH1), 21 December 2022.

⁵⁷ Letter from Dr Richard Broome to Commissioner Sackar, 11 January 2023 (SCOI.84115).

⁵⁸ Summons to produce to St Vincent’s Hospital (SVH2), 10 March 2023.

⁵⁹ Letter from St Vincent’s Hospital to Caitlin Healey-Nash, 15 March 2023 (SCOI.84121).

⁶⁰ Death Certificate – Allan Smyth, 20 June 2023 (SCOI.84122).

⁶¹ Investigator’s Note regarding contact with Allan Smyth, 24 April 2007 (SCOI.34303).

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Attempts to locate and contact family members

50. On 19 June 2023, the Inquiry sent a letter to Mr Baumann's sister, Anna-Christa Baumann-Serr, requesting any information she may hold in relation to Mr Baumann's death. On 22 June 2023, the Inquiry was contacted by Ms Baumann-Serr.⁶²

Other sources of information

51. On 22 December 2022, a letter was sent to Services Australia regarding any Medicare and PBS records that were in existence in relation to Mr Baumann.⁶³ On 17 January 2023, the Inquiry received a response from Services Australia confirming that there were no such records available.⁶⁴
52. On 13 March 2023, a letter was sent to Ms Binney, inviting her to meet with the Inquiry to discuss the circumstances surrounding Mr Baumann's disappearance. On 14 April 2023, Ms Binney contacted the Inquiry, advising that she was not in a position to provide any further information relating to Mr Baumann's disappearance.⁶⁵
53. On 13 March 2023, a letter was sent a letter to Ms Seneviratne inviting her to meet with the Inquiry to discuss the circumstances surrounding Mr Baumann's disappearance. On 5 June 2023, Ms Seneviratne contacted the Inquiry, advising that she was not in a position to provide any further information relating to Mr Baumann's disappearance.⁶⁶
54. On 5 June 2023, a letter was sent to Ms Foster, inviting her to meet with the Inquiry to discuss the circumstances surrounding Mr Baumann's disappearance.⁶⁷ The Inquiry did not receive a response from Ms Foster.
55. On 5 June 2023, a letter was sent to FASS seeking confirmation that it held the DNA profiles for Mr Baumann's mother and father, and requesting that, if so, the DNA profiles of Mr Baumann's parents be run against all unidentified bodies in New South Wales.⁶⁸ On 20 June 2023, Carole Field, Group Manager of the Database and Case Management Unit at FASS, provided the Inquiry with a statement detailing FASS' response to the Inquiry's queries.⁶⁹ Ms Field stated that FASS did not hold a reference sample for either of Mr Baumann's parents but that the NSWPF had received a mitochondrial DNA report in relation to Mr Baumann's mother and her mitochondrial DNA profile could be used to search

⁶² Statement of Aleksandra Jez, 24 June 2023, [12]-[13].

⁶³ Letter from Caitlin Healey-Nash to Services Australia, 22 December 2022 (SCOI.84120).

⁶⁴ Letter from Services Australia to the Inquiry, 17 January 2023 (SCOI.84119).

⁶⁵ Statement of Aleksandra Jez, 24 June 2023, [16].

⁶⁶ Statement of Aleksandra Jez, 24 June 2023, [17].

⁶⁷ Statement of Aleksandra Jez, 24 June 2023, [18].

⁶⁸ Letter from Aleksandra Jez to Clint Cochrane, 5 June 2023 (SCOI.84114).

⁶⁹ Statement of Carole Field, 20 June 2023 (SCOI.84118).

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against all mitochondrial DNA profiles from unidentified human remains on the national DNA database. However, Ms Field stated that to date, no mitochondrial DNA match has been identified

Other steps

56. On 20 June 2023 the Inquiry arranged for a search to be conducted on the National Coronial Information System (**NCIS**) for any further information related to Mr Baumann's disappearance. No relevant results were obtained.⁷⁰
57. The Inquiry also took certain steps by way of private hearing, which will be the subject of a confidential part of the Report of the Inquiry in due course.

Submissions as to the evidence now available

58. This section of the submission sets out key matters arising from the Inquiry's consideration of the evidence and the conclusions that it is suggested can be drawn from the evidence.

Background and disappearance

Arrival in Australia

59. Mr Baumann was a German national who arrived in Sydney on 11 December 1981 on a temporary visa that was valid until 11 June 1982.⁷¹
60. There is some evidence to suggest that Mr Baumann travelled to Australia for the purpose of pursuing a music career as a composer.⁷² After arriving in Australia, Mr Baumann may have worked as a musician at the Sydney Conservatorium of Music, although the NSWPF never confirmed this.⁷³ At the time of his disappearance, Mr Baumann was employed by the ABC as an Assistant Sound Librarian. When he was initially employed by the ABC, Mr Baumann utilised the surname "Moltzen".⁷⁴

Living arrangements

61. Upon his arrival in Australia, it appears that Mr Baumann resided at a property in Bennett Street, Bondi, but the NSWPF never confirmed this.⁷⁵

⁷⁰ Statement of Aleksandra Jez, 24 June 2023.

⁷¹ Request by Senior Constable Gribble to be assigned, 22 November 2016, [3] (SCOI.11010.00007).

⁷² Request by Senior Constable Gribble to be assigned, 22 November 2016, [2], [69] (SCOI.11010.00007); Missing Persons Unit Running Sheet, 21 October 1993, 3 (SCOI.38950); Report of Senior Constable John Gribble regarding missing persons investigation, 3 December 1993, 3 (SCOI.38945).

⁷³ Request by Senior Constable Gribble to be assigned, 22 November 2016, [12] (SCOI.11010.00007).

⁷⁴ Letter from Inspector Morton to V Rimodli (ABC) regarding Peter Baumann, 26 November 1993, 2 (SCOI.38894).

⁷⁵ Request by Senior Constable Gribble to be assigned, 22 November 2016, [4] (SCOI.11010.00007).

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62. From around March 1982 to July 1982, NSWPF records indicate that Mr Baumann resided at Glebe Point Road, Glebe, with a person named Keith Smith. However, the nature of Mr Baumann's relationship with Mr Smith is not clear; he was never spoken to by the NSWPF.⁷⁶
63. On or around late 1982 to early 1983, Mr Baumann moved to Cross Street, Waverley (now in Bronte) which was owned by Ms Binney.⁷⁷ At the time of Mr Baumann's disappearance Ms Binney's name was Ruth Van Duyn (although she was still referred to by Mr Gover in his contemporaneous note as "Mrs Binney"). By the time she provided a statement to the NSWPF, her name was changed to Ruth Binney. Mr Baumann was living at this address until he disappeared in around October 1983.
64. Ms Binney would collect the rent from Mr Baumann on a fortnightly basis and, in accordance with a request from Mr Baumann, Ms Binney provided rent receipts in the name of "Peter K.J Ann".⁷⁸
65. The Cross Street premises was a house that had been converted into five flats. At the time of Mr Baumann's disappearance, only one other flat was occupied and the occupant was a Japanese cartoonist whose name was initially believed to be 'Hyuma Hoshi' but was later revealed to be Hiroshi Hamasaki.⁷⁹ Mr Hamasaki was never spoken to by the police.

Relationship with Ms Seneviratne

66. According to a statement that Ms Seneviratne gave to the NSWPF in 1993, Mr Baumann first approached Ms Seneviratne in around December 1981 whilst she was working in a gift shop in Sydney. Ms Seneviratne states that she initially refused to go out with him until around January 1982, when they eventually struck up a relationship. He told her that he was a musician at the Conservatorium of Music, and they met for lunch on most days outside the Conservatorium.⁸⁰ Their relationship lasted until around July 1982 and she went to his flat at Bennett St, Bondi, on a number of occasions during that period.⁸¹
67. In her 1993 statement, Ms Seneviratne stated that Mr Baumann seemed generally stable but at times could be aggressive, very demanding and possessive of her. She was prevented from talking to friends or having a social life outside of their relationship.⁸² Around three months into their relationship, Ms Seneviratne stated that Mr Baumann asked her to marry him, that he had all of the relevant forms on hand, and that all she needed to do was "fill our [her] section". Ms Seneviratne said she rejected

⁷⁶ Request by Senior Constable Gribble to be assigned, 22 November 2016, [8] (SCOI.11010.00007).

⁷⁷ Statement of Ruth Binney, 16 November 1993, 1 (SCOI.10850.00024).

⁷⁸ Request by Senior Constable Gribble to be assigned, 22 November 2016, [9] (SCOI.11010.00007).

⁷⁹ Request by Senior Constable Gribble to be assigned, 22 November 2016, [10] (SCOI.11010.00007).

⁸⁰ Request by Senior Constable Gribble to be assigned, 22 November 2016, 2 (SCOI.11010.00007).

⁸¹ Statement of Sharmalie Seneviratne, 26 August 1993, [3]-[4] (SCOI.10850.00020).

⁸² Statement of Sharmalie Seneviratne, 26 August 1993, [3] (SCOI.10850.00020).

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Mr Baumann's proposal on the basis that she was young and that she also harboured suspicions that he may be using the marriage to gain permanent residency. Mr Baumann was "very upset" with Ms Seneviratne's response and continued to ask her to marry him until she broke off the relationship in early 1982.⁸³ They had limited contact after the break up until just prior to Mr Baumann's disappearance in October 1983.

Relationship with Mr Smyth

68. Mr Smyth gave a statement to police on 16 November 1993. The copy of this statement that has been produced to the Inquiry is not signed, and refers to the fact that the signed copy is contained in the official notebook of SC Gribble. These notebooks have not been produced to the Inquiry and are, presumably, missing. The failure by the NSWPF to retain these notebooks, so as to be in a position to produce them to the Inquiry, is another material deficiency in the NSWPF record-keeping. According to Mr Smyth, he was in a relationship with Mr Baumann that commenced in December 1981/January 1982. Mr Smyth met Mr Baumann in Centennial Park in the summer of 1981 when he was walking his dogs. They would meet two to three times a week either at Mr Baumann's home or Mr Smyth's home in Artlett Street, Edgecliff, and the relationship continued until Mr Baumann's disappearance.⁸⁴ According to a police running sheet, Mr Smyth "used to regularly see" Mr Baumann and continually referred to him as "absolutely delightful".
69. Mr Smyth described Mr Baumann as having an obsession about not going back to Germany and wanting to avoid being conscripted. He described this as a "real fear". Mr Smyth recalls that one day Mr Baumann attended his home and told him that he had met "a prostitute" and offered her \$20,000 to marry him. Mr Smyth alleges that at some stage after the marriage, Mr Baumann told him that some people, namely "the girl's protectors", had approached him and asked for a further \$30,000. Mr Smyth got the impression that Mr Baumann was being blackmailed and that the threats being made were of a violent nature.⁸⁵
70. During this period, Mr Smyth was living with Mr Keasberry in Artlett Street, Edgecliff, and the two men had been living together since 1971.⁸⁶

⁸³ Statement of Sharmalie Seneviratne, 26 August 1993, [4] (SCOI.10850.00020).

⁸⁴ Request by Senior Constable Gribble to be assigned, 22 November 2016, 3 (SCOI.11010.00007); Statement of Allan Smyth, 16 November 1993, 1 (SCOI.10850.00023).

⁸⁵ Statement of Allan Smyth, 16 November 1993, 1 (SCOI.10850.00023).

⁸⁶ Request by Senior Constable Gribble to be assigned, 22 November 2016, [55] (SCOI.11010.00007).

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Marriage to Ms Foster, permanent residency, and divorce

71. In or around March 1982, Mr Baumann met Ms Foster.
72. According to the P79A Report of Death to Coroner, Ms Foster was a “prostitute... who he met in Byron Bay, so that he could obtain permanent residence in Australia”.⁸⁷
73. This conclusion appears to be supported by evidence that suggests that Mr Baumann wanted to remain in Australia and that he did not want to return to Germany. Mr Baumann was said to have expressed his desire to stay in Australia on a number of occasions, and that he was concerned about being conscripted in Germany.⁸⁸ Whilst he was living at the Cross Street premises, Mr Baumann told Ms Binney that he was married but that he was in the process of arranging a divorce. Ms Binney told police that she thought the marriage had occurred so that Mr Baumann could stay in Australia.⁸⁹ However, there is also evidence that Mr Baumann was exempt from conscription on medical grounds.⁹⁰
74. There is some evidence to suggest that Mr Baumann paid an amount to Ms Foster in exchange for her agreeing to marry him (but the evidence in relation to whether this involved a lump sum payment or regular payments over the course of the marriage is conflicting).
75. According to a statement given to the police on 11 April 2007 by Ms Foster’s boyfriend over the years from about 1980 to 1987, John Pauperis, Ms Foster had told him she was a “prostitute”, but she did not go into details and that as far as he knew, she did not have a pimp. Mr Pauperis attended Mr Baumann’s residence on one occasion and was not aware of any money being provided by Mr Baumann to Ms Foster.⁹¹
76. Ms Foster gave a statement to police on 14 September 1993. Her account of events was more detailed. According to Ms Foster, she had met Mr Baumann in Byron Bay whilst Ms Foster was helping some friends at the Byron Bay Markets. Mr Baumann told Ms Foster that he was looking to marry an Australian so that he could stay in the country and that he would rather die than go back to Germany. Mr Baumann indicated that he was willing to marry Ms Foster in exchange for some money. She could not recall the exact amount but said that it was not a large sum of money. Ms Foster gave Mr Baumann her contact details.

