



Special Commission of Inquiry into LGBTIQ hate crimes

SUBMISSIONS OF COUNSEL ASSISTING

26 June 2023

IN THE MATTER OF ANTHONY CAWSEY

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 Anthony Cawsey has been determined to fall within Category B of the Inquiry's terms of reference. That is, Mr Cawsey'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 be¹) 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. On the morning of Saturday 26 September 2009, at 5:56am, Mr Cawsey's body was discovered lying prone and outstretched on a path that ran along the southern bank of Busby's Pond in Centennial Park, Sydney.
4. Mr Cawsey had been on a phone call until 5:24am. He met his death in the 32-minute window between the end of the phone call and the discovery of his body.

Circumstances of death

5. Mr Cawsey had walked from his apartment in Redfern to Centennial Park in the early hours of the Saturday morning. The available evidence suggests that is likely that he went to Centennial Park for

¹ Transcript of the Inquiry, 2 November 2022, T138.43 (TRA.00003.00001).

Special Commission of Inquiry into LGBTIQ hate crimes

the purpose of engaging in sexual activity with a man. On his walk, he had phoned into a gay chat line, and prior to his death had connected with a man and spoke about sex while they engaged in mutual masturbation.²

6. Mr Cawsey suffered a single stab wound to the chest. When his body was found, his pants were pulled down to a position just above his knees, revealing a pair of pink women's underpants and a black g-string.³
7. The precise circumstances of Mr Cawsey's death, including the identity of the person who inflicted the stab wound, remain unknown.

Findings of post-mortem examination

8. An autopsy report was performed by Dr Rebecca Irvine on 29 September 2009.⁴ Her report to the coroner, dated 14 December 2009, 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. The knife punctured the right ventricle of the heart, and the injury would have been quickly disabling.
9. The stab wound was approximately 2.7cm long and 10 cm deep and caused by a single-edged blade. There were two small abrasions at the end of the wound,⁵ which could indicate that the knife had been pushed deep enough that the handle was touching the skin.⁶ The measurement of the wound could not be used to reliably estimate the size of the blade, as the human body is elastic and deformable, and the blade may not have entered the body cleanly or fully.⁷
10. In addition to the knife wound, Mr Cawsey had various small, superficial abrasions, including a 4 x 2 cm abrasion on the underside of his chin and a 3.2 x 0.6 cm abrasion on his right forearm.⁸
11. Toxicology samples indicated a modest concentration of alcohol (0.005g/110mL) and the presence of cannabinoids (Delta-9-tetrahydrocannabinol at 0.010 mg/L and Delta-9-THC Acid at 0.025 mg/L) and methamphetamine (0.2mg/L).⁹

² See below at [58]-[66].

³ See below at [68].

⁴ Autopsy Report by Dr Rebecca Irvine, 14 December 2009 (SCOI.10464.00008).

⁵ Autopsy Report by Dr Rebecca Irvine, 14 December 2009, p 3 (SCOI.10464.00008).

⁶ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [31] (SCOI.10464.00009).

⁷ Pathology Report of Dr Johan Dufflou, 1 November 2017 (SCOI.10488.00020). See below at [240]-[244].

⁸ Autopsy Report by Dr Rebecca Irvine, 14 December 2009, p 7 (SCOI.10464.00008).

⁹ Certificate of Analysis, Mark David, 21 October 2009 (SCOI.10465.00024).

Special Commission of Inquiry into LGBTIQ hate crimes

Persons of interest

12. The key person of interest in the death of Mr Cawsey is Moses Kellie. Mr Kellie was 24 years old at the time of Mr Cawsey's death. He was originally from Sierra Leone and had migrated to Australia as a refugee in 2006. He was homeless and sleeping in Centennial Park from approximately April 2009 to November 2009.¹⁰ His mental health presentation is complex, with possible (but contested) diagnoses of schizophrenia, a substance use disorder, and exposure to trauma during his childhood.¹¹
13. In October 2015, Mr Kellie was arrested and charged with the murder of Mr Cawsey, but the charges were dismissed in September 2016.¹² Although Mr Kellie remains the only person of interest, there is insufficient evidence to make a conclusive finding on the balance of probabilities that Mr Kellie is responsible for Mr Cawsey's death.
14. Mr Kellie is now deceased, having died in the Villawood Detention Centre on 25 January 2019. His death is the subject of an ongoing inquest.

Indicators of LGBTIQ status or bias

15. 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.
16. Mr Cawsey was considered by many of his friends and family to be heterosexual, albeit very private about his love and sex life.¹³ A review of his phone use, SMS history and photographs revealed that Mr Cawsey also engaged in sexual activities with men.¹⁴ He was a frequent user of gay chat line telephone services such as Mediatel and Manhunt, and used those services to speak with men.¹⁵
17. The evidence indicates that Mr Cawsey had gone to Centennial Park to seek out a sexual encounter with a man. He had left a recorded message on the gay chat line Mediatel, to the effect that he was sexually aroused and wandering through a park on the edge of the city wearing "girlies panties". Mr Cawsey left details about the size of his penis and stated that he wanted to engage in a sexual act with another man.¹⁶ Parts of Centennial Park are well-known and popular beats.¹⁷

¹⁰ See below at [77].

¹¹ See below at [207]-[239].

¹² See below at [200]-[203].

¹³ Statement of Melanie Staples, 24 February 2017, [71] (SCOI.10464.00009).

¹⁴ Statement of Melanie Staples, 24 February 2017, [71] (SCOI.10464.00009).

¹⁵ Statement of Melanie Staples, 24 February 2017, [76] (SCOI.10464.00009).

¹⁶ See below at [58]-[61].

¹⁷ See below at [262]-[264].

Special Commission of Inquiry into LGBTIQ hate crimes

18. Immediately prior to his death, Mr Cawsey had connected with a man via the gay chat line and was engaging in “phone sex”.¹⁸ His body was found with his pants around his knees and his underwear and buttocks exposed.¹⁹
19. All of these circumstances give rise to a reasonable suspicion that Mr Cawsey was the target of an attack on the basis of the expression of his sexuality. However, there is insufficient information to conclusively make a finding to this effect.
20. Mr Kellie became a person of interest after making an “admission” to becoming angered after being repeatedly propositioned for sex by a man. Whether this admission pertains to Mr Cawsey’s death is contestable and discussed below at [155]-[195]. If this admission was accurate and pertained to the stabbing of Mr Cawsey, this excessive hostility at a sexual advance is open to being interpreted as anger motivated by prejudice against LGBTIQ people. However, interpretation of Mr Kellie’s version of events is significantly complicated by his psychotic illness and traumatic experiences, and there is insufficient information to reliably determine the motivation for his behaviour.²⁰

Exhibits: availability and testing

21. A large number of exhibits were collected and retained in relation to the death of Mr Cawsey. The exhibits collected included:
 - a. Two cigarette butts and a cigarette lighter located near Mr Cawsey’s body;
 - b. The clothing worn by the Mr Cawsey, and the property found on his body (including a wallet and a phone);
 - c. Swabs taken from Mr Cawsey at post-mortem;
 - d. Various items of clothing, shoes and property belonging to Mr Kellie, and either worn by Mr Kellie when arrested by police or found at his various “campsites” around Centennial Park;
 - e. Knives that had been seized from Mr Kellie, or from locations in Centennial Park; and
 - f. Miscellaneous items collected from Centennial Park on the morning of Mr Cawsey’s death.²¹

¹⁸ See below at [65].

¹⁹ See below at [68.c].

²⁰ See below at [249]-[255].

²¹ Certificate of analysis of Lisa-Ann Wedervang, 18 April 2016 (SCOI.10465.00005); Statement of Crime Scene Officer Anna Wood, 27 July 2010 (SCOI.10464.00165); Statement of Crime Scene Officer Detective Sergeant Crimmins, 26 September 2009 (SCOI.83364).

Special Commission of Inquiry into LGBTIQ hate crimes

22. Police also obtained a large number of reference DNA samples from people who knew or were connected to Mr Cawsey, and from Mr Kellie.²²
23. These exhibits were subject to various forensic examinations by the Forensic and Analytical Science Service (**FASS**) at the time of the original police investigation. There were two results of particular note:
 - a. On a section of a “rolly” cigarette, found near the body of the deceased, analysts recovered DNA that was a mixture that originated from two individuals, “**unknown male A**” and “**unknown male B**”;
 - b. The black g-string worn by Mr Cawsey screened positive for blood and semen. Analysts recovered DNA that was a mixture that appears to originate from two individuals. Mr Casey and a second individual, “**unknown male C**”, could not be excluded as contributors to this mixture.²³
24. These profiles were not matched to any person on the national DNA database, nor to any person in relation to whom police had obtained a reference sample (including Mr Kellie).
25. It is unknown whether these unidentified DNA profiles were deposited at the scene during the murder of Mr Cawsey.²⁴ The cigarette butt may have been left by any member of the public who used Centennial Park. The DNA profile on the g-string may have been deposited during an earlier sexual encounter. Nonetheless, identification of any of the unknown profiles could generate investigative leads.
26. There was no forensic evidence linking Mr Kellie to the scene of the crime or to the body of Mr Cawsey. Various items of Mr Kellie’s clothing, shoes and belongings were subject to forensic testing, and no blood nor DNA profile originating from Mr Cawsey was identified.
27. The Inquiry caused the retesting by FASS of various exhibits that were identified to be of particular forensic significance to the investigation into Mr Cawsey’s death. The results of these tests are set out below at [270]. In short, further forensic testing has not advanced any theory as to who may have been responsible for the stabbing of Mr Cawsey.

²² See below at [74].

²³ Certificate of analysis of Lisa-Ann Wedervang, 18 April 2016 (SCOI.10465.00005).

²⁴ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [97] (SCOI.10464.00009).

Special Commission of Inquiry into LGBTIQ hate crimes

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

28. An inquest into Mr Cawsey's death was conducted on 11 to 13 December 2017 by Deputy State Coroner Magistrate Russell. This inquest occurred after charges against Mr Kellie had been withdrawn (see below at [32]); however, Mr Kellie remained the only person of interest at the inquest.
29. On 13 December 2017, her Honour suspended the inquest pursuant to s 78(3)(b) of the *Coroners Act 2009*, being of the opinion that there was evidence capable of satisfying a jury beyond reasonable doubt that Moses Kellie had committed an indictable offence and that there was a reasonable prospect that a jury would convict him of that offence.²⁵
30. On suspension of the inquest, her Honour made the following findings:
- "Anthony Cawsey died at Centennial Park, Sydney, New South Wales on 26 September 2009. The cause of his death was Haemopericardium as a result of a stab wound to his left chest."*²⁶
31. On 7 March 2018, her Honour referred the matter to the Director of Public Prosecutions pursuant to s 78(4) of the *Coroners Act 2009*.²⁷

Criminal proceedings

32. As noted above, Mr Kellie was charged and arrested for the murder of Mr Cawsey on 6 October 2015. 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.²⁸
33. The ODPP reconsidered the prosecution of Mr Kellie following the referral from the coroner in March 2018, but again declined to prosecute on the basis that even with the new evidence obtained during the inquest, there remained no reasonable prospect of conviction.²⁹

²⁵ Notice of suspension of inquest, 5 March 2018 (SCOI.10483.00069); Referral from the Coroner to the ODPP, 7 March 2018 (SCOI.10483.00054).

²⁶ Findings of inquest into the death of Anthony Cawsey, 13 December 2017 (SCOI.10483.00005).

²⁷ Referral from the Coroner to the ODPP, 7 March 2018 (SCOI.10483.00054).

²⁸ Letter advising of decision to withdraw charges, 13 September 2016 (SCOI.83377).

²⁹ Letter from Peter McGrath SC to Magistrate Paula Russell, 16 November 2018 (SCOI.10483.00062).

Special Commission of Inquiry into LGBTIQ hate crimes

Features of the original police investigation, and opportunities missed

34. The original police investigation was extensive and thorough. Multiple possible scenarios were considered by police, and these submissions do not point to any appropriate line of enquiry that was not pursued.
35. Nonetheless, a comment should be made in relation to the timing of the arrest of Mr Kellie.
36. Despite police having obtained all relevant evidence against Mr Kellie by 2010, they failed to bring charges against him until October 2015. It appears that this was motivated by his pending release from custody at the expiration of his sentence for other matters, rather than any breakthrough in the case.³⁰
37. Delay in prosecution risks weakening the Crown case, and can also impact upon the ability of an accused person to fully test the evidence relied upon by the Crown: see *Longman v The Queen* (1989) 168 CLR 79. Witnesses may become unavailable, or their memory of events may fade. Documents, records or other exhibits may be lost. Unexplained delays of the type experienced in relation to the prosecution of Mr Kellie should be avoided.

Unsolved Homicide Team

38. Mr Cawsey's death has not been reviewed by the Unsolved Homicide Team.

Strike Force Parrabell

39. Mr Cawsey's death was not reviewed by Strike Force Parrabell, which only reviewed deaths between 1976 and 2000.

Investigative and other steps undertaken by the Inquiry, and their outcomes

40. In the course of assessing Mr Cawsey's case, the Inquiry has taken various investigative and other steps, including:
 - a. Requesting and obtaining the coronial file;
 - b. Summoning the police investigation file from the NSWPF;

³⁰ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [180]-[181] (SCOI.10464.00009).

Special Commission of Inquiry into LGBTIQ hate crimes

- c. Summoning the prosecution file from the ODPP;
 - d. Requesting and reviewing information received from the Australian Institute of Criminology's National Homicide Monitoring Program;
 - e. Requesting a forensic review of the file by FASS, and causing the forensic re-examination of eight exhibits that were identified as being of significance to the investigation and as having the potential for further forensic testing;
 - f. Obtaining an expert report from Dr Kerri Eagle, an independent forensic psychiatrist; and
 - g. Making contact with Mr Cawsey's family.
41. The Inquiry has reviewed and analysed the material obtained and considered whether any further investigative or other avenues are warranted.

Request for coronial file

42. On 15 June 2022, the Inquiry issued a written request to the Registrar of the Coroners Court of NSW (**Coroners Court**) at Lidcombe to obtain the coronial file in relation to the death of Mr Cawsey.
43. The Coroners Court at Lidcombe provided materials on 7 July 2022.

Summons for police files and documents

44. On 21 July 2022 the Inquiry issued a summons to NSWPF (summons NSWPF3) that sought all documents relating to the investigations by them of the death of Mr Cawsey. Material was produced in response on 9 August 2022.

Summons for ODPP files

45. On 22 June 2022, the Inquiry issued a summons to the ODPP (summons ODPP1) requesting all material in relation to the prosecution of Mr Kellie. On 11 July 2022, the ODPP provided materials in relation to Moses Kellie.

Requests to, and conferences with, the Forensic and Analytical Science Service

46. On 30 January 2023, the Inquiry conducted a conference with FASS in relation to the potential for further forensic testing in Mr Cawsey's matter. Several exhibits were identified as having the potential for further forensic testing.

Special Commission of Inquiry into LGBTIQ hate crimes

47. On 13 February 2023, the Inquiry sent a letter to FASS requesting all Forensic Examination Request forms (P377) held by FASS in relation to the exhibits in Mr Cawsey’s matter. These were received by the Inquiry on 16 February 2023.
48. On 30 March 2023, the Inquiry wrote to FASS requesting that further forensic analysis be conducted on eight exhibits.
49. On 23 June 2023, the Inquiry received an expert certificate from David Bruce, a forensic biologist at FASS.³¹ The results of the further analysis conducted by FASS is set out below at [270].

Professional opinions obtained

50. By letter dated 21 December 2022, the Inquiry sought a report from Dr Kerri Eagle, forensic psychiatrist. Dr Eagle was asked to address topics including:
 - a. Whether there were any aspects of the manner of Mr Cawsey’s death (including the nature and extent of the injuries inflicted) and/or the crime scene which may indicate that a homicide has occurred in the context of LGBTIQ hate/prejudice/bias (hereafter collectively referred to as “hate”);
 - b. Whether, on the assumption that Mr Kellie’s admission pertained to the stabbing of Mr Cawsey, there was evidence of Mr Kellie being motivated by LGBTIQ hate;
 - c. The conclusions reached in an email from psychologist Kimberly Ora to the NSWPF: see below at [258].
51. Dr Eagle considered that she did not have the particular expertise required to be able to provide an opinion in respect of the first of those topics.
52. Dr Eagle’s report, dated 17 February 2023, is considered below: see [235], [249]-[255], [261].

Submission as to the available evidence

53. This part 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.

³¹ Certificate of analysis of David Bruce, 23 June 2023 (SCOI. 84130).

Special Commission of Inquiry into LGBTIQ hate crimes

Personal circumstances of Mr Cawsey

54. Mr Cawsey was 37 years old at the time of his death. He was the youngest son of Esmond and Laurie Cawsey, each of whom is now deceased, and had three older sisters. He worked as a stage-hand for a company named Show Support, and was physically active and fit. He was variously described by friends and family as vibrant, charismatic and kind.³²
55. Mr Cawsey lived in Redfern with his flatmate [1407]. At the time of his death, he had been in a sexual relationship with [1362], [REDACTED].³³
56. The majority of Mr Cawsey's friends and family considered him to be heterosexual, albeit very private about his love and sex life. A review of his phone use, SMS history and photographs revealed that Mr Cawsey also engaged in sexual activities with men. He was a frequent user of gay chat line telephone services such as Mediatel and Manhunt, and used those services to speak with men.³⁴
57. Mr Cawsey was a long-term user of prohibited drugs, including amphetamines, LSD, cocaine and cannabis. His drug use did not prevent him from maintaining regular employment and functional relationships.³⁵

Movements prior to death

58. At **4:24am** on the morning of 26 September 2009, Mr Cawsey left his apartment in Redfern and walked to Centennial Park.³⁶ Mr Cawsey's communications suggest that this was an unplanned trip, and he did not have a pre-arranged meeting with any individual.³⁷
59. At **4:44am**, while walking to Centennial Park, Mr Cawsey connected to a gay chat line, Mediatel Services.³⁸
60. Mediatel Services and Manhunt allow callers to dial in to an access number. They are prompted to record their name and a brief description of themselves, which can then be listened to by other users. They can then listen to the messages recorded by other users, and either record a message to send

³² Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [42]-[46] (SCOI.10464.00009).

³³ See Statement of [1362], 9 October 2009 (SCOI.10465.00040); Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [48] (SCOI.10464.00009).

³⁴ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [71]-[78] (SCOI.10464.00009).

³⁵ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [61]-[63] (SCOI.10464.00009).

³⁶ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, p 41 (SCOI.10464.00009).

³⁷ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [105] (SCOI.10464.00009).

³⁸ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, p 41 (SCOI.10464.00009).

Special Commission of Inquiry into LGBTIQ hate crimes

directly to another user, or request a live chat. Once connected, the two people may swap numbers and connect outside the system. Messages are deleted after 24 hours.³⁹

61. During a call, he recorded the following message:

“Hi I’m a tall slim guy feeling really horny and kinky. I’m just in a park on the edge of the city in Sydney and um yeah I’ve just ah I’ve got a t-shirt that’s cut just below my nipples, some girlie’s panties and a pair of boots and I just left my pants and my shirt on the other side of the park and I’m walking through in the dark like a little sissy girl, I’ve got a really small little skinny cock I like, I want a man that want to treat me like a little girl show me what man cocks they’ve got compared to mine.”⁴⁰

62. Mr Cawsey did not reveal his specific location details.

63. Mr Cawsey was connected to the chat line until 5:01am.

64. Assuming he walked the most direct route from his apartment to Centennial Park at a moderately brisk walking pace, Mr Cawsey would have arrived at the Snake Bank path (where his body would eventually be found) at 4:54am.⁴¹

65. Between **5:12am and 5:24am**, Mr Cawsey used his mobile to call the landline of a man by the name of [I354]. According to [I354], they spoke to each other about sex while [I354] masturbated. It is likely that Mr Cawsey also masturbated.⁴²

66. [I354] was investigated by police, but excluded as a suspect given that he resided in Westmead and a CCTV review confirmed he did not leave his house.⁴³

67. At **5:56am**, the body of Mr Cawsey was discovered by several park users who separately notified police.⁴⁴ Accordingly, the evidence establishes that Mr Cawsey met his death in the 32-minute window between the end of his phone call at 5:24am and the discovery of his body at 5:56am.

³⁹ Statement of Matthew Price, Mediatel, 14 May 2010 (SCOI.10467.00054); Statement of Matthew Price, 30 November 2015 (SCOI.10467.00065); Statement of Mark Burrows, Manhunt, 30 September 2009 (SCOI.10467.00067).

⁴⁰ Transcript of Mediatel recording by Anthony Cawsey, 26 September 2009 at 4:45 (SCOI.10466.00005).

⁴¹ Statement of Ben Whitehouse, 22 June 2015 (SCOI.10480.00120).

⁴² Statement of [I354], 28 September 2009 (SCOI.83374).

⁴³ Statement of Detective Senior Constable Melanie Stables, 24 February 2017, p 43 (SCOI.10464.00009).

⁴⁴ Statement of Rodney Long, 26 September 2009 (SCOI.10464.00014), Statement of Brylan Stewart, 26 September 2009 (SCOI.10464.00022), Statement of Keaton Stewart, 26 September 2009 (SCOI.10464.00018); Statement of Rita Uechtritz, 26 September 2009 (SCOI.10464.00027).

Special Commission of Inquiry into LGBTIQ hate crimes

Crime scene examination

68. Mr Cawsey's body was found on a path along Snake Bank on the southern side of Busby's Pond, Centennial Park. Police made the following observations upon their attendance:⁴⁵
- a. Mr Cawsey was lying prone and outstretched, partially positioned on the track.
 - b. On his upper body, Mr Cawsey was dressed in a blue short sleeved shirt with a cut-off black top underneath. The blue t-shirt was soaked through with blood.
 - c. On his lower body, Mr Cawsey was wearing navy blue tracksuit pants with parallel white stripes running down each leg, pink women's underpants and a black g-string. The tracksuit pants and the pink underpants were pulled down and positioned just above his knees. The g-string remained in place, covering his genitalia but leaving his buttocks exposed.
 - d. Mr Cawsey was also wearing a blue baseball cap and a pair of brown suede women's boots.
 - e. The upper body garments were lifted at the crime scene revealing a single stab wound to the left lower chest and two defects with cut edges in the lower left blue shirt.
 - f. Mr Cawsey's wallet (with driver's license), keys and mobile phone were all left on his person.
69. Police concluded that Mr Cawsey had been stabbed proximate to where his body was located, as there was no blood trail in the vicinity and blood pooling was confined to the body and area immediately surrounding it.⁴⁶
70. The property found on Mr Cawsey's body tends against a hypothesis that Mr Cawsey was the victim of a robbery offence.
71. Several items were found near Mr Cawsey's body, including: a "rollie" cigarette butt, a tailor-made cigarette and a red plastic disposable cigarette lighter.⁴⁷
72. Police searched Centennial Park. Detective Senior Constable (**DSC**) Staples, in her 2017 statement, described this as a "systematic search", but the details of the search are not recorded in the material before the Inquiry. It may be inferred that it was more thorough in areas around where Mr Cawsey's body was found. The search does not appear to have located any of Mr Kellie's campsites. No other items were established by police to be associated with Mr Cawsey's death.⁴⁸

⁴⁵ Statement of Melanie Staples, 24 February 2017, [20]-[25] (SCOI.10464.00009).