⁸⁷ P79A Report of Death to Coroner, 25 June 2008 (SCOI.10850.00012).

⁸⁸ Statement of Allan Smyth, 16 November 1993, 1 (SCOI.10850.00023).

⁸⁹ Request by Senior Constable Gribble to be assigned, 22 November 2016, [11] (SCOI.11010.00007); Statement of Ruth Binney, 16 November 1993, 1 (SCOI.10850.00024).

⁹⁰ Request by Senior Constable Gribble to conduct a further examination of the case, 13 February 2006, [68] (SCOI.11010.00007).

⁹¹ Statement of John Pauperis, 11 April 2007, [12] (SCOI.10850.00026).

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77. Ms Foster was later contacted by Mr Baumann after she had returned to Sydney. He attended her residence in Balmain where she lived with her boyfriend, Mr Pauperis, who was also present. They discussed Mr Baumann's suggested arrangement. Ms Foster told Mr Baumann that if she married him, she would not be able to claim any welfare benefits. He offered her \$70 per week which was equivalent to those benefits.
78. On 12 June 1982, Mr Baumann married Ms Foster.⁹²
79. Ms Foster attributes her decision to marry Mr Baumann to her sympathetic nature. She states that she certainly did not agree to it for the money. Rather, "the money was a consequence of the circumstance".
80. According to Ms Foster, after the wedding, Mr Baumann stayed in touch with Ms Foster to provide her with the agreed \$70 per week. In March 1983, Ms Foster moved to a new home, but Mr Baumann continued to provide her with the funds on a weekly basis. She observed that Mr Baumann had become extremely paranoid and had developed an aggressive attitude towards women. She stated that he had been slipping notes under her door and accusing her of conspiring to have him deported. She was of the view that the notes were very out of character.
81. According to Mr Smyth, as noted above, Mr Baumann had paid a lump sum to a woman that he married and at the time of his disappearance, was being "blackmailed" for additional funds.⁹³
82. According to Ms Foster, she and Mr Baumann filed for divorce in around June or July 1983.⁹⁴ She last saw him at around that time after she asked him for their divorce certificate.
83. On 29 April 1983, Mr Baumann was granted permanent residency.⁹⁵

October 1983

84. According to a statement provided to the police by Ms Seneviratne in 1993, Mr Baumann telephoned her "one Friday" at about 7:00pm. They spoke on the telephone for around 30 to 40 minutes. She was very shocked by the call but observed that he sounded very relaxed. He told her about his job at the ABC and indicated that he wanted to meet up. They arranged to meet at the Compass Centre in Bankstown the next day.⁹⁶ Ms Seneviratne stated that during her call with Mr Baumann she asked him

⁹² Certificate of Marriage – Cherie Foster, 12 June 1982 (SCOI.38933).

⁹³ Statement of Allan Smyth, 16 November 1993, 1 (SCOI.10850.00023).

⁹⁴ P79A Report of Death to Coroner, 25 June 2008 (SCOI.10850.00012); Statement of Cherie Kim Foster, 14 September 1994, [12] (SCOI.10850.00025).

⁹⁵ Review by Coronial Advocate Assisting – Sergeant G Robinson, 11 December 2008, 1 (SCOI.10850.00007).

⁹⁶ Statement of Sharmalie Seneviratne, 26 August 1993, [5] (SCOI.10850.00020).

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where he was living, and he would not answer. She became suspicious that he called her out of the blue and would not disclose where he was residing.

85. Later that same evening, she looked up Mr Baumann's details. Ms Seneviratne found Mr Baumann's contact details in the phone book. He was listed under the name "Peter K.J. Ann", a name he had written on an audio cassette he gave her. Ms Seneviratne telephoned that number and Mr Baumann answered. Ms Seneviratne said Mr Baumann was "very angry and sounded almost scared". During the conversation, the telephone "went dead in his mid-sentence". Ms Seneviratne was unable to call Mr Baumann back despite a number of attempts to do so.⁹⁷
86. Ms Seneviratne was worried. At around 9:00pm to 9:30pm, she went to the Cross Street premises. She said she went with her cousin, Hamish Pears, although as explained below Mr Pears denied this. Ms Seneviratne said that when she arrived at the Cross Street premises, the door was open and the flat was very untidy. Clothes were scattered across the room, and there were full ashtrays and beer bottles lying around. She said it "looked as though there had been a struggle in the room" and that "a small cushion had been burnt in the shower recess".⁹⁸
87. According to Ms Seneviratne, she then left the Cross Street premises, but as she did so she spotted something sticking out of the letterbox. She "just grabbed it"; observed that there was an address on the back of the letter, and then drove to that address. The address was in Artlett Street, Edgecliff, and was the home of Mr Smyth and Mr Keasberry. At about 10:30pm that evening, Ms Seneviratne drove to this address.⁹⁹
88. According to Ms Seneviratne, when she arrived at the Artlett Street premises, she rang a bell on the gate. A man walked through the front door and towards the gate and asked if he could help. Ms Seneviratne described him as "caucasian, five feet eight inches tall, medium build, thirtyish, balding, dressed all in black" and said he spoke with a German accent. (It should be observed that, at this time, Mr Smyth was 63¹⁰⁰ and Mr Keasberry was 32, meaning that if Ms Seneviratne spoke to either of these two persons it was likely to have been Mr Keasberry). Ms Seneviratne told the man that she was looking for Mr Baumann and sought his assistance. The man asked how she got his address and she indicated that it was on the back of the letter which she had found in Mr Baumann's letter box. Ms Seneviratne stated that the man "then became nervous" and asked where the letter was. After Ms

⁹⁷ Statement of Sharmalie Seneviratne, 26 August 1993, [5] (SCOI.10850.00020).

⁹⁸ Statement of Sharmalie Seneviratne, 26 August 1993, [6] (SCOI.10850.00020).

⁹⁹ Statement of Sharmalie Seneviratne, 26 August 1993, [6] (SCOI.10850.00020).

¹⁰⁰ Death Certificate – Allan Smyth, 20 June 2023 (SCOI.84122). It should be observed that an Investigator's Note dated 8 March 2007 records Mr Smyth's birthday as 21 January 1934, but this note also misspells Mr Smyth's first name as "Allen" and does not disclose its source. Mr Smyth's death certificate is the more reliable record and should be preferred.

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Seneviratne told him that the letter was in the the letter box, the man said that Mr Baumann “should be at home”. The man then told Ms Seneviratne that he had no idea where Mr Baumann was and that he, “might take a jog down to Peter’s place”. Ms Seneviratne asked why he would do that when she had just been there and he replied, “yes, I might still take [a] jog down there anyway”.¹⁰¹

89. Ms Seneviratne stated that she then drove home and read the letter she had taken. She didn’t keep it, but recalled it said something to the following effect:

Dear Peter,

I have finally told Oliver about us. I have told him how much I love you and that I want to be with you. I have also told him that I want to sell the house but (word was unreadable) was giving him a hard time about selling the house.

90. Ms Seneviratne could not remember the entire letter but recalled that it said, “how much he cares for Peter how much he wants to be with him”. Ms Seneviratne stated that the letter was signed either “Dillian” or “William”.¹⁰²
91. According to Ms Seneviratne, she returned to the Cross Street premises the next day (a Saturday) with her sister, Diania Seneviratne. They arrived at around 9:00am to 10:00am and she noticed that Mr Baumann’s room was in the same condition as it had been the previous day. Ms Senevirante knocked on the door of Mr Baumann’s neighbour and enquired as to his whereabouts. Mr Baumann’s neighbour did not know where Mr Baumann was but heard him arguing with a girl on the phone and stated that Mr Baumann had “burnt a cushion”.¹⁰³
92. Ms Seneviratne’s recollection as set out in the above paragraphs is not supported by the evidence provided to the NSWPF by Mr Pears on 13 April 2007, or Diania Seneviratne on 14 June 2007.¹⁰⁴ However, Diania Seneviratne does remember “standing at the door” of a “very messy” room when she was around 16 years old.
93. According to Ms Seneviratne, after “a few weeks” she notified Mr Baumann’s “landlady Ruth BAVAMDYUM” (presumably Ms Binney) by telephoning her at her home in Epping, Sydney. Ms Binney told her she had not seen Mr Baumann since he paid his rent money “about two weeks before he went missing”. Ms Binney also told her that she had “reported the matter to Waverley or Bondi Police Stations”. According to Ms Seneviratne, Ms Binney told her that the NSWPF had taken “his passport

¹⁰¹ Statement of Sharmalie Seneviratne, 26 August 1993, [6] (SCOI.10850.00020).

¹⁰² Statement of Sharmalie Seneviratne, 26 August 1993, [6] (SCOI.10850.00020).

¹⁰³ Statement of Sharmalie Seneviratne, 26 August 1993, [7] (SCOI.10850.00020).

¹⁰⁴ Statement of Hamish Pears, 13 April 2007, (SCOI.10850.00028); Unsigned notebook statement of Dilani Seneviratne, 19 May 2008 (SCOI.34336).

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and wallet and personal papers". Other items belonging to Mr Baumann were placed in storage at her house in Epping.¹⁰⁵

94. According to an unsigned statement provided to the police by Ms Binney in 1993, Ms Binney, at some time in "October 1983", became aware that Mr Baumann was missing. She received a telephone call from Ms Seneviratne who informed her that she had been on the phone with Mr Baumann when the line went dead and that she had been to his flat and found "the chair overturned and the door open". Ms Binney stated she went over to the flat "the next day".¹⁰⁶
95. According to Ms Binney, upon looking through his room, she saw "the armchair turned over, his jacket was on the bed and it looked as though he was packing his clothes into plastic bags... and his bed pillow was lying in the shower half burnt". Ms Binney also noticed the word 'AIDS' had been written on a mirror.¹⁰⁷ As noted above at paragraph [7], there is evidence to suggest that Ms Seneviratne may also have seen the word 'AIDS' written on the mirror. After Ms Binney inspected Mr Baumann's flat, she stated that she "rang the Police at WAVERLEY and the uniformed Police arrived and they took a photograph from his identity card."¹⁰⁸
96. On 29 November 1983, the NSWPF prepared a missing person report in relation to Mr Baumann that records that Ms Binney was the informant.¹⁰⁹
97. According to an unsigned statement provided to the police by Mr Smyth in 1993, Mr Smyth last saw Mr Baumann "on a Sunday, it was in Summer in 1983" when he visited him at the Cross Street premises.¹¹⁰ Although the police appear to have deduced that this date was 23 October 1983, it is also possible that this date was 30 October 1983, for reasons explained below. Mr Smyth stated that Mr Baumann was meant to see him the next day, which was a Monday, but that he did not show up. Mr Smyth appears to have been the last person to see Mr Baumann before he disappeared.¹¹¹
98. On the Tuesday or Wednesday after Mr Baumann failed to meet Mr Smyth when he was meant to, Mr Smyth stated that he became worried and attended the Cross Street premises. He observed that the front door of Mr Baumann's flat was open, his bed had not been made but that "his guitar and everything was intact". Mr Smyth asked a neighbour (an Australian man in his late 50s) for a key to Mr

¹⁰⁵ Statement of Sharmalie Seneviratne, 26 August 1993, [8] (SCOI.10850.00020).

¹⁰⁶ Statement of Ruth Binney, 16 November 1993, 1 (SCOI.10850.00024).

¹⁰⁷ Statement of Ruth Binney, 16 November 1993, 2 (SCOI.10850.00024).

¹⁰⁸ Statement of Ruth Binney, 16 November 1993, 1 (SCOI.10850.00024).

¹⁰⁹ Report to Waverley Police Station made by Ruth Binney, 29 November 1982 (SCOI.10850.00106).

¹¹⁰ Statement of Allan Smyth, 16 November 1993, 2 (SCOI.10850.00023).

¹¹¹ Statement of Allan Smyth, 16 November 1993, 2 (SCOI.10850.00023).