⁴⁶ Statement of Melanie Staples, 24 February 2017, [24] (SCOI.10464.00009).

⁴⁷ Statement of Melanie Staples, 24 February 2017, [26] (SCOI.10464.00009).

⁴⁸ Statement of Melanie Staples, 24 February 2017, [27] (SCOI.10464.00009).

Special Commission of Inquiry into LGBTIQ hate crimes

Overview of the police investigation

73. On 26 September 2009, Strike Force Annand was set up by the Homicide Squad to investigate Mr Cawsey's death. The investigation was led by then Detective Sergeant Leggat and Detective Senior Constable Frame.⁴⁹ In November 2013, DSC Staples assumed carriage of the investigation, and remained the officer-in-charge at the time of the coronial hearing in 2017.⁵⁰
74. The statement of DSC Staples dated 24 February 2017 summarises the lines of inquiry that were followed during the course of the initial investigation and subsequently at the time of the coronial inquest. The police investigation was thorough, and these submissions will not set out all steps taken by police. Some of the key lines of inquiry are summarised below.
- a. Inquiries relating to Mr Cawsey's movements: A detailed timeline was established in relation to Mr Cawsey's movements in the days and hours leading up to his death.⁵¹ Mr Cawsey's mobile phone activity was scrutinised. The evidence suggested that Mr Cawsey's decision to go to Centennial Park was unplanned and that he did not have a pre-arranged meeting with any particular individual.⁵²
 - b. Inquiries related to Mr Cawsey's use of gay chat lines: Police considered that the absence of specific location details in Mr Cawsey's message left on the Mediatel message made it unlikely that he was killed by a person from that service. Nonetheless, to fully investigate this possibility, extensive enquiries were undertaken to identify men who were using either Manhunt or Mediatel around the time of the murder, and to obtain volunteer DNA samples from them and/or interview them as to their movements. This line of enquiry identified no persons of interest.⁵³
 - c. Inquiries relating to Mr Cawsey's background and associates: Police obtained statements from friends, family, co-workers and associates of Mr Cawsey. This included drug related associates or other people who it was thought may have some animosity towards Mr Cawsey. These statements pertained to their relationship with Mr Cawsey, and their movements on 25 and 26 November 2009. In some cases, witness' movements were confirmed by review of call charge records and/or CCTV footage. These inquiries did not

⁴⁹ Statement of Melanie Staples, 24 February 2017, [11] (SCOI.10464.00009).

⁵⁰ Statement of Melanie Staples, 24 February 2017, [175] (SCOI.10464.00009).

⁵¹ Statement of Melanie Staples, 24 February 2017, [91]ff, [105] (SCOI.10464.00009).

⁵² Statement of Melanie Staples, 24 February 2017, [105] (SCOI.10464.00009).

⁵³ Statement of Melanie Staples, 24 February 2017, [110]-[119] (SCOI.10464.00009).

Special Commission of Inquiry into LGBTIQ hate crimes

reveal any conflicts, debts, or other interpersonal issues which could have provided a motive to kill Mr Cawsey, nor did any persons of interest emerge.⁵⁴

- d. Forensic analysis: As noted above, forensic examination of the scene revealed unknown male DNA profiles on Mr Cawsey's underwear and on the cigarette butt recovered at the scene. Police obtained a total of 76 volunteer DNA samples for comparison to these profiles, with no match identified.⁵⁵

75. Police also considered the possibility that Mr Cawsey was killed as a result of a hate crime. This line of enquiry is considered further below at [256]-[268].

2015-2016: The prosecution of Mr Kellie

76. After pursuing multiple lines of enquiry, Police formed the opinion that Mr Kellie had committed the murder of Mr Cawsey. It was the Police case that Mr Cawsey was stabbed and killed by Mr Kellie during an interaction in which Mr Cawsey propositioned Mr Kellie for sex.⁵⁶
77. Mr Kellie was a Sierra Leone national who immigrated to Australia in 2006.⁵⁷ Between April and November 2009, Mr Kellie was homeless and living in Centennial Park at three or four different "campsites".⁵⁸ Mr Kellie was charged and convicted of two other offences which occurred in the Centennial Park precinct shortly after the murder of Mr Cawsey.⁵⁹
78. Mr Kellie was spoken to by police on a number of occasions, about both Mr Cawsey's death and other incidents that occurred in a similar time period. By way of overview:
- a. At about 5:15am on 3 October 2009, police were conducting a canvass of Centennial Park in connection to the murder investigation. Mr Kellie was spoken to by Detective Sergeant Bishop. Mr Kellie told police that he was sleeping in Centennial Park, and showed police two locations where he slept;⁶⁰
 - b. Also on 3 October 2009, Mr Kellie provided a three-page typed statement to Police at the Maroubra Police Station. This version outlined where he resided in Centennial Park, his

⁵⁴ Statement of Melanie Staples, 24 February 2017, [9], [87], [99]-[109].

⁵⁵ Statement of Melanie Staples, 24 February 2017, [111]-[119] (SCOI.10464.00009); Statement of Stewart Leggat, 11 November 2015 (SCOI.10467.00077-92).

⁵⁶ Statement of Melanie Staples, 24 February 2017, [145] (SCOI.10464.00009); Facts Sheet H58741437, p 2 (SCOI.83380).

⁵⁷ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [152] (SCOI.10464.00009).

⁵⁸ See below at [91]-[97].

⁵⁹ See below at [127]-[137].

⁶⁰ Statement of Detective Sergeant Peter Bishop, 7 December 2009 (SCOI.10468.00003); Statement of Detective Senior Constable Scott Johnson, 11 February 2010 (SCOI.10471.00103).

Special Commission of Inquiry into LGBTIQ hate crimes

movements on 25 and 26 September 2009, and his knowledge of both violence and homosexual activity occurring in the park;⁶¹

- c. On 16 October 2009 at Waverley Police Station, Mr Kellie was interviewed by police in relation to an assault on [1360]. In this interview, he provided information about his practices in relation to using and carrying knives, and referred to being interviewed by police in relation to the murder in Centennial Park;⁶²
- d. At about 12:32pm on 17 October 2009, police located Mr Kellie sitting in the entrance of a large concrete drain on the southern bank of Busby's Pond in Centennial Park. Detective Sergeant Bishop had a conversation with Mr Kellie, and Mr Kellie was subject to a search. Both the conversation and the search were recorded;⁶³
- e. Also on 17 October 2009, Mr Kellie was interviewed by police at the Maroubra Police Station.⁶⁴ This interview pertained to, among other things, his campsites within Centennial Park, his movements around the time of Mr Cawsey's death, and his knowledge of homosexual activity occurring in Centennial Park;
- f. Also on 17 October 2009, Mr Kellie participated in a video-recorded walkthrough of Centennial Park, where he described his position and movements on the morning of Mr Cawsey's death;⁶⁵
- g. On 17 January 2010, Mr Kellie was interviewed by police at the Eden Police Station in relation to the robbery of [1359] on Lang Road, Centennial Park. During this interview, Mr Kellie made various admissions that Police considered were consistent with Mr Cawsey's murder and inconsistent with the robbery of [1359]. This interview is considered below in detail at [155]-[195].⁶⁶
- h. On 6 October 2015, upon being arrested in relation to the death of Mr Cawsey, Mr Kellie was interviewed at Wagga Wagga Police Station.⁶⁷ Mr Kellie denied involvement in Mr

⁶¹ Statement of Moses Kellie, 3 October 2009 (SCOI.10468.00063).

⁶² ERISP Transcript, 16 October 2009 (SCOI.10468.00067-8).

⁶³ Transcript of questioning and search of Moses Kellie at Centennial Park, 17 October 2009 (SCOI.10468.00072); Statement of Detective Sergeant Peter Bishop, 7 December 2009 (SCOI.10468.00003); Statement of Detective Senior Constable Scott Johnson, 11 February 2010 (SCOI.10471.00103).

⁶⁴ ERISP Transcript, 17 October 2009 (SCOI.10468.00075-6).

⁶⁵ Transcript of video walkthrough, 17 October 2009 (SCOI.10468.00088); Statement of Detective Sergeant Fiona Frame, 1 April 2016 (SCOI.10468.00023).

⁶⁶ ERISP Transcript, 17 January 2010 (SCOI.10469.00003-4).

⁶⁷ ERISP Transcript, 6 October 2015 (SCOI.10469.00007-8).

Special Commission of Inquiry into LGBTIQ hate crimes

Cawsey's death, and denied that he had been speaking about Mr Cawsey's murder when interviewed by police on 17 January 2010.

79. Despite Mr Kellie becoming a person of interest to police in 2009 only shortly after Mr Cawsey's death, police did not charge Mr Kellie until October 2015.
80. As noted above at [26], there was no forensic evidence linking Mr Kellie to the scene of the crime or to Mr Cawsey's body. Mr Kellie was not a match to any of the unknown DNA profiles recovered from the crime scene. Police seized a large number of exhibits from Mr Kellie and his "campsites", including clothing, knives, backpacks and shoes. Analysis of all these items failed to establish a forensic link between Mr Kellie and Mr Cawsey. None of Mr Cawsey's property was ever found on Mr Kellie or at any of his "campsites".⁶⁸
81. The evidence comprising the Police case against Mr Kellie is discussed below.

(a) Sightings of Mr Kellie in proximity to the crime scene

82. Three witnesses – Mark Kay, Lachlan Youll and Harriet Pembroke – provided statements to police regarding sighting a man who generally fit the description of Mr Kellie within the vicinity of the crime scene the day before the murder.⁶⁹ Another witness, Jonathan Edgington, gave evidence of seeing a man broadly fitting the description of Mr Kellie shortly after the murder.⁷⁰
83. Mr Kay was walking his dog in Centennial Park from about 3:00pm on Friday, 25 September 2009. About halfway along the path that runs along the southern bank of Busby's Pond, he described seeing a man emerge from the bush adjacent to the path. The man caught and held Mr Kay's attention because he was wearing long black trousers and a hooded jacket despite it being a hot day. The man stared intensely at Mr Kay, in a manner that he perceived as aggressive. Mr Kay described the man in the following terms:

"[H]e had dark brown complexion and appeared to have Indonesian or Malay facial features. By this I mean his eyes were more oval than slanted. He looked as though he would be around 30 years of age and appeared to be around the same height as me, which is around 6 ft 1" tall. He was an average build, not skinny and not stocky."⁷¹

⁶⁸ Statement of Melanie Staples, 24 February 2017, [39], [169]-[171] (SCOI.10464.00009).

⁶⁹ Statement of Mark Kay, 28 October 2009 (SCOI.10467.00098); Statement of Lachlan Youll, 22 December 2009 (SCOI.10467.00104); Statement of Harriet Pembroke, 17 December 2009 (SCOI.10467.00108); Facts Sheet H58741437, p 4 (SCOI.83380)

⁷⁰ Statement of Jonathan Edgington, 30 September 2009 (SCOI.10467.00101); Facts Sheet H [REDACTED], p 7 (SCOI.83380).

⁷¹ Statement of Mark Kay, 28 October 2009 (SCOI.10467.00098).

Special Commission of Inquiry into LGBTIQ hate crimes

84. As set out below, Mr Kellie had a “campsite” concealed by bushes along the southern bank of Busby’s Pond, which supports the proposition that the man seen by Mr Kay was in fact Mr Kellie.
85. Between 7:30pm and 8:30pm on the same day, Mr Youll and Ms Pembroke were jogging through Centennial Park, and saw a man wearing all dark clothing, with a hood over his head, next to the fence which surrounds McKay Oval, close to the start of the track that leads to Busby’s Pond. Mr Youll described the man as being about 5 ft 11’ and of a medium build, but did not see his face.⁷² Mr Pembroke described him as “about 5’9” tall, medium or athletic build”. She also stated that it was too dark to see his face.
86. None of these sightings amount to a positive identification of Mr Kellie, notwithstanding that they may be said to be, in broad terms, consistent with being Mr Kellie.
87. Mr Edgington gave evidence of seeing a man walking on a bush track in an area on the south-western side of Centennial Park known as the “SW paddock”, at about 6:10am on Saturday, 26 September 2009 (that is, only about 14 minutes after the discovery of Mr Cawsey’s body). Mr Edgington described the man as wearing a camouflage jacket in shades of dark green, with the hood pulled up over his head, and dark pants. He further stated:
- “I could see that he had brown skin and was of an Asian appearance, when I saw Asian, more along the lines of an Indian background... His face was a round shape. There was nothing distinguishing about his face that I can recall I couldn’t say if he had facial hair.”⁷³
88. Mr Edgington described the person to be “walking at a normal pace” and carrying a clear 2-litre water bottle with a large red or orange top.
89. Mr Kellie would later tell Police that on the morning of Mr Cawsey’s murder he went to fill up a 1-litre coke bottle of water and then returned to the SW Paddock, and that he was wearing a green shirt, lending some credence to this being a sighting of Mr Kellie.⁷⁴
90. The probative value of these alleged sightings is limited. Even assuming each to be Mr Kellie, it is known that Mr Kellie was homeless and living in Centennial Park at the time of Mr Cawsey’s death, which provides an innocent explanation for him being sighted by multiple people in the area. None of the purported sightings tie Mr Kellie closely to the crime scene. The sightings by Mr Kay, Mr Youll and Ms Pembroke were the afternoon or evening before Mr Cawsey came to the park. Mr Edgington’s

⁷² Statement of Lachlan Youll, 22 December 2009 (SCOI.10467.00104).

⁷³ Statement of Jonathan Edgington, 30 September 2009 (SCOI.10467.00101).

⁷⁴ Statement of Moses Kellie, 3 October 2009 (SCOI.10468.00063); ERISP Transcript of Moses Kellie, 17 October 2009, Q 662-676, 697(SCOI.10468.00076).

Special Commission of Inquiry into LGBTIQ hate crimes

sighting, which is the closest in time, places him an approximately 10-minute walk from the crime scene.

(b) Location of Mr Kellie's campsites

91. On 3 October 2009, Mr Kellie was spoken to by Police in Centennial Park, and was asked to show Police where within the park he had been living. Mr Kellie took police to two locations, the first being a sandstone pavilion situated off Park Drive, where he had slept the previous night because it had been raining, and the second being a location under a tree in an area of the park known as "SW Paddock" (**Campsite 1**).⁷⁵
92. In his statement dated 3 October 2009, Mr Kellie stated, "I don't have any possessions to carry or to hide".⁷⁶
93. At a later date, on 17 October 2009, Mr Kellie was located by Police at a drainpipe that opened into Busby Pond, that was concealed from view by foliage. In the drainpipe was a sleeping bag, a number of backpacks, food packaging and other items (**Campsite 2**). This site was approximately 75 metres east of where Mr Cawsey's body was located.⁷⁷ Mr Kellie had not disclosed the location of this campsite when spoken to on 3 October 2009.
94. In an interview, Mr Kellie stated that he used the drain campsite on and off, and didn't stay there permanently because of the possibility of rain. He indicated that he'd only left the drain campsite a few days before 26 September 2009.⁷⁸
95. On 9 November 2009, Police conducted a search of the south-western corner of Centennial Park. A campsite was found in the bushes that separated the McKay and Mission playing fields (**Campsite 3**). The campsite contained a number of sketch pads with Mr Kellie's name written in them. Also located in the campsite were newspapers dated 19 and 20 September 2009.⁷⁹
96. The location of each campsite is marked on the map at **Annexure A**.

⁷⁵ Statement of Detective Sergeant Peter Bishop, 7 December 2009 (SCOI.10468.00003); Statement of Detective Senior Constable Scott Johnson, 11 February 2010 (SCOI.10471.00103).

⁷⁶ Statement of Moses Kellie, 3 October 2009 at [6] (SCOI.1046800073).

⁷⁷ Statement of Detective Sergeant Peter Bishop, 7 December 2009 (SCOI.10468.00003); Statement of Detective Senior Constable Scott Johnson, 11 February 2010 (SCOI.10471.00103).

⁷⁸ ERISP Transcript of Moses Kellie, 17 October 2009 (SCOI.10468.00076 at p 20, 40).

⁷⁹ Statement of Detective Sergeant Peter Bishop, 7 December 2009 at [39] (SCOI.10468.00003).

Special Commission of Inquiry into LGBTIQ hate crimes

97. The close proximity of Mr Kellie’s campsites to the crime scene increases the likelihood of Mr Cawsey and Mr Kellie crossing paths in the early hours of the morning on 26 September 2009, and may be considered a piece of circumstantial evidence in the case against Mr Kellie.

(c) Lies as consciousness of guilt

98. The Police sought to rely on multiple “lies” in interviews given by Mr Kellie as evidence of his guilt.⁸⁰ These arose from omissions or inconsistencies in his accounts to police, pertaining to the location of his campsites, when he had last been in the area around the crime scene, and his movements on the morning of Mr Cawsey’s death.

99. Police alleged that Mr Kellie “made false statements to distance himself from the area where the victim’s body was located” and that Mr Kellie “deliberately lied... because he knew that the truth would implicate him in the murder”.⁸¹

100. As a preliminary comment, relying on these errors as deliberate lies, and lies made on account of a consciousness of guilt, is fraught. Mr Kellie was a homeless and itinerant man with a borderline IQ level.⁸² While Mr Kellie’s mental health presentation is complex, it is at least possible, if not likely, that he suffered from a psychotic illness: see below at [207]-[239]. An imperfect recollection of where he was camping, his waking times, and his routes, when interviewed one week and three weeks after Mr Cawsey’s death, may simply reflect that he had a disorganised mind, experienced some temporal disconnect associated with his living conditions, or was generally an unreliable historian.

101. These are all matters that bear upon his credit and reliability, and can be used when determining what weight to place on Mr Kellie’s exculpatory statements: *Zonneff v The Queen* (2000) 200 CLR 234. However, for these errors to be treated as proof of a guilty conscience and an implied admission, they would need to be deliberate falsehoods told by Mr Kellie due to a consciousness that “the truth would convict him”: *Edwards v R* (1993) 178 CLR 193; *R v Lane* [2011] NSWCCA 157. It is necessary to consider other reasonable explanations for any lie told by Mr Kellie.

102. The three lies relied upon by Police are considered in turn.

⁸⁰ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [163] (SCOI.10464.00009).

⁸¹ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [146] (SCOI.10464.00009); Facts Sheet H [REDACTED], p 2 (SCOI.83380).

⁸² Psychological Report of Dr John Jacmon, 8 November 2010 (SCOI.10488.00008); Psychiatric Report of Dr Thomas Oldtree Clark, 9 June 2011 (SCOI.10488.00009); Psychiatric Report of Dr Jonathan Adams, 15 June 2011 (SCOI.10486.00231).

Special Commission of Inquiry into LGBTIQ hate crimes

103. *“Lies” about the location of his campsite:* The “lie” alleged against Mr Kellie was his omission to reveal the location of two campsites, Campsites 2 and 3, that were closer to the scene of the crime than the ones he took police to on 3 October 2009: see above at [93]. The Police case was put as follows:

“It is significant that [Mr Kellie] has attempted to distance himself from the campsites close to Busby’s Pond and therefore the crime scene where the victim’s body was located. On 3 October 2009... [Mr Kellie] only disclosed the campsite which was the most remote campsite to where the murder occurred. [Mr Kellie] deliberately withheld information about the location and existence of the campsites close to Busby’s Pond.”⁸³

104. It is necessary to bear in mind that Mr Kellie appeared to be transient and sleeping in multiple locations around the park, depending on conditions such as the weather. The term “campsite” may imply a degree of semi-permanency that these sites did not in fact possess.
105. Mr Kellie may have had other reasons for not disclosing all locations where he slept or stored property in the park – to preserve what limited privacy he had, and to prevent him being “moved on” from these places. Another explanation is that he was aware that a person had been killed and was fearful of being wrongfully accused.
106. It further might be regarded as surprising, if Mr Kellie was lying to deflect police by distancing himself from the crime scene, that he remained in the park following the murder (although it is of course possible that Mr Kellie only lied after it became obvious that he was under suspicion).
107. *“Lies” about when he was last in the area around the crime scene:* When Mr Kellie was interviewed on 17 October 2009, he told Police that the last time that he was in the area “where the police tape was” (i.e. around the crime scene) was one to two weeks before the murder.⁸⁴ The police case was that the newspapers found in Campsites 2 and 3, dated 19-20 September 2009, indicated that he was in fact at those campsites at a date closer to Mr Cawsey’s death. Further, if Mr Kay’s sighting (set out above at [83]) is assumed to be of Mr Kellie, it would place him close to the crime scene only a day prior to the murder.
108. In relation to the comments made on 17 October 2009, Mr Kellie’s estimate of one to two weeks was an approximation only. The dates on the newspaper were close to a week prior to Mr Cawsey’s death, so it may be doubted whether Mr Kellie’s description could be treated as deliberately misleading. The sighting by Mr Kay may be more compelling evidence of a lie, but still must be treated with caution.

⁸³ Facts Sheet H [REDACTED] p 15 (SCOI.83380)

⁸⁴ ERISP Transcript of Moses Kellie, 17 October 2009, Q755-758; Q 842-848.

Special Commission of Inquiry into LGBTIQ hate crimes

109. *“Lies” about his movements on the morning of Mr Cawsey’s death:* When Mr Kellie was first interviewed on 3 October 2009, Mr Kellie said that on Friday 25 September 2009 he had stayed at a camp he had set up near Alison Road, Kensington, and slept under a tree on the park bench. He stated he woke up at 3:00am on Saturday 26 September 2009, and had walked along Anzac Parade to a newsagency located at the intersection of Todman Avenue, before continuing to walk to the University of New South Wales (**UNSW**). He said that he reached UNSW as the sun was starting to rise, and so decided to return to the park, walking the same way he had come.
110. When interviewed on 17 October 2009, he said he only woke up at 5:30am, and asserted that he knew this to be the exact time because he was wearing a watch.⁸⁵ He again said that he walked to the newsagency, before walking to UNSW. He said he walked this route because people had left rubbish on the street before, including newspaper and electronics, saying he had found his radio this way on a previous occasion.⁸⁶ He again said that when he arrived at UNSW, the “sun start to come up”.⁸⁷
111. The assertion that he woke at 5:30am was characterised by police as a “lie”, and said to be an attempt by Mr Kellie “to absent himself from Centennial Park at the approximate time of the murder”⁸⁸ once he was aware that he was under suspicion. However, on both versions, he claimed to have been at UNSW at sunrise, being the approximate time of Mr Cawsey’s death.
112. At 7:37pm on 17 October 2009, Mr Kellie participated in a “video walk-through” of Centennial Park and its surrounds with police. From a police vehicle, Mr Kellie appeared to indicate that he walked down Doncaster Avenue to reach the newsagency, rather than Anzac Parade.⁸⁹ The inconsistencies may be thought to reinforce the falsity of his account of being away from Centennial Park on the morning of the murder.
113. However, ascertaining the path being indicated by Mr Kellie is unclear due to the video being taken from a moving vehicle at night. Police requested that Mr Kellie return with them to walk the route during daylight. For unknown reasons, this never occurred.
114. Police obtained CCTV from two premises along Anzac Parade, the Doncaster Hotel and the Mobile Service Station.⁹⁰ While Mr Kellie was not identified on the CCTV, the angles of each camera and

⁸⁵ ERISP Transcript of Moses Kellie, 17 October 2009, Q 530-564, 665 (SCOI.10468.00076).