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Baumann's flat so that he could lock it. The neighbour said he would lock it and Mr Smyth asked him to inform Mr Baumann that "Allan" had been around.¹¹²

99. According to Mr Smyth, "later that week" he received a telephone call from "a man at the A.B.C. asking if I had seen Peter". Mr Smyth told then he "hadn't seen him since that last Sunday". Mr Smyth said he "might have" gone back to Mr Baumann's flat the following Friday or on the weekend. Mr Smyth stated that over the next week, he started to worry because he "knew of the demand for money" and that the notion of 'Cooper Pedy' was stuck in his mind. Mr Smyth was also unsure about why Mr Baumann left his expensive guitar behind.¹¹³
100. Mr Smyth also stated that a "man and lady" attended his residence a "couple of weeks" after Mr Baumann's disappearance and that occurred at around 8:30pm. He stated that these two people asked about Mr Baumann's whereabouts and told him that they were worried. Mr Smyth described them as "both white and he was a bit overweight and the girl was medium build with fair [hair]". Mr Smyth says that he was suspicious because Mr Baumann never mentioned these friends but did not go to police as he had his "own problems at the time". He further stated that he did not make any enquiries about Mr Baumann until he was contacted by police.¹¹⁴ There is a chance that Mr Smyth is referring to the visit to the Artlett Street property by Ms Seneviratne and Mr Pears but Mr Smyth's description of the woman that attended his property does not match the description of Ms Seneviratne provided by her cousin Mr Pears, who described her as having "dark skin, wavy long black hair, dark eyes, thin build".¹¹⁵
101. At some stage during the course of the police investigation, the police seem to have concluded that the conversation between Ms Seneviratne and Mr Baumann occurred on or around 26 October 1983, and that Mr Baumann has not been seen or heard from since this time. However, there are several issues arising out of the evidence described in the above paragraphs that are worth considering when trying to establish what happened prior to Mr Baumann's disappearance, and when it happened.
102. **First**, if Mr Smyth's statement is accurate and he last saw Mr Baumann on a Sunday (and he was contacted by the ABC "later" the following week), it would appear likely that Mr Smyth saw Mr Baumann on Sunday, 30 October 1983, and that he was supposed to meet with Mr Baumann on Monday, 31 October 1983. The telephone call with the ABC would then have occurred sometime in early November.

¹¹² Statement of Allan Smyth, 16 November 1993, 2 (SCOI.10850.00023).

¹¹³ Statement of Allan Smyth, 16 November 1993, 2 (SCOI.10850.00023).

¹¹⁴ Statement of Allan Smyth, 16 November 1993, 2 (SCOI.10850.00023).

¹¹⁵ Statement of Hamish Pears, 13 April 2008, [7] (SCOI.34336).

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103. In a file note prepared by Mr Gover dated 9 November 1983, Mr Gover refers to a call from “William” of “artell(?) St Edgecliff stating that he did not know the whereabouts of Peter”. Mr Smyth could be the “William” who is recorded as contacting Mr Gover on Wednesday 9 November 1983, which raises the possibility that Mr Smyth’s meeting was as late as Sunday 6 November 1983, although it is equally or perhaps more likely that Mr Smyth’s recollection may have somewhat telescoped, and his conversation with the person from ABC may not have been the week immediately after the Sunday.
104. **Second**, the above is consistent with the contemporaneous evidence that suggests Mr Gover sought to locate Mr Baumann on Thursday, 3 November 1983 and again on Friday 4 November 1983.¹¹⁶
105. **Third**, the above is also consistent with some of the non-contemporaneous evidence contained in Mr Smyth’s statement and Ms Seneviratne’s statement. Mr Smyth states that the person from the ABC told him that Mr Baumann’s job would be kept open for two weeks, and it is recorded that by 9 November 1983, Mr Gover was thinking the job would need to be terminated that day.¹¹⁷ Ms Seneviratne states that she spoke to Mr Baumann “one Friday” and contacted Ms Binney “a few weeks later”. It is possible this date was Friday, 4 November 1983 and not Friday, 28 October 1983. Mr Gover prepared a file note that indicated that “Sharmalee” contacted him on 7 November 1983 (i.e. the following Monday) and was going to see him the following day.
106. However, there is still some conflict between Ms Seneviratne’s evidence that she spoke to Mr Baumann “one Friday” and went to Mr Smyth’s house that same day, and the visit that Mr Smyth recalls as occurring “around a couple of weeks later”, after Mr Baumann disappeared. There are several possible explanations for this, including possible telescoping of memory and/or that Ms Seneviratne saw Mr Keasberry rather than Mr Smyth, and that the visit Mr Smyth recalls from a white woman with fair hair was not Ms Seneviratne.
107. **Fourth**, as noted above, the relevant dates and days of the week may not be reliable given the passage of time before Ms Seneviratne and Mr Smyth prepared their first statement; both statements appear to contain a certain level of telescoping and/or imprecision as to the relevant dates. Mr Gover’s record appears to be contemporaneous and is the most reliable record as far as it goes. On the basis of the above matters, however, it is not clear how the NSWPF arrived at the conclusion that Mr Baumann disappeared on 26 October 1983 or why Deputy State Coroner Milovanovich was informed that Mr Baumann disappeared on or around this date.

¹¹⁶ Letter from ABC Welfare Officer to Peter Baumann, including file note re contact from Ruth Binney and Sharmalie Seneviratne, 7 November 1983 (SCOI.10850.00046).

¹¹⁷ Letter from Inspector Morton to V Rimoldi (ABC) regarding Peter Baumann, 26 November 1993, 3 (SCOI.38894).

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Events after October 1983

108. According to Ms Seneviratne, in 1992, and just after speaking to the police about Mr Baumann's disappearance, she made various enquiries and obtained the contact number for Mr Smyth. At that time, she telephoned him and asked if he knew where Mr Baumann was. Mr Smyth said: "No sorry love I have'nt [sic] heard from him for years". Ms Seneviratne again telephoned that number and asked to speak to 'Dillian'. She states that the following conversation ensued:

Unknown male: "Speaking"

Ms Seneviratne: "Do you have any idea as to where Peter is?"

Unknown male: "No I don't know where he is, who's calling?"

Ms Seneviratne: "I know what was written in the letter. I know that you were going to leave Oliver for Peter."

Unknown male: [becomes upset] "I'm in the security business. I'll find out who you are."

109. Ms Seneviratne then hung up and made no further enquiries after that incident.¹¹⁸ Ms Seneviratne's separate reference to speaking to Mr Smyth and then speaking to a person who answered to 'Dillian' suggests she did not think they were the same voice.
110. The evidence available in 1993 indicated that, at that time, both Mr Smyth and Mr Keasberry had some connection with the security industry, in that Mr Keasberry held a security licence and Mr Smyth was the director of a security firm named Watchguard Pty Ltd.¹¹⁹
111. There is other evidence before this Inquiry that suggests that prior to finalising his statement, on 15 October 1993, Mr Smyth telephoned police. NSWPF records indicate that Mr Smyth told police that Mr Baumann was probably accidentally killed by unknown persons and that his body was "probably dumped in a bush". The records further indicate that Mr Smyth told police he "wished to speak privately of [the] matter in the future". There is nothing to suggest that police ever followed up Mr Smyth or acted on his desire to speak privately to them.¹²⁰
112. Furthermore, at some stage during the police investigation, Mr Smyth told police not to speak to Mr Keasberry as he was exclusively heterosexual, "highly moral" and had very little contact with

¹¹⁸ Statement of Sharmelie Seneviratne, 26 August 1993, [11] (SCOI.10850.00020).

¹¹⁹ Report of Senior Constable John Gribble regarding missing persons investigation, 3 December 1993, 8 (SCOI.38945).

¹²⁰ Missing Persons Unit Running Sheet, 15 October 1993, 3 (SCOI.38950).

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Mr Baumann.¹²¹ The NSWPF records also contain the following handwritten note under information about Mr Keasberry:

*Shares house with SMYTH and was sharing house at the time of relationship with BAUMANN financial arrangement (both equal partners in house at Edgecliff at time of disappearance.) SMYTH denies that OLIVER homosexual, describes him as very straight, conservative highly moral person ? does not want police to interview OLIVER.*¹²²

113. The Artlett Street property was later sold (in the mid-1980s).¹²³ There is no evidence to suggest that any person other than Mr Smyth or Mr Keasberry lived there, although this line of enquiry does not appear to have been exhausted by police. There is also evidence that Mr Smyth leased an adjacent property to the Artlett Street residence, which had an in-ground swimming pool, and that parties were held on this property from time to time.¹²⁴ It appears that swimming pool was filled in prior to the sale of the property in the mid-1980s.
114. A number of other developments happened in relation to this case in 2007 when the police took steps to further the investigation into Mr Baumann's disappearance. At this time, police established that Mr Smyth was still living with Mr Keasberry but they had relocated to Western Australia.¹²⁵ Upon speaking to the police in 2007, Mr Smyth denied ever saying that Mr Baumann may have been accidentally killed and dumped in a bush.¹²⁶
115. Ms Seneviratne also prepared a second statement that was dated 27 April 2007. In that statement she recalled an occasion in 1996 where a brown Valiant drove up and down her street. She watched the vehicle for a period and then saw a man standing under a tree across the road. She thought the man looked like Mr Baumann and had similar physical features. She saw the man approach her house and quickly closed the door before contacting her neighbour. The man walked back under the tree across the road.¹²⁷
116. It is submitted that the above evidence raises many questions that the NSWPF did not seek to explore. Furthermore, and to the extent that there are inconsistencies in the above evidence, it appears that

¹²¹ Request by Senior Constable Gribble to be assigned, 22 November 2016, [55] (SCOI.11010.00007).

¹²² Report of Senior Constable John Gribble regarding missing persons investigation, 3 December 1993, 8 (SCOI.38945_013).

¹²³ Request by Senior Constable Gribble to be assigned, 22 November 2016, [77] (SCOI.11010.00007).

¹²⁴ Letter from Missing Persons Unit to NSWPF Services Section enclosing file and requesting decision re follow-up action, 4 March 1994, 4 (SCOI.38945).

¹²⁵ Investigator's Note – Contact with Allan Smyth, 18 April 2007 (SCOI.34300).

¹²⁶ Investigator's Note – Contact with Allan Smyth, 24 April 2007 (SCOI.34303).

¹²⁷ Statement of Sharmalie Seneviratne, 27 April 2007, [5] (SCOI.10850.00022).

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no steps were taken in 1993 to 1994 to reconcile these inconsistencies with each other or to determine whether the evidence provided by each of the witnesses was reliable or not. Some steps were taken in 2007 to ascertain the reliability of the evidence provided by witnesses in 1993 but these steps were incomplete and rendered more difficult due to the passage of time.

Police Investigation

1983 to 1991

117. As noted above, Mr Baumann's disappearance was reported to the NSWPF in 1983.¹²⁸ Although there is evidence to indicate that the NSWPF attended the Cross Street premises and obtained some personal information about Mr Baumann, no contemporaneous record of any police investigation into Mr Baumann's disappearance at that time has been produced to this Inquiry. Although there is evidence to suggest that "all the Occ Pads and T.P. Messages for 1983 were accidentally burnt",¹²⁹ that does not explain the absence of any records of any investigative steps at all. Furthermore, there is evidence before this Inquiry that this matter was "not investigated until 1993".¹³⁰ It is not known why Mr Baumann's disappearance was not investigated at the time (see submissions at [19]-[22] above).

118. On 27 September 1989, Waverley Police Station conducted some routine checks for people listed as missing "within the Waverley patrol". No reference for Mr Baumann was found.¹³¹

1992 to 1994

119. From around 1992 the matter was investigated by SC Gribble from the Missing Person's Unit. SC Emery also appears to have been involved in the investigation from around this time.¹³²

120. In 1992, the NSWPF conducted various checks to see whether Mr Baumann could be located, but with no relevant results.¹³³

121. On 27 August 1993, the NSWPF received information from Interpol in relation to Mr Baumann.

¹²⁸ Report to Waverley Police Station made by Ruth Binney, 29 November 1982 (SCOI.10850.00106).

¹²⁹ Letter from Missing Persons Unit to NSWPF Services Section enclosing file and requesting decision re follow-up action, 4 March 1994, 6 (SCOI.38945).

¹³⁰ Request from Senior Constable John Gribble to be assigned case and response from Eastern Suburbs LAC, 13 February 2006 – 21 April 2006, 2 (SCOI.34229).

¹³¹ Report of Constable GR Aston regarding missing persons, including Peter Baumann, 27 September 1989 (SCOI.38969).

¹³² Running Sheet – Enquiries made by Constable Emery, 5 August 1992 – 26 March 2002 (SCOI.34263).