⁸⁶ ERISP Transcript of Moses Kellie, 17 October 2009, Q 583 (SCOI.10468.00076).

⁸⁷ ERISP Transcript of Moses Kellie, 17 October 2009, Q 638 (SCOI.10468.00076).

⁸⁸ Facts Sheet H [REDACTED], p 14 (SCOI.83380)

⁸⁹ Transcript of video walk-through, 17 October 2009 (SCOI.10468.00088).

⁹⁰ Investigators Note, Review of Mobil Service Station CCTV, 14 December 2015 (SCOI.84125).

Special Commission of Inquiry into LGBTIQ hate crimes

quality of the footage are such that Mr Kellie's account of walking to UNSW cannot be definitively excluded.

115. Conclusions: The omissions or inconsistencies in Mr Kellie's accounts are capable of being construed as lies amounting to admissions, and can be considered as one element of the circumstantial case against Mr Kellie. However, the purported "lies" may not have been deliberately false, or alternatively may not have been told out of a consciousness of guilt: see *Edwards v The Queen* (1993) 178 CLR 193; *R v Lane* [2011] NSWCCA 157. Great care should be taken as to what reliance can be placed on these "lies" in assessing Mr Kellie's involvement in Mr Cawsey's death.

(d) Tendency and coincidence evidence

116. The police case against Mr Kellie relied upon evidence of other offences in or around Centennial Park that were said to have been committed by Mr Kellie. Mr Kellie was convicted of two offences,⁹¹ and was suspected to have been the offender in relation to a third incident.⁹² The police case was that these offences demonstrated a pattern of behaviour, or tendency, on the part of Mr Kellie that made it more likely that he committed the offence against Mr Cawsey. The police case was also that it would be improbably coincidental, having regard to the similarities between the offences, that a person other than Mr Kellie committed Mr Cawsey's murder.

117. The Police case was put as follows:

"The common features of these offences were: unprovoked violent attacks; no personal history with the victims; involving the use of knives or bladed weapons; inside or in the immediate vicinity of Centennial Park; during the evening or early morning; and all within a one month period between September and October 2009. It is the Prosecution case that these offences and the murder of [Mr Cawsey] reveal patterns of behaviour in relation to [Mr Kellie.]"⁹³

118. Each offence relied upon as tendency or coincidence evidence is set out below.

119. Assault of [1361], 23 September 2009: It was the police case that Mr Kellie was responsible for an assault on [1361] on 23 September 2009. Mr Kellie was never charged in relation to this alleged conduct.

⁹¹ Facts Sheet H [REDACTED], p 2 (SCOI.83380).

⁹² Statement of Detective Senior Constable Melanie Staples, 24 February 2017, p 64 (SCOI.10464.00009).

⁹³ Facts Sheet H [REDACTED], p 2 (SCOI.83380).

Special Commission of Inquiry into LGBTIQ hate crimes

120. At about 4:10am on Anzac Parade, [I361] was walking along the eastern side of Anzac Parade at Moore Park. He heard a man, alleged by Police to be Mr Kellie, screaming at him from the other side of the road, saying words such as “Why are you looking at me?” and “You look at me.” [I361] ignored the man.⁹⁴
121. The man then crossed the road and walked up behind [I361] [I361] turned to look at the man, but turned back and continued walking. [I361] then felt something hit him twice to the back of the head. When he turned around, the man said “Why did you say what you said to me before down the street?” The man then lunged towards [I361] and his bag. [I361] dodged the man and ran onto Anzac Parade.⁹⁵
122. After he got away, he realised that he had a small cut to the back of his head. He hadn’t seen anything in the hands of the man, such that it is unknown whether this incident involved “the use of knives or bladed weapons.”⁹⁶
123. In his first statement, dated 23 September 2009 but unsigned, [I361] described the offender as follows:
- “I would describe this male as African, in his early 20’s, about 175 to 180 centimetres tall, of a medium build, with a shaved head, wearing a grey coloured jacket and long dark pants.”⁹⁷
124. In a later statement, made some seven years later on 30 May 2016, [I361] added the following:
- “The man spoke in English with a dense accent. From his accent and his facial appearance I believed the man was from one of the former British colonies in west Africa such as Ghana or a nearby country. He was a dark skinned African. The man also had a very rounded face. When I say he had a shaved head, the man had black hair which was short as in shaved like a number 1 or number 2. I would say the man was of medium or average built. I am 183 tall (6 feet) and the man was definitely shorter than me, I’d say about 5 feet 9 to 5 feet 10 inches tall.”⁹⁸
125. [I361] was not asked to participate in a photo identification procedure in relation to the offender.

⁹⁴ Statement of [I361] 30 May 2016 (SCOI.10470.00033).

⁹⁵ Statement of [I361] 30 May 2016 (SCOI.10470.00033).

⁹⁶ See above at [116].

⁹⁷ Statement of [I361] 23 September 2009 (SCOI.10471.00029).

⁹⁸ Statement of [I361] 30 May 2016 (SCOI.10470.00033).

Special Commission of Inquiry into LGBTIQ hate crimes

126. [1361]'s description is broadly consistent with Mr Kellie, who was of black African appearance, about 172 cm tall, of medium build, with a round face and short dark hair.⁹⁹ However, the description falls well short of a positive identification of Mr Kellie.
127. *Robbery with wounding of [1359], 11 October 2009:* Mr Kellie pleaded guilty to an offence of robbery with wounding in relation to an incident involving [1359]. He was sentenced to 5 years imprisonment.¹⁰⁰
128. According to the facts agreed at sentencing,¹⁰¹ at about 2:30am, [1359] was walking on Lang Road in a poorly-lit residential area opposite Centennial Park. He was talking on his iPhone to a female friend.
129. With no apparent provocation, Mr Kellie confronted [1359] and began to yell something at him that [1359] couldn't understand. He then waved a "silver-coloured object" in his left hand, believed by [1359] to be a knife. Mr Kellie was wearing a dark coloured hooded jacket with a centre zip. The hood was up, disguising his features.
130. [1359] stepped backwards and felt his back touch the fence to Centennial Park. [1359] held his phone out towards Mr Kellie, and either handed it to Mr Kellie or dropped it; either way, Mr Kellie ran off in possession of [1359]'s phone.
131. The friend who [1359] had been on the phone to called [1359]'s phone multiple times, and a male voice with a strong accent had answered.¹⁰²
132. When [1359] arrived home, he realised that he had received a cut to his left upper arm that required suturing. He was uncertain how he received the injury. In an interview with police, Mr Kellie denied carrying a knife, or using any weapon to cause injuries to [1359].
133. *Assault of [1360], 16 October 2009:* Mr Kellie was convicted after a summary hearing of an assault occasioning actual bodily harm in relation to a woman, [1360], on Lang Road near the Fox Studios Complex, and a related charge of possession of a knife in a public place. Mr Kellie was sentenced to 12 months imprisonment, with a non-parole period of 9 months.¹⁰³ The transcript of the sentencing hearing, which would indicate factual findings made by the magistrate, are not available. The following facts are discerned from the statements provided by [1360].

⁹⁹ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [150] (SCOI.10464.00009).

¹⁰⁰ Criminal history of Moses Kellie (SCOI.83357).

¹⁰¹ Statement of agreed facts, 7 October 2010 (SCOI.83362). See also Statement of [1359], 11 October 2009 (SCOI.83351).

¹⁰² Statement of [REDACTED], 11 October 2009 (SCOI.83376).

¹⁰³ Criminal history of Moses Kellie (SCOI.83357).

Special Commission of Inquiry into LGBTIQ hate crimes

134. At approximately 8:30pm, [1360] exited the Fox Studios Complex and was walking along the footpath on Errol Flynn Boulevard. As she was walking, she noticed Mr Kellie sitting on a brick wall near the entrance to the complex, drinking from a bottle. He was wearing a hooded jacket (with the hood off) and had a dark coloured backpack next to him.¹⁰⁴
135. As [1360] walked past Mr Kellie, he greeted her and she acknowledged him in reply. [1360] continued to walk on, but began to suspect that Mr Kellie was following her. When she had walked about 300 m from where she first seen Mr Kellie, she turned and saw Mr Kellie about 15 metres behind her, with his hood drawn over his face.¹⁰⁵
136. [1360] continued walking, but moments later heard Mr Kellie break into a run. Seconds later, Mr Kellie grabbed her by the arms and began to pull her out of the streetlight and towards the bushes in front of a house. Her bag was over her right shoulder.¹⁰⁶ [1360] managed to break free and get into a taxi, which took [1360] to the police station. [1360] provided a description of the offender.¹⁰⁷
137. At 8:45pm, police returned to the Fox Studio complex and located Mr Kellie. He was searched by police. In a garden bed behind Mr Kellie, police found a kitchen knife with a brown handle and a silver serrated blade, of which Mr Kellie ultimately admitted to ownership and possession.¹⁰⁸
138. *Availability of coincidence and tendency reasoning:* Section 9(3) of the SCOI Act provides that the Commissioner shall only receive as evidence matters which are, in the opinion of the Commissioner, likely to be admissible in evidence in civil proceedings. It is through this lens that the admissibility of the evidence as tendency or coincidence evidence will be considered.
139. *Coincidence evidence:* Section 98 of the *Evidence Act 1995* (NSW) (**Evidence Act**) restricts the circumstances in which evidence that two or more events occurred can be used to prove that a person did a particular act (in the present case, that Mr Kellie stabbed Mr Cawsey), on the basis that, having regard to any similarities in both the events and the circumstances in which they occurred, it is improbable that the events occurred coincidentally.
140. Coincidence evidence may only be admitted if it is of "significant probative value", either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence (s 98(1)(b)). For evidence to have "significant probative value", it "should make more likely,

¹⁰⁴ Statement of [1360] 16 October 2009 (SCOI.83373).

¹⁰⁵ Statement of [1360] 16 October 2009 (SCOI.83373); Statement of Chrissa Favaloro, 21 October 2009 (SCOI.83368).

¹⁰⁶ Statement of [1360] 21 October 2009, [5].

¹⁰⁷ Statement of [1360] 16 October 2009 (SCOI.83373).

¹⁰⁸ Facts Sheet H38656923 (SCOI.83358).

Special Commission of Inquiry into LGBTIQ hate crimes

to a significant extent, the facts that make up the elements of the offence charged”: *Hughes v The Queen* (2017) 263 CLR 338 at [40]. The evidence must be “important” or “of consequence” to the assessment of the probability of the existence of a fact in issue: *Hughes* at [81], [86], [215].

141. Dissimilarities between events will not necessarily displace the availability of coincidence reasoning. However, dissimilarities may undercut the improbability of something being a coincidence, and so detract from the strength of the inferential mode of reasoning permitted by s 98: see *Selby v R* [2017] NSWCCA 40 at [24].
142. In the present case, the reasoning invited by Police is that the similarities between the four offences (including Mr Cawsey’s murder) would render it improbably coincidental for the murder of Mr Cawsey to have been committed by another person. The relevant similarities include that the offences were unprovoked, committed on persons unknown to Mr Kellie, in the hours of darkness, in the immediate vicinity of Centennial Park, between September and October 2009.
143. However, these identified similarities are generic to many assault and robbery offences. It would hardly be surprising, or improbably coincidental, that many robbery offences in the Centennial Park area would be unprovoked attacks on strangers in darkness.
144. Beyond those broad similarities, there is little commonality between each of the other offences and the circumstances (to the extent that they are known) of the death of Mr Cawsey.
 - a. First, there is no reliable evidence that a knife was used in either the robbery against [1359] [1359] or the assault on [1361] [1359] describes a silver-coloured object, but cannot identify it as a knife, nor confirm how he received his injury. In his interview with Police, Mr Kellie suggests that he only had a fork on him during the robbery.¹⁰⁹ [1361] did not see anything in the man’s hands. There is no allegation of a knife being used in the assault of [1360] [1360]
 - b. Secondly, there is no evidence that Mr Cawsey had any property stolen from him, distinguishing the circumstances of his death from the circumstances of [1359]’s robbery (and the assault of [1361] if it is accepted that Mr Kellie lunged at his bag with the intention of stealing it);
 - c. Finally, and most significantly, the sexual component to Mr Cawsey’s death, inferred from the positioning of his clothing and his stated intentions for coming to Centennial Park, is

¹⁰⁹ ERISP Transcript of Moses Kellie, 17 January 2010, Q200-201 (SCOI.10469.00004).