¹³³ Statement of Senior Constable Simon Field, 15 September 2008, [21] (SCOI.10850.00014); Inquiry – Chefpolice 1097/Baumann, 11 May 1992 (SCOI.10850.00043); Inquiry – Fedpol 174/Baumann/Missing Persons, 11 May 1992 (SCOI.10850.00042); Inquiry – Vedette 1007/Baumann/Missing Persons, 11 May 1992 (SCOI.10850.00041); Inquiry – SPHYNX 973/Baumann/Missing Persons, 12 May 1992 (SCOI.10850.00039); Inquiry – SPHYNX 982/Baumann, 14 May 1992 (SCOI.10850.00040).

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122. On 3 September 1993, a request was submitted to the Bavarian State Police via Interpol requesting that Anna Baumann, Mr Baumann's sister, be interviewed to obtain particular information.¹³⁴
123. On 9 September 1993, SC Gribble submitted a report to the Department of Immigration in relation a Japanese national, 'Hyuma Hoshi', who was identified as a possible witness to Mr Baumann's disappearance.
124. On 26 November 1993, the NSWPF wrote to the ABC to request their assistance in obtaining the employment records of Mr Baumann and the contact details of Mr "Govey" (presumably referring to Mr Gover).¹³⁵
125. In 1993, "a number of statements were obtained from next of kin and witnesses".¹³⁶ These statements included:
- a. A statement of Ms Seneviratne dated 26 August 1993;
 - b. A statement from Mr Smyth dated 16 November 1993;
 - c. A statement of Ms Binney dated 16 November 1993; and
 - d. A statement of Ms Foster dated 14 September 1994.
126. In 1994, Mr Baumann's matter was briefly transferred to Waverley Police Station before being almost immediately transferred back to the MPU.¹³⁷
127. On 26 May 1994, the NSWPF spoke with Mr Baumann's brother and sister (Anna and Franz Baumann) who had arrived in Australia from Germany the previous day. At this meeting the NSWPF "spoke... at length" and Mr Baumann's siblings were "informed of the possibilities concerning their missing brother".¹³⁸ As at this date, Mr Baumann's family had only recently been informed there had been a missing persons report made about their son and brother.¹³⁹
128. On 30 May 1994, Mr Baumann's brother and sister met with Ms Foster at the MPU. NSWPF records indicate that the "Baumanns appeared to be distressed as to the lack of Police action taken".¹⁴⁰

¹³⁴ Request to Interpol re further information from Anna Baumann, 3 September 2003 (SCOI.34289).

¹³⁵ Letter from Inspector Morton to V Rimoldi (ABC) regarding Peter Baumann, 26 November 1993 (SCOI.38894).

¹³⁶ Statement of Senior Constable Simon Field, 15 September 2008, [4] (SCOI.10850.00014).

¹³⁷ Report of Senior Constable J P Emery, Missing Persons Unit, 17 June 1994 (SCOI.38939).

¹³⁸ Running Sheet, 25 May 1994 – 1 June 1994, 2 (SCOI.34256).

¹³⁹ Running Sheet, 25 May 1994 – 1 June 1994, 3 (SCOI.34256).

¹⁴⁰ Running Sheet, 25 May 1994 – 1 June 1994, 2 (SCOI.34256).

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129. There is evidence to suggest that by June 1994, there was tension between SC Gribble and SC Emery about the NSWPF response to Mr Baumann's disappearance.¹⁴¹ As noted above, SC Gribble appears to have been frustrated or angry that not enough was being done and that Mr Baumann's family had not been told earlier about the disappearance. SC Emery appears to have been opposed to investigating the matter further. Without full records, it is impossible to draw any definitive conclusions about what appears to be conflict within the NSWPF about this matter.

1999 to 2002

130. on 11 November 1999, the NSWPF received a request from Mr Baumann's siblings, through Interpol, that further attempts be made to try and find him.¹⁴²

131. In 2001, certain routine checks were made to try to ascertain Mr Baumann's whereabouts.¹⁴³ On 11 September 2001, a fax was sent by the MPU to Mr Baumann's family providing them with an update and informing them of a program whereby the MPU obtained DNA samples from the families of long term missing persons.¹⁴⁴ There was subsequent correspondence through Interpol about arranging a DNA sample from Mr Baumann's parents.¹⁴⁵

132. In 2002, Operation Utica was instituted with a view to investigating a number of missing persons matters within the Penrith Local Area Command. Mr Baumann's matter seemingly fell within the purview of Operation Utica. Notwithstanding, it appears that no investigative steps were taken in furtherance of Mr Baumann's matter. Rather, an attempt was made to reassign the matter to the Eastern Suburbs Local Area Command. Separate to Operation Utica, the MPU made checks with financial institutions in respect of Mr Baumann during this time.¹⁴⁶

2005 to 2009

133. On 9 November 2005, Detective Sergeant (**DS**) Darren Smith was appointed as the Officer In Charge.¹⁴⁷ DS Smith undertook the following investigative steps:

- a. On 17 November 2005, DS Smith made enquiries with the Coroners Court to relation to whether they held any records in relation to Mr Baumann but they did not.¹⁴⁸

¹⁴¹ Running Sheet, 25 May 1994 – 1 June 1994, 3 (SCOI.34256).

¹⁴² Interpol request to Missing Persons Unit regarding review of matter, 11 November 1999 (SCOI.38957).

¹⁴³ Fax to Interpol regarding inquiries with Centrelink and Department of Industry, 25 July 2001 (SCOI.38944).

¹⁴⁴ Fax from Constable Karen Dawson to Interpol regarding status of investigation, 11 September 2001 (SCOI.34287).

¹⁴⁵ Letter to Interpol Canberra enclosing DNA samples from parents, 19 October 2001, (SCOI.34261).

¹⁴⁶ Results of inquiries with financial institutions re Peter Baumann, 26 March 2002 to 2 April 2002 (SCOI.34225).

¹⁴⁷ Statement of Detective Sergeant Darren Smith, 12 August 2008 (SCOI.34345).

¹⁴⁸ Statement of Detective Sergeant Darren Smith, 12 August 2008, [4] (SCOI.34345).

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- b. On 17 November 2005, DS Smith contacted the MPU to obtain the investigative file in relation to Mr Baumann and “all related paperwork”. On 7 December 2005, DS Smith received the requested items and he recorded that it consisted of “the statements obtained by Police investigating BAUMANN’S disappearance and enquiries made by Police back in 1993, 10 years after he was reported missing”.¹⁴⁹
- c. On 5 April 2006, DS Smith sought to have Mr Baumann’s case allocated to the “detective’s office at Eastern Suburbs” for further investigation.¹⁵⁰ On 7 March 2007, the case was allocated to DS Smith when he transferred to the Eastern Suburbs LAC.¹⁵¹
- d. In April 2007, DS Smith contacted and obtained statements from John Pauperis (Ms Foster’s boyfriend at the time Mr Baumann disappeared), and Hamish Pears.¹⁵² The statement of Mr Pauperis is dated 11 April 2007 and the statement of Mr Pears is dated 13 April 2007.
- e. Also in April 2007, DS Smith contacted Mr Smyth and Mr Keasberry and recorded that Mr Smyth’s “memory may be failing him” and that Mr Keasberry denied ever knowing Mr Baumann.¹⁵³ DS Smith was unable to contact Ms Foster.¹⁵⁴
- f. Also in April 2007, DS Smith contacted Ms Seneviratne who confirmed she had no further information than what she provided the NSWPF in 1993 save that she thought she had seen Mr Baumann in 1996 but she did not report this to the police.¹⁵⁵ A further statement from Ms Seneviratne was subsequently obtained which is dated 27 July 2007.
- g. In May 2008, DS Smith requested information from Medicare, telecommunications companies, Centrelink, the NSW Electoral Commission and the Department of Immigration and Citizenship.¹⁵⁶
- h. Also in May 2008, DS Smith made enquiries within the NSWPF about whether any unidentified persons had been located that matched Mr Baumann’s description or whether two items of property (Mr Baumann’s guitar and carving knife) were handed to Parramatta Police Station on 13 September 1993 by SC Gribble. No relevant results appear to have been obtained.¹⁵⁷

¹⁴⁹ Statement of Detective Sergeant Darren Smith, 12 August 2008, [5]-[6] (SCOI.34345).

¹⁵⁰ Statement of Detective Sergeant Darren Smith, 12 August 2008, [7] (SCOI.34345).

¹⁵¹ Statement of Detective Sergeant Darren Smith, 12 August 2008, [7] (SCOI.34345).

¹⁵² Statement of Detective Sergeant Darren Smith, 12 August 2008, [9]-[10] (SCOI.34345).

¹⁵³ Statement of Detective Sergeant Darren Smith, 12 August 2008, [12] (SCOI.34345).

¹⁵⁴ Statement of Detective Sergeant Darren Smith, 12 August 2008, [13] (SCOI.34345).

¹⁵⁵ Statement of Senior Constable Simon Field, 15 September 2008, [5] (SCOI.10850.00014).

¹⁵⁶ Statement of Detective Sergeant Darren Smith, 12 August 2008, [14]-[18] (SCOI.34345).

¹⁵⁷ Statement of Detective Sergeant Darren Smith, 12 August 2008, [20]-[21] (SCOI.34345).

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134. In 2006, the Eastern Suburbs Local Area Command requested the assistance of the NSWPF Homicide Squad. This request for assistance was denied pending any coronial findings being made as to the disappearance of Mr Baumann.¹⁵⁸
135. On 8 March 2007, Strike Force Blissett was formed to investigate the circumstances surrounding the 1983 disappearance of Mr Baumann.¹⁵⁹
136. Between 26 May 2008 and 3 June 2008, the investigation into Mr Baumann's disappearance was transferred to Plain Clothes Senior Constable (PC SC) Simon Field.¹⁶⁰ PC SC Field "made a number of name checks utilising the Police and RTA systems" and "received information.... That a fresh search of the 'Unidentified Bodies' data base had failed to locate a match for BAUMANN".¹⁶¹
137. On 25 April 2008, PC SC Field completed the P79A. PC SC Field concluded that:

*It is apparent that BAUMANN is missing believed deceased. BAUMANN has not left the country under his original passport and is believed to still be in the country. Through the various witness statement it may appear that BAUMANN has met with foul play with the varied and bizarre relationships he held whilst in Australia. Although it can not be discounted that BAUMANN, using an alias, has simply changed his name to avoid detection, so that he may remain within Australia illegally, as is stated by witnesses, that he had held grave fears of returning to Germany. Due to the length of time involved in this investigation, police have little evidence at this stage to assist in the disappearance of BAUMANN.*¹⁶²

2011 onwards

138. In 2011, 2014 and 2016 to 2017, several discrete investigations were made regarding Mr Baumann's dental records and potential links with an unidentified body in the Northern Territory. There also appears to have been some liaison between the MPU and the Eastern Suburbs Local Area Command regarding outstanding requisitions to be progressed.

¹⁵⁸ Response from Detective Chief Superintendent Rock Del Monte re request for State Crime Command assistance, 12 April 2006 (SCOI.10850.00038).

¹⁵⁹ Response of Detective Inspector Leggat to request by Senior Constable Gribble, 13 April 2017 (SCOI.11010.00003).

¹⁶⁰ Statement of Detective Sergeant Darren Smith, 12 August 2008, [26] (SCOI.34345); Statement of Senior Constable Simon Field, 15 September 2008, [3] (SCOI.10850.00014).

¹⁶¹ Statement of Senior Constable Simon Field, 15 September 2008, [26]-[27] (SCOI.10850.00014).

¹⁶² Statement of Senior Constable Simon Field, 15 September 2008, [29] (SCOI.10850.00014).

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Hypotheses as to manner and cause of Mr Baumann's death

139. As noted above, there are a number of available hypotheses as to the manner and cause of Mr Baumann's disappearance and death.
140. **First**, Mr Baumann may still be alive and living under an assumed identity. This hypothesis was considered likely by SC Emery in 1994¹⁶³ and possible by SC Gribble.¹⁶⁴ The fact that Mr Baumann used other identities or aliases including "Peter Moltzen" and "Peter Ann" may support this theory. Some more support for this hypothesis may be drawn from the fact that Mr Baumann was reluctant to return to Germany for compulsory military service. However, the evidence on this point is equivocal and he had already obtained permanent residency. It is also noted that all proof of life checks have returned unsuccessful results since the police began making them in 1992.
141. Accordingly, although it is highly doubtful that Mr Baumann is still alive, this hypothesis cannot be completely ruled out.
142. **Second**, Mr Baumann may have died by suicide. This hypothesis was also considered likely by SC Emery in 1994,¹⁶⁵ although unlikely by SC Gribble.¹⁶⁶ Although there are no medical records before the Inquiry concerning Mr Baumann's medical history, some witnesses have given evidence about Mr Baumann's depression and a marked decline in his mental health in around March 1982. During this period, he was said to have become increasingly paranoid and aggressive, which may have been due to Mr Baumann's belief that persons were conspiring to have him deported.¹⁶⁷ There is also evidence that in the days or weeks preceding his disappearance, Mr Baumann was absent from work, apparently due to influenza and nausea. Furthermore, it is alleged that Mr Baumann stated words to the effect of, "I would rather die than return to Germany".¹⁶⁸
143. However, any evidence said to support the hypothesis that Mr Baumann died by suicide must be considered against other evidence, including that that Mr Baumann had successfully obtained permanent residency in April 1983 and secured ongoing employment as a Sound Library Assistant at the ABC.

¹⁶³ Report of Senior Constable J P Emery, Missing Persons Unit, 17 June 1994 (SCOI.38939).

¹⁶⁴ Request by Senior Constable Gribble to be assigned, including investigation plan and list of inquiries, 22 November 2016, [96] (SCOI.11010.00007).

¹⁶⁵ Report of Senior Constable J P Emery, Missing Persons Unit, 17 June 1994 (SCOI.38939).

¹⁶⁶ Request by Senior Constable Gribble to be assigned, including investigation plan and list of inquiries, 22 November 2016, [94] (SCOI.11010.00007).

¹⁶⁷ Report of Senior Constable John Gribble regarding missing persons investigation, 3 December 1993, 5 (SCOI.38945).

¹⁶⁸ Statement of Cherie Kim Foster, 14 September 1993, [3] (SCOI.10850.00025).

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144. **Third**, Mr Baumann's death may have been caused by associates of Ms Foster. Support for this hypothesis can be obtained from evidence that Mr Smyth provided in his statement to police although it is not corroborated in any substantive way in any other evidence before this Inquiry.
145. Mr Smyth gave evidence that Mr Baumann paid Ms Foster in exchange for her getting married to him, and/or that she was a sex worker. According to Mr Smyth, Mr Baumann told him that persons described as Ms Foster's "protectors" had asked for "another \$30,000". They told Mr Baumann that they knew where he lived, and Mr Smyth formed the impression that they were blackmailing Mr Baumann. Although Mr Smyth did not know the precise nature of the threats directed at Mr Baumann, he thought they were of a physical nature. In a subsequent statement to police, Mr Smyth stated that he believed Mr Baumann was killed after a "situation got out of hand" and that his body had been disposed of in the bush.
146. However, it does not appear this hypothesis was pursued by the NSWPF in any considered or systematic way. Whilst a statement was obtained from Ms Foster in 1993, it did not address the allegations identified above. Further, it appears that no efforts were made to identify Ms Foster's "protectors" or whether, in fact, any threats were made to Mr Baumann. To that end, Ms Foster denies that a lump sum was ever paid to her, and attributes the weekly payment to Mr Baumann covering her loss of the "dole" upon their marriage.
147. **Fourth**, Mr Baumann may have been killed as a result of his relationship with Mr Smyth and/or Mr Smyth's partner, Mr Keasberry. This was also a hypothesis contemplated by investigating police.
148. From around December 1981 to the time of his disappearance, Mr Smyth and Mr Baumann were in a relationship. However, the nature of the relationship between Mr Smyth and Mr Keasberry is less clear. Mr Smyth and Mr Keasberry resided together in Artlett Street, Edgecliff, and indeed, they continued to reside together for many years after this. However, there is conflicting evidence as to Mr Keasberry's level of involvement with (or knowledge of) Mr Baumann, at least around the time of his disappearance.
149. The evidence provided by Ms Seneviratne that she found a letter in Mr Baumann's mailbox that was authored by someone called a "William" or "Dillian" who lived at the Artlett Street property was going to leave "Oliver" for Mr Baumann, may suggest Mr Smyth was in fact the "William" or "Dillian" who was in a relationship with Mr Keasberry. The contemporaneous file note by Mr Gover also records that he received a call from someone by the name of "William" who lived at the Artlett Street property (in his file note of this call Mr Gover put the name 'William' in inverted commas). That person told Mr

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Gover that they did not know the whereabouts of Mr Baumann.¹⁶⁹ It is also possible that the name ‘Allan’, when handwritten, could look like ‘William’ or ‘Dillian’, and when spoken, could sound like ‘William’. In this respect, it is relevant that Mr Smyth recalls speaking to a man from the ABC about Mr Baumann’s disappearance although his recollection was that a man from the ABC called him.¹⁷⁰

150. It could also be considered suspicious that Mr Smyth did not want police to speak to Mr Keasberry about Mr Baumann’s disappearance and the contents of the letter itself and the reference to difficulties in ‘selling the property’ may align with Mr Smyth and Mr Keasberry jointly owning the Edgecliff property.
151. A curious feature of the eventual sale of the Artlett Street property was the existence of a plastic swimming pool which was built on land adjacent to the property that was leased by Mr Smyth. The pool was filled prior to the Artlett Street property being sold in December 1987.¹⁷¹
152. Furthermore, Mr Baumann’s family are of the view that Mr Baumann’s disappearance is linked to his “homosexual contacts” and their impression that Mr Keasberry was very jealous that Mr Baumann “intruded into this community”.¹⁷²
153. There is no record of NSWPF interviewing Mr Keasberry at any stage of their investigations, nor was this theory put to Mr Smyth or explored in any real way with any of the witnesses.
154. The evidence available to the Inquiry does not permit any positive conclusion about this theory.
155. **Fifth**, Mr Baumann was killed in a gay hate or gay bias motivated homicide. The evidence supporting this hypothesis is outlined above at paragraph [15].

Submissions as to bias

156. The Inquiry’s ability to assess whether any LGBTIQ bias was involved in Mr Baumann’s death is compromised by the fact that it is not apparent that Mr Baumann died as a result of foul play, and if so, who was involved in his death and why.
157. Nonetheless, there is evidence that suggests that Mr Baumann may have been a victim of foul play. Indeed, at all relevant times the NSWPF appeared to consider Mr Baumann’s disappearance as suspicious. For example, for the purpose of the coronial proceedings, PC SC Field furnished a statement in his capacity as Officer in Charge where he stated that “through the various witness statements it

¹⁶⁹ Letter from Inspector Morton to V Rimoldi (ABC) regarding Peter Baumann, 26 November 1993, 3 (SCOI.38894).

¹⁷⁰ Statement of Allan Smyth, 16 November 1993, 2 (SCOI.10850.00023)

¹⁷¹ Missing Persons Unit Running Sheet, 5 January 1993 – 29 November 1993, 2 (SCOI.38950).

¹⁷² Interpol request to Missing Persons Unit regarding review of matter, 11 November 1999, 2-3 (SCOI.38957).

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may appear that [Mr Baumann] was met with foul play” noting the “varied and bizarre relationships” he had whilst in Australia.

158. There are a limited number of factors that suggest his death may have occurred in circumstances of LGBTIQ bias, namely that Mr Baumann was a gay or bisexual man, that he disappeared in suspicious circumstances, and that the word ‘AIDS’ was written on a mirror at the Cross Street premises. As observed above, it is important to note that bias in relation to HIV-status does not necessarily indicate LGBTIQ bias, although there is significant potential for overlap, especially considering social attitudes to HIV and homosexuality at the time.
159. Although it is submitted that there is sufficient evidence to find that Mr Baumann is deceased, it is submitted that this evidence is insufficient to give rise to any positive finding that Mr Baumann’s death involved LGBTIQ hate or bias. In addition, there remains several reasonable alternative hypotheses about how Mr Baumann died, as identified above at paragraphs [139] to [155]. Several of those alternative hypotheses are less consistent with LGBTIQ hate or bias.
160. As indicated at [28] above, even if Mr Baumann was not the victim of a hate or bias crime, it is possible that the failure of the police to investigate the disappearance thoroughly in 1983 was influenced by bias. However, given the absence of adequate police records, no affirmative conclusion can be drawn in this regard.

Submissions as to manner and cause of death

161. It is submitted that the Inquiry should make a finding that is consistent with the finding of Deputy State Coroner Milovanovich, save that the finding of the Inquiry should reflect the evidence about the likely date that Mr Baumann went missing, as explained above at paragraph [8]:

Peter Baumann is deceased. I find that he died some time on or after 27 October 1983. As to the precise date of death, place of death or manner and cause of death from the available evidence I am unable to say.

Submissions as to recommendations

162. Counsel Assisting proposes the following further recommendation be made:
- a. That the NSWPF obtain a physical reference sample from Mr Baumann’s sister, Anna-Christa Baumann-Serr, for the purposes of ensuring that an autosomal DNA profile is available for searching against DNA profiled from unidentified human remains on the national DNA database.

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- b. That a recommendation should be made to the Registry of Births, Deaths and Marriages to correct the Register of Births, Deaths and Marriages pursuant to s 45(1)(b) of the *Births, Deaths and Marriages Registration Act 1995*, such that Mr Baumann’s date of death is recorded as “on or after 27 October 1983”.
163. Counsel Assisting understands that Ms Baumann consents to the above recommendation being made.
164. Counsel Assisting may make submissions as to further possible recommendations in confidential submissions.

James Emmett SC
Senior Counsel Assisting

Meg O’Brien
Counsel Assisting

The Special Commission of Inquiry
into LGBTIQ Hate Crimes

TENDER BUNDLE HEARINGS OF 26 AND 27 JUNE 2023

**Concerning the deaths of Anthony Cawsey, Barry Jones and
Peter Baumann**

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 26 and 27 June 2023 in relation to the deaths of Anthony Cawsey, Barry Jones and Peter Baumann.
2. None of these deaths were among those reviewed by Strike Force Parrabell.

Anthony Cawsey

Circumstances of death

3. On the morning of Saturday, 26 September 2009, Mr Cawsey's body was discovered on a path that ran along the southern bank of Busby's Pond in Centennial Park, Sydney. The Commissioner agrees that Mr Cawsey died in the 32 minute window prior to the discovery of his body at 5.56am (as phone records indicate he was on a phone call until 5.24am) (CA, [67]).
4. Mr Cawsey suffered a single stab wound to the chest. When he was found, his pants were in a position just above his knees. He was wearing a pair of pink women's underpants and a black G-string. Mr Cawsey's wallet, keys and mobile phone were all found on his person.¹
5. Police concluded that Mr Cawsey had been stabbed where his body was located because there was no blood trail in the vicinity and blood pooling was confined to Mr Cawsey's body and area immediately surrounding it.²
6. Mr Cawsey was gay. He was, however, relatively private about his sexuality and it appears

¹ Statement of Melanie Staples dated 24 February 2017 at [20]-[25] (SCOI.10464.00009).

² Statement of Melanie Staples dated 24 February 2017 at [24] (SCOI.10464.00009).

that many of his friends and family believed him to be heterosexual.³ He was a frequent user of gay chat line telephone services to speak with men.⁴ As noted by Counsel Assisting, the evidence indicates he had gone to Centennial Park to seek out a sexual encounter with a man (CA, [17]).

7. Dr Rebecca Irvine conducted a post-mortem examination on Mr Cawsey's body on 29 September 2009. Her report to the coroner determined that Mr Cawsey died of haemopericardium, an accumulation of blood in the pericardial cavity, due to a single stab wound to the left chest.⁵
8. On 6 October 2015, Moses Kellie was arrested and charged with the murder of Mr Cawsey. Mr Kellie was a homeless man who lived in Centennial Park at the time. Mr Kellie became a person of interest after making an admission to becoming angered after being repeatedly propositioned for sex by a man. Investigating police took this apparent admission to relate to Mr Cawsey.⁶
9. On 7 September 2016, the Office of the Director of Public Prosecutions (**ODPP**) withdrew the charge and Mr Kellie was discharged. The ODPP considered that there was no reasonable prospect of conviction.⁷
10. Between 11 and 13 December 2017, an inquest into Mr Cawsey's death was conducted by Deputy State Coroner Magistrate Russell. Deputy Coroner Russell suspended the inquest on the basis that there was evidence capable of satisfying a jury beyond reasonable doubt that Mr Kellie had committed an indictable offence and that there was a reasonable prospect that a jury would convict him of that offence.⁸
11. In March 2018, the ODPP again declined to prosecute Mr Kellie on the basis that there remained no reasonable prospect of conviction.⁹

Adequacy of police investigations

12. Counsel Assisting describe the initial police investigation as "extensive and thorough" (CA, [34] and [74]). Counsel Assisting also acknowledge that police considered the possibility that

³ Statement of Melanie Staples dated 24 February 2017 at [71] (SCOI.10464.00009).