Special Commission of Inquiry into LGBTIQ hate crimes

suggestive that the killing of Mr Cawsey occurred in a significantly different context from the offending against [1359], [1360] or [1361].

145. Given the generic nature of the identified similarities, and the significant dissimilarities, it is submitted that the evidence would not satisfy the threshold requirement of having significant probative value to be admitted as coincidence evidence.
146. Tendency evidence: Section 97 of the Evidence Act prevents evidence of the character, reputation or conduct of a person to prove that a person has a tendency to act in a particular way unless the evidence is of “significant probative value”. The assessment of probative value requires consideration of two interrelated but separate matters: (1) the extent to which the evidence supports the asserted tendency; and (2) the extent to which the asserted tendency makes more likely the fact or facts sought to be proved by the evidence (here, that it was Mr Kellie, rather than another person, who stabbed Mr Cawsey): *Hughes* at [41].
147. The assault on [1361] cannot safely be attributed to Mr Kellie, and accordingly is of limited value in supporting any tendency on the part of Mr Kellie.
148. The remaining two offences, of which Mr Kellie was convicted, support the existence of a tendency on the part of Mr Kellie to approach and assault people unknown to him, in an unprovoked manner, while they are alone, during the hours of darkness, in the vicinity of Centennial Park. However, there are no distinctive similarities between the two offences, when regard is had to the manner of the assault, the identity of the victims, the use of a weapon, or motivation (insofar as it can be discerned from the facts, with only [1359] having property stolen from him).
149. It is submitted that any tendency of Mr Kellie that can be supported by the evidence is only general in nature. While there is no rule that demands or requires close similarity between the conduct evidencing the tendency and the offence, the specificity of the tendency has a direct impact on the strength of the inference mode of reasoning: *TL v R* (2022) 405 ALR 578 at [29]. As a general proposition, a closer similarity will be required when tendency evidence is relied upon to prove the identity of an offender for a known offence, rather than where the fact in issue is the occurrence of the offence: *Hughes* at [39]; *TL* at [30].
150. Here, tendency is not the only evidence as to identity, and the probative value of the evidence must be considered with regard to the other evidence against Mr Kellie, most significantly the “admissions” by Mr Kellie in the 17 January 2010 interview: see below at [155] and following. However, those admissions would support a theory of the case that Mr Kellie became angered and violent after, on

Special Commission of Inquiry into LGBTIQ hate crimes

his perception, being repeatedly propositioned for sex. A tendency on the part of Mr Kellie to approach and attack people who are walking alone, without provocation, is not significantly probative of the case that was advanced by the prosecution as to how Mr Cawsey met his death.

151. Accordingly, the tendency evidence does not make it significantly more likely that it was Mr Kellie who stabbed Mr Cawsey, and it is submitted that the evidence would not satisfy the threshold requirement of significant probative value to be admitted as tendency evidence.
152. Danger of unfair prejudice: In criminal proceedings, tendency or coincidence evidence relating to a defendant and adduced by the prosecution cannot be used against the defendant unless the probative value of the evidence outweighs the danger of unfair prejudice to the defendant: Evidence Act, s 101(2).
153. That restriction does not apply in civil proceedings: s 101(1). Although the Court has a discretion to refuse to admit evidence if its probative value is substantially outweighed by the danger that the evidence may be unfairly prejudicial (s 135(a)), the danger of improper use of the evidence is lessened in the absence of a jury: *R v Droudis (No 13)* [2016] NSWSC 1350 at [78]-[95]. Accordingly, if, contrary to the submissions above, the evidence was determined to have significant probative value, s 9(3) of the SCOI Act would not prevent its admission.
154. However, the primary submission is that the evidence does not have significant probative value as either tendency or coincidence evidence, and the question of unfair prejudice does not arise.

(e) Alleged admissions by Mr Kellie in his interview regarding the [1359] robbery

155. On 17 January 2010, Mr Kellie was being interviewed in relation to the robbery with wounding against [1359] described above.¹¹⁰
156. During that interview, Mr Kellie described an incident that Police considered was more consistent with the known circumstances of Mr Cawsey's death than the robbery on [1359]. The police sought to rely upon Mr Kellie's interview in relation to the robbery of [1359] as "tantamount to an admission of being involved in a direct physical altercation" with Mr Cawsey.¹¹¹
157. The Police characterised this interview as "significant evidence" implicating Mr Kellie in the murder of Mr Cawsey.¹¹²

¹¹⁰ ERISP Transcript of Moses Kellie, 17 January 2010 (SCOI.10469.00004).

¹¹¹ Facts Sheet H [REDACTED], p 2 (SCOI.83380)

¹¹² Facts Sheet H [REDACTED], p 18 (SCOI.83380)

Special Commission of Inquiry into LGBTIQ hate crimes

158. It is necessary to set out, in some detail, portions of the transcript of this interview.
159. The interviewing officer described to Mr Kellie the brief facts of [1359]'s robbery, noting that it took place "on Lang Road, just short of Mitchell Street, Centennial Park". He asked him about his knowledge of that incident. Mr Kellie provided the following narrative:

“Q128 [...]

A Umm that, that particular morning, I was like coming from one of the restaurants, there's a café there, in the, in the Centennial Park.

Q129 Mmm Mmm.

A There's a café in the Centennial Park, the Centennial Park Café - - -

Q 131 [...]

A [...] as I come out of the gates, the guy, 'cause it's a popular spot like for gay people.

Q 132 All right

A Yeah people are approaching, they just keep come, coming after you, you know, he was standing there you know, he, he start talking about something, which I don't understand about, yeah. I tell him I'm not like interested in the guy.

[...]

Q134 So you thought he was gay?

A No, he approached me.

Q135 He approached you?

A Yeah

Q136 All right, can you say - - -

A 'Cause that's a popular spot where - - -

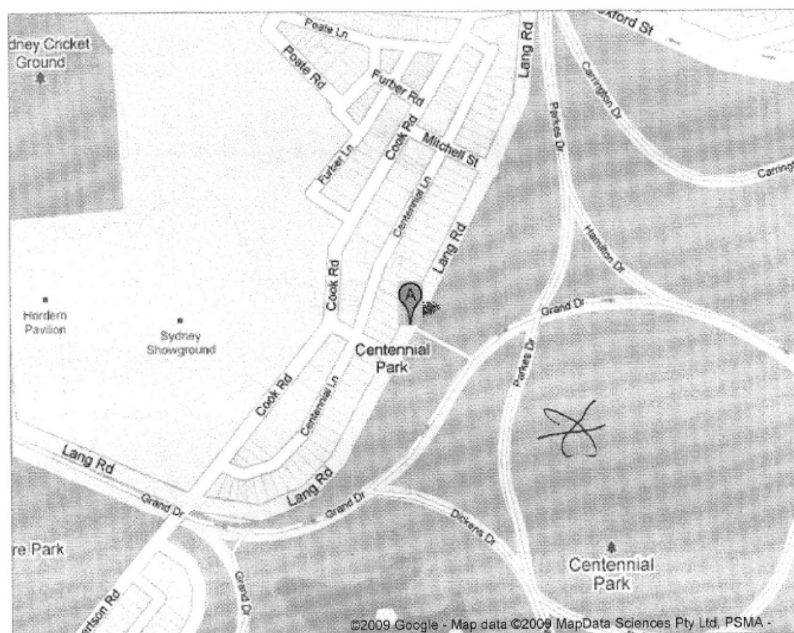
Q 137 Where gays meet?

A Yeah.

[...]

160. At this point, Mr Kellie marked the café that he was describing on the following map with an asterisk:

Special Commission of Inquiry into LGBTIQ hate crimes



161. This asterisk appears to mark the location of the restaurant and café near the corner of Parkes Drive and Grand Drive. On the map, there is a small gate into Centennial Park at the location marked “A”. Although not marked, this map also includes the Robertson Road gate, located where Grand Drive comes to an apex in the bottom left quadrant of the map, as well as the tip of Busby’s Pond along the bottom edge of the map.

162. After indicating the location of the café on the map, Mr Kellie continued:

“Q151 [...]

A Yeah, and there’s a café around there, so I got the food, yeah and I was coming like out, with the bike, with my bike, I was...

Q152 Yeah.

A Then he, he was standing around there, not the first time I saw that guy before I’ve ---

Q153 All right.

A --- seen him like, yeah a few times ---“

163. The interviewing officer then showed Mr Kellie a photograph of [§ 1359] and asked if he recognised him. Mr Kellie stated, “Yeah, I, I yeah do recognise him, yeah.”

164. The interviewing officer next showed Mr Kellie a photograph of the wound on [§ 1359]’s arm, and asked him if he wanted to say anything about that. In response, Mr Kellie continued the narrative that he had commenced earlier:

Special Commission of Inquiry into LGBTIQ hate crimes

- “Q162 [...]

A Well, well when I actually, actually say I’m not interested, like when he was talking then, **he start to pretend he was talking on the phone.**

Q163 [...]

A Yeah, so he start to walk, he start, no make like, **he’s still forcing, still forcing** himself like, **I said, I’m not interested like in gay sex**, because that’s where they thought anybody they see around that area...

Q164 Does he say anything to you?

A Yeah, he approach me... in the morning.

Q 165 Sorry?

A Like... two time, the first time I was entering to the Park, when I, when I met with him and he had like the, the sport area, down, but when I, **when I enter the park, I come up, he was still like behind me - - -**

Q166 Alright.

A - - - and he was talking.

Q167 So how long would he have been there?

A **That was the area I used to live. Around that area.**

Q168 So.

A So he was, he had been there like an hour.

Q169 An hour?

A Yeah, ‘cause I saw him first when I was come out, when I was, **when I was coming into the park.”**

165. The interviewing officer attempted to clarify various aspects of this account. The interview continued:

- Q175 All right. Well what I don’t understand about your, the description you’ve given me, is that you think he was pretending to be on the phone, do you?

A No, what, what I mean is that, he approached me first.

Q176 Right.

A So when, when I give him like the, I say, I’m not interested in that kind of stuff.

Q177 Yeah.

A Yeah, when he first approached me then it was like he was talking, like somebody... after the... I just know... like.. that kind of stuff.

Q178 All right, all right.

A Somebody like, I don’t know if the phone rang or he was pretending because it’s like iPhone, maybe you know - - -

Q 179 Yeah

A - - - is like I I technology... stuff.

Q180 So the first time he approached you?

A Mmm.

Q181 Was about an hour before?

A Yeah.

Q182 OK.