⁴ Statement of Melanie Staples dated 24 February 2017 at [76] (SCOI.10464.00009).

⁵ Autopsy Report by Dr Rebecca Irvine dated 14 December 2009 at page 3 (SCOI.10464.00008).

⁶ ERISP Transcript of Moses Kellie dated 17 January 2010 (SCOI.10469.00004).

⁷ Letter advising of decision to withdraw charges dated 13 September 2016 (SCOI.83377).

⁸ Notice of suspension of inquest dated 5 March 2018 (SCOI.10483.00069); Referral from the Coroner to the ODPP dated 7 March 2018 (SCOI.10483.00054).

⁹ Letter from Peter McGrath SC to Magistrate Paula Russell dated 16 November 2018 (SCOI.10483.00062).

Mr Cawsey was killed as a result of a hate crime (CA, [75]).

13. Counsel Assisting make no criticisms of the original police investigation in the matter.
14. Counsel Assisting make a passing comment as to the time between Mr Cawsey's death and the charging of Mr Kellie with Mr Cawsey's murder, being about 6 years (during which, Mr Kellie was incarcerated for other offences) (CA, [35] to [37]).
15. It does not appear that the various potential explanations for the delay have been explored with either D/SC Staples or other investigating police.
16. In any event, it is noted that timing of Mr Cawsey's arrest does not appear to have had any impact on the ODPP's decision not to prosecute Mr Kellie.
17. It is noted that Counsel Assisting take a more tempered view than investigating police as to the weight that can be placed on the lies, admissions and previous involvements in instances of violence in the vicinity of Centennial Park police attributed to Mr Kellie (see CA, [98] to [199]). In coming to a different conclusion as to the probative value of that evidence, Counsel Assisting do not suggest that the investigation was deficient or pigeonholed in any way.

Anti-LGBTIQ bias

18. The Commissioner of Police agrees that the circumstances of Mr Cawsey's death give rise to a possibility that his sexuality was a factor in the attack which caused his death (CA, [15]).
19. That said, as identified by Counsel Assisting (CA, [290] – [291]), given the remaining doubts about the identity of Mr Cawsey's killer and the circumstances surrounding his death (including the motivations of the killer), it is not possible to arrive at a positive conclusion that Mr Cawsey's death was motivated by LGBTIQ bias.

Manner and cause of death and recommendations

20. The Commissioner of Police supports the submissions made by Counsel Assisting as to the manner and cause of the death, namely that Mr Cawsey died on 26 September 2009 at Centennial Park; the cause of death was Haemopericardium as a result of a stab wound to his left chest; and the person who inflicted the stab wound is unknown (CA, [292]).
21. The Commissioner of Police also supports the recommendations made at CA [293].

Barry Jones

Circumstances of death

22. On the morning of Monday, 27 September 1976, Mr Jones was found dead in the grandstand in Five Dock Park. Mr Jones likely died after 10pm on Sunday, 26 September 1976 (CA, [2]).
23. Mr Jones had been stabbed at least 53 times in the back, underside of the left arm, right side of his chest and stomach area. In addition, one large wound in the left side of his chest had been caused by further repeated knife blows. Mr Jones also suffered cuts to his throat.¹⁰
24. Mr Jones was last seen by various patrons at Western Suburbs Soccer Club on the evening of Sunday, 26 September 1976. It is apparent that he was heavily intoxicated that evening. Mr Jones had a blood alcohol level of 0.350 at the time of his death.¹¹
25. There was no positive evidence that Mr Jones was gay. If he was gay, he was not openly so (CA, [17]). There is evidence that Five Dock Park had been used as a beat up until about mid-1975.¹²
26. Mr Jones was fully dressed when he was found. He had a watch and \$2.26 in coins on him.¹³
27. On the day Mr Jones was found, Dr William Brighton examined his body at the scene. Later that day, Dr Brighton conducted a more detailed post-mortem examination at the mortuary. He concluded that:
 - a Mr Jones died as a result of haemorrhage and respiratory failure, as a result of multiple stab wounds to the chest and abdomen.¹⁴
 - b Mr Jones had no defensive cuts on his hands, although there was a single stab wound near the left wrist.¹⁵
 - c Several of the injuries suffered by Mr Jones were inflicted after his death, including the massive wound to the left chest area, slashing of the throat and two wounds to the front thoracic area.¹⁶
28. Investigating police took samples of Mr Jones' fingerprints.¹⁷ Police located fingerprints in

¹⁰ Post-mortem Report of Dr William Brighton dated 27 September 1976 at page 1-2 (SC01.10495.00016).

¹¹ Relevant Running Sheets, 27 September 1976 — 27 May 1977 at page 11 (SC01.83626).

¹² Relevant Running Sheets, 27 September 1976 — 27 May 1977 at page 148 (SC01.83626).

¹³ Relevant Running Sheets, 27 September 1976— 27 May 1977 at page 6 (SC01.83626).

¹⁴ Post-mortem Report of Dr William Brighton dated 27 September 1976 at pages 1 to 2 (SC01.10495.00016).

¹⁵ Post-mortem Report of Dr William Brighton dated 27 September 1976 at page 2 (SC01.10495.00016).

¹⁶ Post-mortem Report of Dr William Brighton dated 27 September 1976 at page 2 (SC01.10495.00016).

¹⁷ Relevant Running Sheets, 27 September 1976 — 27 May 1977 at page 4 (SC01.83626).

the grandstand. Police located broken bottles in the vicinity. These were seized and fingerprint analysis was conducted.¹⁸ Police were able to eliminate a number of persons known to Mr Jones as a result.¹⁹

29. An inquest into Mr Jones' death was conducted on 26 January 1978. Coroner John Parnell found that Mr Jones died on 26 September 1976 in the grandstand of Five Dock Park "from haemorrhage and respiratory failure due to multiple stab wounds to the chest and abdomen inflicted by a person or persons unknown."²⁰

Adequacy of police investigations

30. The officer in charge, Detective Sergeant Donald McCusker (**DS McCusker**), provided a statement which details the investigation undertaken by police.²¹ As set out in DS McCusker's statement, the police made extensive inquiries and spoke to more than 400 persons. At least 30 detectives worked full time on the investigation.²²
31. Counsel Assisting acknowledge that '[g]enerally speaking, it would appear that the police investigation at the time was extensive' (CA, [56]). The recording of the results of the investigative efforts appear to reflect the standards of the day (CA, [56]). In particular, consistent with the approach to record keeping of that time, information was often recorded by way of running sheet rather than formal statement, interviews were not recorded, and in most cases they were not transcribed verbatim (CA, [55]).
32. Counsel Assisting observe that, although there is no "theory" explicitly recorded in the notes by the original investigators that the murder had occurred at a beat and may have involved gay hate bias, they were evidently alive to the possibility that Mr Jones may have been gay and/or that his death may have occurred in circumstances that had been preceded by a sexual act (CA, [19]).
33. The only express criticisms raised by Counsel Assisting is that at some point after November 1976 the exhibits have been lost (CA, [57]). This is addressed further below.
34. Counsel Assisting speculate (without making a direct criticism) that the police questioning of person of interest NP246 about his whereabouts on the day of the murder appear to have done so in the presence of his parents (CA, [36]). There is no such indication

¹⁸ Relevant Running Sheets, 27 September 1976 — 27 May 1977 at page 8 (SC01.83626).

¹⁹ Relevant Running Sheets, 27 September 1976 — 27 May 1977 at page 82 (SC01.83626).

²⁰ Inquest into the death of Barry Jones— Findings dated 26 January 1978 (SC01.10495.00002).

²¹ Statement of DS McCusker dated 6 December 1977 (SC01.10495.00027).

²² Statement of DS McCusker dated 6 December 1977 at [10] (SC01.10495.00027).

that the questioning occurred in this manner. The relevant running sheet records (albeit in the single record) NP246's version of events and notes that "Mr and Mrs [NP246] were also interviewed".²³ This does not suggest that they were present during NP246's questioning.

35. It may be assumed that, even in 1976, investigating police were alive to the potential pitfalls of conducting an interview of a person in the presence of their alibi witnesses. It goes without saying that it would not have been appropriate for the witnesses to be interviewed collectively. There is not, however, any sound basis to positively conclude that such an approach was, in fact, adopted.

Retention of exhibits

36. During the investigation, police collected exhibits which included the following items subjected to forensic examination by Dr Robert James Goetz, forensic microbiologist, during the initial investigation:
- a Blood sample, penile swab and smear, anal swab and smear, hair sample and fingernail cuttings from Mr Jones and pair of white underpants and fawn trousers worn by Mr Jones. Semen was located on the swab and smear taken from Mr Jones' penis. Semen stains were found on the inside front of Mr Jones' underwear and trousers. The results of testing of the semen were consistent with the semen being from Mr Jones. Semen was not detected on the anal swab and smear.²⁴
 - b Knife located in Mr Jones body. Blood was located on the knife; however, it appears that it was not suitable for blood grouping.²⁵
 - c Raincoat from Florida Dry Cleaning Co. Blood was located on the raincoat.²⁶ It appears that this raincoat was located during a blanket canvass of drycleaners to ascertain whether items of clothing containing bloodstains were provided after Mr Jones' death. It appears that this raincoat was not linked to Mr Jones' death.²⁷
 - d Pair of white lady's shoes belonging to Carol Grant (who was Mr Jones' cousin-in-law who resided with Mr Jones and her husband, Kenneth Grant). No blood was located on these shoes.²⁸

²³ Relevant Running Sheets, 27 September 1976— 27 May 1977 at page 125 (SC01.83626).

²⁴ Report of Robert Goetz dated 5 November 1976 at pages 2-3 (SC01.10495.00028).

²⁵ Report of Robert Goetz dated 5 November 1976 at page 2 (SC01.10495.00028).

²⁶ Report of Robert Goetz dated 5 November 1976 at pages 1-2- (SC01.10495.00028).

²⁷ Statement of DS McCusker dated 6 December 1977 at [14] (SC01.10495.00027).

²⁸ Report of Robert Goetz dated 5 November 1976 at page 2 (SC01.10495.00028).

- e White and red torch collected from Kenneth Grant's car. Blood was located on the torch. However, the quantity of blood was insufficient for grouping.²⁹
 - f Seiko watch and silver chain belonging to Kenneth Grant. No blood was located on these items.³⁰
 - g Telephone book, from telephone box in Walker St, Haberfield. Blood was located on this telephone book seized from a telephone booth near Mr Jones' home. Blood grouping indicated that the blood appeared to be different to Mr Jones' blood.³¹
37. It is regrettable that the exhibits that may have been linked to Mr Jones' death were not retained. It is not clear on the material when the exhibits were destroyed or lost and which agency was responsible for any such decision (and for the ongoing retention of the exhibits to that time).
38. Notwithstanding the lapse of almost 50 years since the death, the Commissioner of Police agrees that it is unacceptable that key exhibits have not been retained. It is similarly regrettable that a record does not exist as to what happened to them.
39. It is noted that the knife was a central feature of investigating police's inquiries. Given the matter remained unsolved, and was plainly a homicide, steps should have been taken to record the location of, or what ultimately transpired in relation to, the exhibits (particularly the knife).
40. The Commissioner notes that it is likely that at least some of the blood sample, swabs and smears, hair sample and fingernail cuttings would have been consumed during the process of forensic examination. Further, it is noted that FASS (and its predecessor organisations) did not begin storing samples until 1985 (CA, [130]).
41. It appears that all forensic testing that could be conducted on the exhibits at that time of the initial investigation was undertaken.³² Most of the items identified by Counsel Assisting were ruled out as having any connection (based on the available technology) to Mr Jones' murder.
42. The advancements in forensic testing capabilities and identification by DNA in the more than 40 years since Mr Jones' death could simply not be known in the 1970s. Indeed, the earliest DNA testing in a criminal context did not occur until 1986 in the UK (i.e. a decade after Mr

²⁹ Report of Robert Goetz dated 5 November 1976 at page 2 (SCOI.10495.00028).

³⁰ Report of Robert Goetz dated 5 November 1976 at page 2 (SCOI.10495.00028).

³¹ Review of an unsolved homicide case screening format (undated) at page 10 (SCOI.62861).

³² Report of Robert Goetz dated 5 November 1976 (SCOI.10495.00028).

Jones' death). DNA testing was not available as an investigative tool to NSW police for a number of years thereafter. Even had such exhibits been retained, whether they would be suitable for testing, the results of such testing and the inferences able to be drawn from those results about the circumstances of Mr Jones' death are matters of speculation.

43. In two statements provided to the Inquiry dated 2 May 2023 and 22 May 2023, Assistant Commissioner Conroy has set out in detail the developments to NSWPF's exhibits management practice since the 1970s and 1980s, including in respect of the handling, recording and storage of exhibits. For the reasons set out in those statements, particularly in relation to the development and operation of the Exhibits Forensic Information and Miscellaneous Property System, to the extent the exhibits were lost as opposed to consumed during testing, it is highly unlikely that a similar issue would occur today.
44. Counsel Assisting suggest that there is no record indicating that police ever sought to obtain fingerprints from the knife found in Mr Jones' chest (CA, [53]). The available material indicates that the knife, amongst various other exhibits, was provided to the Health Commission of New South Wales for forensic examination.³³ Further, DS McCusker's statement indicated that³⁴:

Detective R Johnston of the Scientific Section arrived and I was present when he took certain photographs and measurements and carried out other scientific duties. A statement has been supplied by that Detective fully setting out the inquiries he conducted.

45. The tender bundle does not contain Detective Johnston's statement. Therefore, it is not clear whether such a statement is presently available (noting that the material produced by NSWPF to the Inquiry was produced in hard copy without a record of the material produced being taken by NSWPF). Given the thoroughness of the initial investigation and the fact that fingerprinting was conducted on Mr Jones, the grandstand in which he was located and on beer bottles located in the vicinity of the grandstand, it is more likely than not that fingerprinting on the knife would have been conducted and that any prints located would have been recorded and pursued.
46. The Commissioner of Police agrees that a failure to attempt fingerprinting of the knife would have been a very significant deficiency in the investigation. For the reasons expressed

³³ Report of Robert Goetz date 5 November 1976 at page 2 (SCOI.10495.00028).

³⁴ Statement of DS McCusker dated 6 December 1977 at [3] (SCOI.10495.00027).

above, however, the Inquiry could not conclude that this is what occurred.

Information from Patrick Syron in 1998

47. On 5 May 1998, Patrick Syron informed police that he had been talking to an acquaintance, I392 who claimed that NP246 was responsible for Mr Jones' murder. Mr Syron had apparently indicated that I392 had died as a result of jumping out of a hospital window.³⁵
48. Counsel Assisting note that the available material does not record whether Mr Syron provided a formal statement to police, nor does it record whether any attempt was made to locate and speak to I392 (CA, [96]).
49. However, Counsel Assisting have since confirmed that I392 was indeed spoken to by police following the 1998 report made by Mr Syron. The Commissioner of Police accepts that a record of the conversation or interview with I392 should have been made (or, if it was made, retained).
50. Counsel Assisting also note that the material produced to the Inquiry does not disclose whether, upon the receipt of information from Mr Syron in 1998, or during the course of the UHT's subsequent considerations of the case, consideration was given to locating exhibits for potential DNA testing (or fingerprinting, in the case of the murder weapon). Counsel Assisting suggest that if this did not occur, it should have, and may have yielded valuable evidence (CA, [133]).
51. It is not clear on the material presently available whether or not those enquiries were made. It appears that the police officers involved in those aspects of the case have not been approached by the Inquiry regarding whether such steps were taken.

Information from Allan Adair in 2018

52. In 2018, Allan Adair provided a statement to New Zealand Police that gave the following account³⁶:
 - a He recalled attending the Five Dock Hotel on a Saturday before the murder with his father (Robert Adair Sr), his brother (Robert Adair Jr), and three of his father's friends:
 - b Two men then walked into the pub: "one was short and squat with black hair, and the other was taller and skinnier with long blonde hair". They were younger than Mr Adair.'

³⁵ COPS Event E49993 dated, 8 May 1998, 1 (SC01.11032.00002).

³⁶ Statement of Allan Adair dated 4 February 2018 (SC01.62862).

- c The two men saw Mr Jones sitting underneath the windows and they kept saying 'that bastard he's a queer, he's a poof.'
 - d The blonde man took a knife out of his jeans and said that it would be no good for slashing but would be really good for stabbing. Mr Adair described the knife as having "a handle shaped like a deer's hoof at the end".
 - e Mr Adair found out about the murder when his father came home and told the family. Some time later, Mr Adair saw a newspaper article about the murder with an accompanying photograph of the murder weapon. He believed that the weapon was the knife that he described the blonde man as having. When he raised this with his father, his father said, "no, you didn't bloody see nothing, you didn't hear nothing". He did not report the information at the time as a result of these comments made by his father to him.
53. Upon receipt of this information, Detective Sergeant Peter Costello (**DS Costello**) of the NSWPF reviewed the relevant materials. DS Costello concluded that, despite extensive canvassing of patrons who were at the Five Dock Hotel on 25 September 1976, there was no mention of:
- a Allan Adair being present at the Hotel on that occasion.
 - b Any person being in possession of a knife.
54. DS Costello therefore reasoned that if Mr Adair did see Mr Jones at the Five Dock Hotel, it was two or more weeks before the murder.³⁷ Regardless, DS Costello tested Mr Adair's account of events during a telephone interview. Mr Adair accepted that aspects of his recollection must be muddled — he claimed that he had moved to New Zealand in June 1976, three months before the murder.³⁸ Also, Mr Adair was not able to provide any more detailed description of the knife or the two men. It is potentially noteworthy that details of the murder weapon appear to have been shown on televised news in November 1976.³⁹
55. Mr Adair was unable to identify anyone who was alive and could corroborate his account, except his brother, Robert Adair Jr. DS Costello provided Mr Adair with his contact details and advised him to contact him or the Unsolved Homicide Team if he had any further

³⁷ Investigator's Note — Information of Allan Adair provided via New Zealand Police dated 23 May 2018 at pages 1-4 (NPL0120.0001.0001).

³⁸ Investigator's Note — Information of Allan Adair provided via New Zealand Police dated 23 May 2018 at pages 4-5 (NPL.0120.0001.0001).

³⁹ Relevant Running Sheets, 27 September 1976 — 27 May 1977 at page 1 (SC01.83626).

information.⁴⁰

56. Counsel Assisting observe that the materials produced to the Inquiry do not record any further action taken by NSWPF following the information provided by Mr Adair (CA, [120]). This is a matter which the Inquiry could have, but has not, taken up with DS Costello.

Anti-LGBTIQ bias

57. The Commissioner of Police agrees that it is *possible* that Mr Jones' death was one in which LGBTIQ bias was a factor.
58. Counsel Assisting's assessment that it is *probable* that Mr Jones' death was one in which LGBTIQ bias was a factor (CA, [173]) is, however, surprising giving the paucity of evidence relating to the identity of the offender/s or the motivations driving the murder of Mr Jones.
59. The evidence of Mr Adair does not appear to be sufficiently reliable to enable a positive conclusion that he observed Mr Jones at the Five Dock Hotel and/or that his observations were made on the day of Mr Jones' death.
60. It may be accepted that the fact that the Five Dock Park had been a beat or a "regular meeting place for homosexuals" is a relevant consideration in assessing the presence or absence of bias, as is the possibility that Mr Jones may have been gay (CA, [174]). Similarly, the apparently frenzied nature of the attack is potentially consistent with a gay-hate homicide (CA, [176]).
61. In the absence of further evidence regarding the identity or motivations of Mr Jones' killer/s, however, it is difficult to see how a positive conclusion, on the balance of probabilities, can be arrived at in relation to the possibility that bias played a role in Mr Jones' death.
62. Indeed, it is at least arguable that the indicia of bias are stronger in respect of Mr Cawley's death than they are in respect of the murder of Mr Jones. In this respect, the two cases are illustrative of the fact that ascribing bias motivations is by no means a straightforward task; it is one in relation to which reasonable minds can – and do – differ.
63. While this matter was not the subject of consideration by SF Parrabell, it is of further note that *all* of the indicia relied upon by Counsel Assisting in formulating the view that Mr Jones' death was probably motivated by bias are matters contained within the BCIF.

⁴⁰ Investigator's Note — Information of Allan Adair provided via New Zealand Police dated 23 May 2018 at pages 5-6 (NPL.0120.0001.0001).

Manner and cause of death

- 64. The Commissioner of Police supports the submissions made by Counsel Assisting as to the manner and cause of the death (CA, [179]).
- 65. In line with the findings reached at the Coronial Inquest into his death, Mr Jones died on 26 September 1976 in the grandstand of Five Dock Park, Park Road, Five Dock from haemorrhage and respiratory failure due to multiple stab wounds to the chest and abdomen inflicted by a person or persons unknown (CA, [179] – [180]).

Peter Baumann

Circumstances of disappearance

- 66. Mr Baumann has not been seen since 1983. His remains have never been found.
- 67. Mr Baumann was a gay or bisexual man.⁴¹ He was in a homosexual relationship with Allan Smyth at the time of his disappearance. He previously had two known relationships with women in Australia, including having married Cherie Foster in June 1982. He was divorced in June or July 1983.⁴²
- 68. The last known sighting of Mr Baumann appears to have been when he ‘walked off duty’ from his work at the ABC at about 11.30am on 27 October 1983.⁴³
- 69. Sharmalie Seneviratne (now Sharmalie Kotoga) (**Ms Seneviratne**),⁴⁴ who was a previous girlfriend of Mr Baumann, stated that⁴⁵:
 - a During a telephone conversation with Mr Baumann, "the telephone went dead in his mid sentence". Ms Seneviratne tried to ring Mr Baumann back "a number of times but the line was dead".
 - b She drove to Mr Baumann's house because she was worried something had happened to him. She noted that Mr Baumann's house was "very untidy" and it "looked as though there had been a struggle in the room". She also noticed that a

⁴¹ Missing Persons Unit Investigation Plan dated 11 March 2006 (SCOI.34221).

⁴² Statement of Sharmalie Seneviratne dated 26 August 1993, [4] (SCOI.10850.00020).

⁴³ Letter from ABC Welfare Officer to Peter Baumann, including file note re contact with Ruth Binney and Sharmalie Seneviratne dated 7 November 1983 (SCOI.10850.00046).

⁴⁴ Used for ease of reference given that the CA and the police investigative file uses that name.

⁴⁵ Statement of Sharmalie Seneviratne dated 26 August 1993 at [5] (SCOI.10850.00020).

small cushion had been burnt in the shower recess.

70. At the time of his disappearance, Mr Baumann was in a relationship with Allan Smyth.⁴⁶ It appears that Mr Smyth was also in a long-term relationship with another man called Mervyn Oliver Keasberry at the same time (although that relationship may not have been sexual).⁴⁷
71. On 29 November 1983, a missing persons report was prepared by the NSWPF, recording a report by Mr Baumann's landlady, Ruth Binney.⁴⁸ It appears that Ms Binney rather than Ms Seneviratne initially reported Mr Baumann's disappearance to police. Indeed, Ms Seneviratne stated in her 1993 statement that she did not do anything more about the matter because she was scared and also felt that the police would not "take it seriously as it would just sound like a domestic argument".⁴⁹
72. On or about 25 June 2008, NSWPF reported Mr Baumann's disappearance to the coroner.⁵⁰
73. On 4 August 2009, an inquest was held. That day, Deputy State Coroner Milovanovich found that Mr Baumann was deceased, but was unable to determine a precise date, place, or the manner and cause of his death.⁵¹

Availability of records regarding initial investigation

74. There are limited contemporaneous records available regarding Mr Baumann's disappearance in 1983. The Commissioner of Police agrees that it is concerning *if* no investigation was conducted at the time (CA, [19]).
75. As Counsel Assisting point out at CA, [22], at some stage following the receipt of the report of Mr Baumann's disappearance, police officers from Waverley Police Station attended Mr Baumann's residence. A note was made or a photograph taken of Mr Baumann's identity card or passport details. No contemporaneous records regarding these steps are available.
76. While record keeping practices in the police (as in other organisations) have changed dramatically in the intervening 40 years, it seems more likely that whatever records were taken in 1983 are no longer available rather than that no investigative steps at all were taken, or that no records at all were made. It is of course lamentable if no investigative steps at all were taken in response to report of Mr Baumann's disappearance.

⁴⁶ Statement of Detective Sergeant Darren Smith dated 12 August 2008 at [12] (SCOI.34345).

⁴⁷ Statement of Detective Sergeant Darren Smith dated 12 August 2008 at [12] (SCOI.34345).

⁴⁸ Missing Persons Report made by Ruth Binney dated 29 November 1983 (SCOI.10850.00106).

⁴⁹ Statement of Sharmalie Seneviratne dated 26 August 1993 at [7] (SCOI.10850.00020).

⁵⁰ P79A Report of Death to Coroner dated 25 June 2008 (SCOI.10850.00012).