Special Commission of Inquiry into LGBTIQ hate crimes

- A **Down by the sporting area...**
- Q183 And did he ask you for some sort of sexual favour?
- A Yeah, it's, **it's like a popular place**, it's like a popular spot.
- Q184 I realise that, but - - -
- A Yeah, that area
- Q185 Can you remember what he specifically said to you, what did he ask for? Oral sex? Some other form of sex?
- A Yeah... they approaching me, and they don't, they don't, they don't hide any stuff around that area.
- Q186 All right.
- A Yeah, just like... a lady on the street, you know.
- Q187 All right, yeah. Did he offer you some money to do anything?
- A Yeah. I said, I'm not interested, **he forced, he forced attempt.**
- Q188 Did you complain about that to anyone, at any stage?
- A No, it was like two of us... after.
- [...]
- Q190 Yeah.
- A OK. After, I actually said, I'm not interest... Back off.
- Q191 Right.
- A Yeah because, because some people do, when you say you're not interested, they don't go away.
- Q192 All right.
- A But **he still keep coming**, like when I was, **when I enter I was in the park, he was like on the side of the park.**
- [...]
- Q198
- A No I, I did not stab him. When, when, when I, when I come outside *[the gates]*... I said what is your problem, we start arguing, we start to argue.
- Q199 Right
- A Yeah, when **we start to argue I said, If you don't, I said, If you don't, I said the F word. I said I, I will, I will, you know I will, I will stab you...** I was not carrying a knife - -
- Q200 But did you stab him or not?
- A - - - I was not carrying a knife, it was like a fork, this - - -

166. The words "the gates" at Q198 is not in the transcript of the interview, but can be heard on the audio file.

167. The interviewing officer pressed Mr Kellie on how 1359 may have sustained the wound that was shown to Mr Kellie in a photograph. Mr Kellie responded:

Q208 [...]

Special Commission of Inquiry into LGBTIQ hate crimes

A He dropped the phone, when the argument was going on, 'cause he was like talking to somebody, when the argument was going on, when I pushed him, **I pushed him like onto the park**, because the park has like a... sharp wires from the park.

Q209 Right.

A Like if you know Centennial Park, you know there is a old - - -

Q210 Yeah I know the fence that, yeah, yeah.

A The fence is there, and that's a iron fence.

Q211 Yeah.

A So when the argument was going on, I pushed him the, the phone drop. I said, if you come down again I, I will do something to you and when he start to run he drop the phone, and I, I took the phone, yeah.

Q212 What did you intend to do with the phone?

A I was not even want the phone, first I, I try to, to, to... I said, come on take your phone, or something like that. Then he's started to run, start going up, then later the lady called me...

Q214 [...]

A [...] I push to the railing, to the wall, to the, how you call it, the fence.

[...]

Q221 [...]

A [...] I tell him, I say, I'm not interested, I say why you following... what's your problem something like that, we start arguing, when I pushed him onto the wall, onto the wall. Maybe that's how he got this injury."

168. After this account, the interviewing police asked Mr Kellie about the iPhone which they found in his campsite in a pipe next to Busby Pond (i.e. Campsite 2). Mr Kellie claimed that he intended to return the phone, and denied putting his sim card into it.

169. The interviewing officer redirected the interview to the confrontation:

[...]

Q288 What, what did he confront you with that made you end up in a struggle with him?

A **It was, it was the gay sex.**

Q289 Gay sex - - -

A Yeah, yeah.

170. In the exchange that follows, Mr Kellie is gesturing to locations featured on the same map as extracted at [160] above.

Q290 [...]

A At the first, it was like the first entrance to the gates that's where I met him like hour before.

Q291 At the gates?

A Yeah.

Special Commission of Inquiry into LGBTIQ hate crimes

Q292 Here?

A Down, the first gate in Centennial Park, if you enter, this is the Lang Road, Centennial Park...

Q293 Yeah, the main gates, are up here are they?

A Yeah, this is **the cricket ground around the main gate** is here, around here.

Q294 Yeah

A This is the Grand Drive, so when you enter here, this would, I think it was around this, this Lang Road, around this area... this happened. When I enter I came to the café, he was still there, so I decided to, to, it's like... like when I come out of there, where I'm gunna go next, it's like, is, is there this... One, two, two, three times, not the first time I've seen him, seen him.

171. It is reasonably clear from the video recording that Mr Kellie gestured to the Robertson Road Gate as the "main gate".

172. The interviewing officer then asked Mr Kellie where he was "camping near this pipe". Mr Kellie stated that it was off the first map that he was shown, but identified it on a second map that showed a greater portion of Centennial Park. He did not purport to relate this location to any interaction with the victim.

173. The interviewing officer challenged Mr Kellie's version of events, by reference to the fact that 1359 stated that Mr Kellie walked up behind him and brushed past him. Mr Kellie stated:

Q316 [...]

A Nope. I, I, I didn't actually walk behind... **I was actually like on the gate**, because when I'm first met him, for 1 hour before, he was coming up. It it doesn't take that long to 1 hour to reach to the other gate cos like short distance. So I enter the café and **come out of that gate**, I was going to *[Woollahra]*... so I was like standing at the **side of the fence**, put the bag there, then he come, he come again, come like, he was talking... he was talking to... on the phone, but **he was talking on the same topic, yeah about sex stuff**, on the same, like talking to a female person about going out something like that, having a great time... like yeah - - -

[...]

Q318 [...]

A He was like **pretending phone**, when he was talking with, then he past me.

Q319 Yeah.

A Then I say, I... I, this guy still keep coming you know, because like he was watching when I enter the café, I you know, still... there, he come out, I was, yeah he was like... **he would have reached the next gate.**

[...]

Q321 [...]

A One hour I met him at the, the gate - - -

Special Commission of Inquiry into LGBTIQ hate crimes

Q322 No I understand the one hour before.

A Yeah.

Q323 But at the time you've had a bit of push and shove against the fence.

A **I was back at the other gate.**

Q324 At the other gate?

A It's Lang Road there, **that's other gate there, small gate.**

[...]

Q328

A He, like he was talking to her, but she was not talking... one like, like me to her, like I, I was standing there at the next gate.

Q329 All right.

A At the other gate after I've come out of the café, its **like he was waiting on the other, he was waiting like the... you do not take that long like to walk that distance..**"

174. Mr Kellie was asked about his comments of having seen the victim on previous occasions (see above at Q294):

Q357 All right, and you say you seen this bloke three or four times before, this same person, this fella?

A Mmm.

Q358 Three or four times before, you've seen him before?

A Yes, yes.

Q359 Had he approached you for sex on those occasions as well?

A Yeah, yeah.

Q360 And what was your reaction to that?

A I'm still not interested I didn't like force, I didn't, it did not anger me, because like people do it you know, but **when he start, keep coming, that's when I get angry over this...**

175. As may be apparent from the extracts above, Mr Kellie's account in the interview is confusing to follow and open to multiple interpretations. He often rambled and gave answers that were not responsive to questions asked. His English is heavily accented and his grammar is imperfect. This is an inherent limitation in relying upon the interview as an admission.

176. It is clear that, at least at some points during the course of the interview, Mr Kellie is describing an incident consistent with the assault on [redacted 1359]: he recognises the photograph of [redacted 1359] (which does not bear any particular resemblance to the appearance of Mr Cawsey¹¹³); he describes the victim as speaking on an iPhone (whereas Mr Cawsey had an old Nokia); he describes pushing the victim against the fence of Centennial Park; and he describes taking the victim's phone.

¹¹³ See annexure to the Statement of Detective Sergeant Mark Winterflood, 28 January 2010 (SCOI.83385).

Special Commission of Inquiry into LGBTIQ hate crimes

177. However, there are two indications that Mr Kellie may have been, at times, switching to a description of an interaction with Mr Cawsey, which he had conflated with the robbery of [§ 87(2)(b)]. These are:
- a. The nature of the incident he described;
 - b. The apparent location of the incident.
178. *Nature of the incident described by Mr Kellie:* Mr Kellie gave a version of events in which the victim repeatedly propositioned him for “gay sex”, which was what angered Mr Kellie and led to an “argument”.
179. There was no evidence that [§ 87(2)(b)] was gay or that he was seeking to meet other men at Centennial Park.¹¹⁴ [§ 87(2)(b)]’s evidence was that he was walking home along Lang Road towards Oxford Street while looking for a taxi. By contrast, Mr Cawsey was in Centennial Park with the expressed intention of seeking a sexual encounter (although it is speculative as to whether he in fact propositioned any person).
180. Similarly, Mr Kellie described the man as pretending to talk on the phone (Q162, Q318) and talking about “sex stuff” on the phone (Q316). This is consistent with Mr Cawsey connecting to a gay chat line and engaging in phone sex with [§ 87(2)(b)]. This was a fact that was not publicly known.¹¹⁵
181. Together, these are significant features that suggest Mr Kellie may have been, at least at times, describing an encounter with Mr Cawsey.
182. Against that, however, it is not implausible that Mr Kellie was recounting to Police a distorted perception of his interaction with [§ 87(2)(b)]. [§ 87(2)(b)] was speaking on the phone to a friend when Mr Kellie confronted him and began to yell incoherently. A report by Dr Clark prepared in connection with the criminal proceedings in relation to the robbery of [§ 87(2)(b)] found that it was likely that Mr Kellie had a schizophrenic illness at the time of the robbery.¹¹⁶ Dr Clark stated:
- “[H]e was paranoid, feeling that people were after him and that he had experienced hallucinatory voices, with threatening intimidating sexual content.
[...]
He was paranoid and convinced that the victim was a sexual predator. This was unrealistic in context but these were his convictions at the time.”

¹¹⁴ See Statement of [§ 87(2)(b)] 11 September 2010 (SCOI.10491.00011).

¹¹⁵ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, p 81 (SCOI.10464.00009).

¹¹⁶ Psychiatric report of Dr Thomas Clark, 12 April 2011 (SCOI.10488.00009).

Special Commission of Inquiry into LGBTIQ hate crimes

183. It is significant that Mr Kellie maintained his version of the victim being a “sexual predator” in his interview with Dr Clark, over a year after the interview of January 2010 and in the context of preparing for the sentencing of the robbery on [§ 87(2)(b)], where the offence that he had pleaded to would have been plain.
184. Alternatively, if Mr Kellie was indeed confused and conflating events, a reasonable possibility exists that he was conflating the robbery of [§ 87(2)(b)] with another occasion, or multiple other occasions, on which he was approached for sex in Centennial Park. There is some indication of this by Mr Kellie’s description of having been approached for sex by the same victim up to three or four times before (Q357-360), and his knowledge of Centennial Park as a “popular” meeting place for men seeking to have sex with men.
185. In evaluating whether Mr Kellie described a sexual advance by Mr Cawsey, it may be observed that Mr Kellie never describes the victim as having his pants or underpants removed. Given Mr Kellie’s preoccupation with the sexual advances made by the victim, that would be an unusual detail for him to omit.
186. *Location of the incident described by Mr Kellie:* Mr Kellie described meeting the victim twice. From his account, it is reasonably clear that the first location that he met the victim was at the Robertson Road Gates (Q290, 293). This would have been the gate used by Mr Cawsey if he was taking the most direct route from his Redfern apartment. [§ 87(2)(b)] would have passed this gate as he walked on Lang Road towards Oxford Street and may have been seen by Mr Kellie, but [§ 87(2)(b)] did not suggest in his account that he met or spoke to anyone in person prior to being robbed, nor is there any suggestion that [§ 87(2)(b)] propositioned any person for sex.¹¹⁷
187. On one interpretation of Mr Kellie’s interview, one of the incidents in which he said he was propositioned for gay sex occurred “down by the sporting area” (Q182) or around the area where Mr Kellie used to live (Q167). At least one of Mr Kellie’s campsites was near Busby Ponds adjacent to where Mr Cawsey’s body was found. [§ 87(2)(b)] by contrast, was never within Centennial Park when he was robbed of his phone, and never near Busby Pond.
188. Another reading of the interview as a whole is that Mr Kellie described both meetings with the victim as occurring at two sets of gates into Centennial Park, the first being at the Robertson Road Gate (which is near the area Mr Kellie “used to live”), and the second at smaller gates further down Lang Road, close to where [§ 87(2)(b)] was in fact robbed.

¹¹⁷ Statement [§ 87(2)(b)] 11 September 2010 (SCOI.10491.00011).