⁵¹ Finding of Deputy State Coroner Milovanovich dated 4 August 2009 (SCOI.10850.00002).

77. Four decades have passed since Mr Baumann's disappearance. The absence of records is entirely unsatisfactory. Indeed, it appears that some records may have been accidentally burned.⁵² It goes without saying that such a turn of events is unacceptable.
78. It is noted that electronic document management systems now used by police makes it very unlikely that similar issues would arise in respect of an investigation conducted today.
79. Similarly, the NSWPF's approach to missing persons reports generally has changed very significantly since 1983. Those changes are elsewhere addressed in evidence provided by the NSWPF to the Inquiry, and have resulted in a substantial decrease in the number of persons who remain missing on a long-term basis.⁵³

Adequacy of initial police investigation

80. Counsel Assisting's criticisms of the initial investigation are premised on the assumption that no investigative steps were taken in or around 1983. As noted above, there is a significant degree of speculation involved in the assessment of whether no investigative steps were taken, as distinct from the possibility that steps were taken, but no records of those steps have been retained.
81. A number of Counsel Assisting's criticisms of the initial investigation are addressed in turn below.
82. First, Counsel Assisting state that the NSWPF should have sought to speak with Mr Baumann's associates as soon as practicable after Mr Baumann disappeared (CA, [29]). They note that, *based on the documents produced to this Inquiry*, the NSWPF did not take any steps to test the veracity of the accounts provided to them by various witnesses, even when they conflicted.
83. It is accepted that, if such inquiries were not undertaken, this would represent a significant shortcoming of the initial missing person's investigation in 1983. However, as noted above, it is not possible to positively determine the scope of the investigative steps (or lack thereof) actually undertaken.
84. In respect of the suspicious circumstances surrounding Mr Baumann's disappearance, Counsel Assisting point to the apparent fact that the word 'AIDS' was written on the mirror to suggest that Mr Baumann's disappearance should have been suspected to have been

⁵² Report of Senior Constable John Gribble regarding missing persons investigation dated 3 December 1993 at page 6 (SCOI.38945).

⁵³ See Statement of Glen Browne, 22 May 2023, [64].

due to homicide and/or gay hate (CA, [15], [27] and [28]).

85. However, there is at least some reason to doubt the accuracy of Ms Binney's recollection (as she is the only person who appears to assert a firsthand recollection) of the presence of the word 'AIDS' is correct.
86. There is no mention in the contemporaneous material (albeit the material appears incomplete) which suggests that NSWPF were informed that Mr Bauman was gay or that the word 'AIDS' had been written on his mirror. Indeed, the material that is available (being the initial missing person report from Ms Binney⁵⁴ and a handwritten file note Mr Gover dated 7 November 1983⁵⁵ which referred an attendance at Mr Baumann's apartment after his disappearance) is the kind of material that would be expected to have included reference to the word 'AIDS' had it been present.
87. Further, it is notable that the following statements provided by witnesses during the investigation between 1992 and 1994 do not contain any mention of the words 'AIDS' written on a mirror (or anywhere else) in Mr Baumann's apartment:
 - a Statements of Ms Seneviratne dated 26 August 1993 and 27 April 2007. Ms Seneviratne described attending Mr Baumann's apartment twice in what is apparently the immediate aftermath of his disappearance. Ms Seneviratne did not make any reference to the words 'AIDS' written in the apartment.⁵⁶
 - b Statement of Allan Smyth dated 16 November 1993. Mr Smyth described attending Mr Baumann's flat at least once,⁵⁷ and possibly twice,⁵⁸ after Mr Baumann disappeared. While it is possible that Mr Smyth attempted to minimise his involvement in the matter in light of the letter which Ms Seneviratne says that she found, there is no apparent reason why he would admit to attending the property but omit any reference to the words AIDS being on the mirror.
 - c Unsigned statement of Ms Seneviratne's sister, who described attending a room with Ms Seneviratne.⁵⁹ If it was Mr Baumann's unit, she made no reference to the word 'AIDS' being on the mirror, or to Ms Seneviratne informing her that she observed it

⁵⁴ Report to Waverley Police Station made by Ruth Binney dated 29 November 1983 (SCOI.10850.00106).

⁵⁵ Letter from ABC Welfare Officer (H.A.R Gover) to Peter Baumann, including file note re contact from Ruth Binney and Sharmalie Seneviratne dated 7 November 1983 (SCOI.10850.00046).

⁵⁶ Statement of Sharmalie Seneviratne dated 26 August 1993 (SCOI.10850.00020); Statement of Sharmalie Seneviratne dated 27 April 2007 (SCOI.10850.00022).

⁵⁷ Statement of Allan Smyth dated 16 November 1993 at page 2 (SCOI.10850.00023).

⁵⁸ Statement of Allan Smyth dated 16 November 1993 at page 3 (SCOI.10850.00023).

⁵⁹ Unsigned notebook statement of Dilani Seneviratne dated 19 May 2008 (SCOI.34336).

written.

d Pears Hamish, who denied attending Mr Baumann's property with Ms Seneviratne.⁶⁰

88. The grim-reaper advertising campaign did not take place until 1987. The extent to which HIV / AIDS had become a focus of anti-LGBTIQ violence or public paranoia as at 1983 is not entirely clear.⁶¹ It may be that Ms Binney's recollection is not correct.
89. Second, Counsel Assisting state that the failure to establish a crime scene and/or identify or retain any exhibits of forensic value, and the failure to identify and locate relevant witnesses, has limited the ability of subsequent investigators and other finders of fact to establish the manner and cause of Mr Baumann's death.
90. These issues have not been explored with the relevant officers. There is, therefore, a significant degree of speculation involved in the assessment of what did, or did not, occur. If there was, in fact, a total failure to seek to identify relevant witnesses, that is undoubtedly concerning. Either way, the absence of records of contact with such witnesses necessarily hampers further consideration of the circumstances surrounding Mr Baumann's disappearance.
91. Third, Counsel Assisting submit that NSWPF should have ensured that its understanding of events was as accurate as possible, particularly in relation to understanding the chronology around Mr Baumann's disappearance (CA, [32]).
92. This observation is wholly uncontroversial; it is accepted that investigations need to be mindful of the unreliability of reconstructions based on a recollection many years later (CA, [32]).

MPU investigation

93. Counsel Assisting state that it was not until between 1992 and 1994 that an investigation into Mr Baumann's disappearance was conducted by the NSWPF Missing Persons Unit (**MPU and MPU Investigation**) (CA, [23]).
94. Counsel Assisting make some criticisms of the investigative steps taken at this time. These are addressed in turn below.

⁶⁰ Statement of Hamish Pears dated 13 April 2007 (SCOI.10850.00028).

⁶¹ There is a reference in Gary Wotherspoon's book, *Gay Sydney* (SCOI.03677) that suggests that HIV / AIDS-related homophobic paranoia may have appeared as early as May 1983 when a headline appeared in a newspaper stating that AIDS was "expected to sweep Australia" (see p. 222), though it is not clear how widespread such paranoia was at that juncture.

95. It appears that the police officers involved in the MPU Investigation have not been approached by the Inquiry regarding the bases for investigative steps taken (or, more importantly, not taken).
96. First, Counsel Assisting assert that the "failure to properly investigate Mr Baumann's disappearance in 1983 created a situation where it was much more difficult, even by 1992, for subsequent investigators to establish the manner and cause of Mr Baumann's death" (CA, [24]). As noted above, there is a question as to the extent to which there was a failure to investigate in 1983, rather than a failure of document retention.
97. Either way, the Commissioner of Police agrees that the lack of documentation regarding investigative steps being taken in 1983 being available to the MPU Investigation significantly constrained the MPU investigators. Counsel Assisting's criticism of the MPU Investigation needs to be considered in the context of the material that was available to the relevant officers.
98. Second, Counsel Assisting state that there were a number of investigative leads, generated by the information provided by these witnesses, that were also never tested, either in 1983 or in the investigatory steps taken in 1992 to 1994 (CA, [29]). Counsel Assisting assert that the NSWPF never made further enquiries about the "protectors" of Ms Foster who were allegedly threatening Mr Baumann, and nor did the police seek to interview Mr Keasberry.
99. A statement was obtained from Ms Foster during the MPU Investigation. It is not clear whether she was asked whether she was a sex worker and, if so, whether she made any comment regarding this (including whether she had a "protector"). Her statement made no mention of this.⁶² It is noted that Ms Foster's boyfriend at the relevant time, John Pauperis, subsequently provided a statement to police in which he indicated that he was aware that Ms Foster was a sex-worker, but unaware of her having a "protector". He further noted that she worked at a brothel (as opposed, for example, on the streets).⁶³
100. Third, Counsel Assisting note that police seized Mr Baumann's guitar and knife in 1993,⁶⁴ but they were never the subject of any forensic examination (CA, [16]). In 1994, these items were returned to Mr Baumann's family.⁶⁵
101. It is not clear based on the material presently available whether those items were subject to

⁶² Statement of Cherie Kim Foster dated 14 September 1994 (SCOI.10850.00025).

⁶³ Statement of John Pauperis dated 11 April 2007 (SCOI.10850.00026).

⁶⁴ Handwritten Running Sheet 5/1/1993 to 29/11/1993 at page 4 (SCOI.34262).

⁶⁵ NSWPF Running Sheet dated 26 May 1994 (SCOI.34256).

forensic testing. It does not appear that this has been explored with either the officer in charge of the MPU Investigation or other police involved in the MPU Investigation. However, the Commissioner notes the following:

- a It is likely that any forensic value in the guitar and the knife would have diminished in the 10 or so years before it was seized, especially noting that the items were transferred from Mr Baumann's apartment to Ms Binney's house. It is not clear whether the items would have been transported and stored in a manner which preserved any forensic value.
 - b There is no suggestion in the material that either the guitar or the knife contained any overt signs of involvement in Mr Baumann's disappearance (for example, the presence of bloodstains).
 - c The failure to retain these items must be considered in context. DNA testing was a relatively novel phenomenon as at 1993. 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.
102. Fourth, Counsel Assisting identify that there is evidence to suggest that by June 1994, there was tension between Senior Constable (**SC**) Gribble and SC Emery about the NSWPF response to Mr Baumann's disappearance, including about the fact that it had apparently taken over 10 years to notify Mr Baumann's family that he had been reported missing (CA, [33]). Counsel Assisting refer to an exchange between SC Gribble and SC Emery in which SC Emery is recorded as having indicated the following:
- a "Waverly Dets were satisfied that all avenues of inquiry have been exhausted and Waverly Dets would not make any further inquiries".⁶⁶
 - b "every attempt to locate Peter Baumann" had been made.⁶⁷
103. The Commissioner agrees with Counsel Assisting's comment that it is both notable and laudable that SC Gribble continued to agitate for this case to be reinvestigated as recently as 2016 (CA, [33]). However, it is appropriate to record that the Inquiry has not sought to explore with SC Emery the basis on which he held the belief he did regarding the adequacy

⁶⁶ NSWPF Running Sheet dated 26 May 1994 (SCOI.34256).

⁶⁷ Report of Senior Constable JP Emery, Missing Persons Unit dated 17 June 1994 (SCOI.38939).

of the investigation.

Anti-LGBTIQ bias

104. The Commissioner of Police agrees that there is insufficient evidence to give rise to any positive finding that Mr Baumann's death involved LGBTIQ hate or bias (CA, [159]).
105. Undoubtedly, anti-LGBTIQ bias was widespread in society in 1983 (and for many years thereafter). Such bias no doubt infected at least some policing activity in that period. Nevertheless, Counsel Assisting's suggestion that it is possible that the failure of the police to investigate the disappearance thoroughly in 1983 was influenced by bias (CA, [160]) is entirely speculative. It has not been explored with the relevant officers, who are not represented before this Inquiry.
106. In particular, it is not apparent on the material presently available whether the investigating police officers were aware that Mr Baumann was, or might have been, gay.
107. Additionally, for the reasons explored at paragraphs [74] to [79] and [84] to [88] above, there is both a question as to the reliability of Ms Binney's recollection regarding the word 'AIDS' on the mirror and in relation to the extent to which the absence of records regarding investigative steps is reflective of poor record keeping and/or retention as opposed to a total failure to investigate. As acknowledged above, either deficiency is unsatisfactory.

Manner and cause of death

108. The Commissioner of Police supports the submissions made by Counsel Assisting regarding the manner and cause of the death being consistent with the finding of Deputy State Coroner Milovanovich (save for the date), namely that Mr Baumann died some time on or after 27 October 1983, but the precise date of death, place of death or manner and cause of death are unknown (CA, [161]).

109. The Commissioner of Police also supports the recommendations made by Counsel Assisting at CA, [162].



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10 July 2023

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