Special Commission of Inquiry into LGBTIQ hate crimes

189. Mr Kellie makes repeated reference to coming out of the gates to the park (Q128-132, Q198, Q294, Q316, Q323-323). While Mr Kellie entered the park, the man stayed “on the side of the park” (Q192). Across a number of answers, Mr Kellie expressed concern that the man was taking too long to walk from the Robertson Road Gate to the smaller gates on Lang Road (Q294, Q316, Q319), which fuelled his paranoia that the man was “waiting” for him (Q329). On this interpretation, Mr Kellie could reasonably be describing [§ 87(2)(b)]’s movements, notwithstanding that he has interpreted [§ 87(2)(b)] [§ 87(2)(b)]’s innocuous path along Lang Road with paranoia.
190. In summary, there are aspects of Mr Kellie’s interview that give rise to a real suspicion that he was conflating his interactions with Mr Cawsey and [§ 87(2)(b)], such that the interview could be taken as an admission to meeting Mr Cawsey and becoming angered at him after being propositioned for sex. That was the interpretation favoured by the original investigating Police as well as, later, the Coroner.
191. However, Mr Kellie’s interview is open to a number of other, reasonable interpretations, including:
- a. That he was describing a distorted perception of his interactions with [§ 87(2)(b)];
 - b. That he was conflating the robbery of [§ 87(2)(b)] with other occasions on which he had been propositioned by men within Centennial Park, a popular beat; or
 - c. That Mr Kellie was lying about being propositioned by [§ 87(2)(b)] in order to try and mitigate his conduct in the robbery. In this regard, it is relevant that he lied at other points in the interview, including by saying that he was intending to return the phone to [§ 87(2)(b)] and denying placing his own sim card in the phone.¹¹⁸
192. Further, even if it is accepted that Mr Kellie was conflating encounters with [§ 87(2)(b)] and Mr Cawsey, it would follow that Mr Kellie’s memory was confused and distorted. The two events must have become enmeshed into one incident in his mind, such that he was switching between the two events throughout the interview. It would be necessary to not only identify which aspects of the interview related to Mr Cawsey as opposed to [§ 87(2)(b)], but also treat those aspects of the interview as sufficiently reliable. The difficulties with this are self-evident.
193. Thus, while it is an arguable proposition that Mr Kellie was conflating the murder of Mr Cawsey and the robbery of [§ 87(2)(b)] in the January 2010 interview, these statements do not provide a safe or reliable basis, at least on their own, for a finding that Mr Kellie was responsible for Mr Cawsey’s death.

¹¹⁸ ERISP Transcript of Moses Kellie, 6 October 2015, Q 338-341 (SCOI.10469.00008).

Special Commission of Inquiry into LGBTIQ hate crimes

194. When Mr Kellie was interviewed on 6 October 2015, he denied confusing the two incidents.¹¹⁹ Mr Kellie stated, “*Well, you don’t, don’t mix two things together. That’s two, armed robbery and murder, that’s two different thing... No, I didn’t get them confused.*”¹²⁰ He maintained that he had been propositioned for sex by [1359] prior to committing an armed robbery on him. He provided the following version of events:

“Q65 [...]

A I mean the, the victim, because I got charged with armed robbery - - -

Q66 Yes

A I remember the, um, the police asked me, um, do you know this fella before. I said, Nah. I say, I’m, I’m, I first met him in the, in, in front of Centennial Park.

Q67 Yes.

A Um, he asked me for gay sex. Then he walk away. I walk into the park. And that’s where I walked behind him and I rob him of his mobile phone.

Q68 OK.

A. Yeah, that was the, the person for the armed robbery.

[...]

Q76 [...]

A [...] I was sitting there. He came past talking on the phone. Then he, he talked to me but I can’t remember what he actually said. Then he walked off. I said, What’s, I said to myself, What’s wrong with this, with this person, you know? Um, then I saw him again the second time. He was talking on the phone. Um, that’s when I, that’s, that’s when I went and rob him. I went from the other side of the park, I come out of the other, on the other entrance, and robbed him, robbed him of his mobile phone.

[...]

Q89 [...]

A [...] So as he start walking up the street, then I went into the park, and when I come out from the other side, he was still talking on the phone, on, on the other side of the fence. That’s when I, that’s when I walked outside and robbed him.”¹²¹

195. On one view, this is consistent with the interpretation of his interview on 17 January 2010 that the second interaction was at the “smaller gates” on Lang Road (see above at [189]), and furthers the difficulty of relying upon the earlier interview as an admission.

¹¹⁹ Transcript of interview with Moses Kellie, 6 October 2015 (SCOI.10469.00008).

¹²⁰ ERISP Transcript of Moses Kellie, 6 October 2015, Q 338-341 (SCOI.10469.00008).

¹²¹ ERISP Transcript of Moses Kellie, 6 October 2015 (SCOI.10469.00008).

Special Commission of Inquiry into LGBTIQ hate crimes

(f) Alleged admission to Mr Kellie's sister

196. On 18 January 2016, [1357], the eldest sister of Mr Kellie, provided a statement to police in which she recounted a conversation that she had with Mr Kellie in Goulburn Gaol. According to [1357] [1357], she “directly” asked Mr Kellie “what he did and whether he did the killing.” She stated:

“[Mr Kellie] told me that it was his friends that did the killing but they ran away and [Mr Kellie] was the one that got caught. [Mr Kellie] said that he got caught with the man’s phone. [...] He denied killing and denied having the knives. He said his friends did the killing in a group and he was there.”¹²²

197. [1357]’s statement does not specify when this alleged admission was made, nor what words were used by Mr Kellie. It is at odds with Mr Cawsey’s phone being left in his shirt pocket.

198. In the letter from the Coroner referring the matter to the ODPP, the Coroner observed the following:

“[1357]’s oral evidence at the inquest raised serious concerns regarding the reliability of the statement above. It was 6 years between the date of the conversation and her recording the contents of it in her statement. She was vague in evidence as to precisely what was said by Moses Kellie and was unable to recall clearly what words were used by Moses and what facts she had assumed or inferred. As such it is near impossible to discern whether in fact Moses said that his friends did the killing and whether in fact Moses said that he was present while they did the killing.

Little or no weight could be given to the evidence based on the oral evidence of [1357].”¹²³

199. If it was accepted that Mr Kellie made the statement attributed to him by [1357], it may amount to a direct admission to presence at the time of Mr Cawsey’s death. However, the admission would be inconsistent with the purported admission in the 17 January 2010 interview and also the facts of Mr Cawsey’s murder to the extent that they are known. Consistent with the Coroner’s findings, limited weight should be given to this admission.

September 2016: The “no bill” decision

200. On the basis of the above evidence, Police considered that there was sufficient evidence to prosecute Mr Kellie for the offence of murder.¹²⁴

¹²² Statement [1357], 18 January 2016 (SCOI.10470.00019).

¹²³ See also Referral from the Coroner to the ODPP, 7 March 2018, [47]-[48] (SCOI.10483.00054).

¹²⁴ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [181] (SCOI.10464.00009).

Special Commission of Inquiry into LGBTIQ hate crimes

201. On 6 October 2015, Mr Kellie was brought to Wagga Wagga Police Station from Junee Correctional Centre, and arrested for the murder of Mr Cawsey.¹²⁵
202. On 7 September 2016, the Director of Public Prosecutions made a direction that there be no further proceedings against Mr Kellie. The court was advised of the determination and Mr Kellie was discharged.¹²⁶
203. In a letter from Ms Kara Shead, Deputy Director of Public Prosecutions, to Detective Chief Inspector Dickinson of the NSWPF Homicide Squad dated 13 September 2016, the following reasons were provided for the determination that there be no further proceedings:

“ In determining there was no reasonable prospect of conviction, there were difficulties with the admissibility of the tendency and coincidence evidence, as well as the reliability of the “admissions”, and the statements made by the accused alleged to be “lies as consciousness of guilt”, given his history of mental illness.”¹²⁷

2017: The coronial inquest

204. A coronial inquest was conducted into the death of Mr Cawsey on 11 to 13 December 2017, by Deputy State Coroner Russell.
205. Her Honour formed the opinion that there was evidence capable of satisfying a jury beyond reasonable doubt that Mr Kellie had committed an indictable offence – in her opinion, the offence of manslaughter by dangerous and unlawful act.¹²⁸
206. There were some items of evidence adduced during the coronial hearing that were not available at the time of the 2015-2016 prosecution of Mr Kellie. The new evidence is considered and assessed below.

(a) New evidence as to Mr Kellie’s mental health

207. At the coronial hearing, the nature and extent of Mr Kellie’s mental health problems, particularly at the time of Mr Cawsey’s death and the interviews of police, was probed. This line of enquiry explored whether Mr Kellie had a mental illness, and if so whether it affected his cognition, or his ability to answer questions responsively, truthfully, or reliably.

¹²⁵ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [182] (SCOI.10464.00009).

¹²⁶ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [184] (SCOI.10464.00009).

¹²⁷ Letter advising of decision to withdraw charges, 13 September 2016 (SCOI.83377).

¹²⁸ Referral from the Coroner to the ODPP, 7 March 2018 (SCOI.10483.00054).

Special Commission of Inquiry into LGBTIQ hate crimes

208. It is necessary to set out and comment upon each of the expert reports in relation to Mr Kellie.
209. Psychological Assessment Report of Dr John Jacmon, 8 November 2010:¹²⁹ Dr Jacmon, a psychologist, assessed Mr Kellie by way of testing and clinical interview. Dr Jacmon concluded that Mr Kellie’s day-to-day functioning was impaired by post-traumatic stress disorder (**PTSD**), depression and anxiety at clinically significant levels.
210. Dr Jacmon further assessed Mr Kellie to be at a “borderline level of IQ”, characterised by significantly below-average general intellectual functioning existing concurrently with related limitations in two or more adaptive skill areas. This was said to be the lowest level of intelligence at which an individual may function independently, i.e. without the need for carer assistance.
211. Psychiatric Report of Dr Thomas Clark, 12 April 2011:¹³⁰ Dr Clark prepared a psychiatric report in connection with Mr Kellie’s court proceedings in relation to the robbery of [1359]. Dr Clark was asked to comment on whether Mr Kellie was fit to plead, and whether the defence of insanity was open to him.
212. Dr Clark diagnosed Mr Kellie with a schizophrenic illness which “in all probability, was present at the time of his offence.”¹³¹ Dr Clark noted that Mr Kellie showed the “typical social and personal deterioration of a schizophrenic illness, with loss of supports.”
213. Dr Clark’s comments as to Mr Kellie’s likely state of mind at the time of the offence are set out above at [182].
214. Evidence raising doubts about Mr Kellie’s self-reported history: Subsequent to the provision of these reports, Police obtained information which was said to give rise to “some concern... that [Mr Kellie] has created or exaggerated a mental health situation because he saw that as being advantageous to his court proceedings.”¹³²
215. Some of the “concerns” arose from an unreliable history provided by Mr Kellie. For example, Mr Kellie told Dr Adams in 2011 that he had previously attended Blacktown Hospital for mental health services and was prescribed psychiatric medication. However, Blacktown Hospital had no record of having Mr Kellie as a mental health patient.¹³³

¹²⁹ Psychological report of Dr John Jacmon, 8 November 2010 (SCOI.10488.00008).

¹³⁰ Psychiatric Report of Dr Thomas Clark, 12 April 2011 (SCOI.10488.00009).

¹³¹ Psychiatric Report of Dr Thomas Clark, 12 April 2011, p 4 (SCOI.10488.00009).

¹³² Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [205] (SCOI.10464.00009).

¹³³ Referral from the Coroner to the ODPP, 7 March 2018, [36] (SCOI.10483.00054).

Special Commission of Inquiry into LGBTIQ hate crimes

216. Other concerns arose from comments recorded in Mr Kellie’s Justice Health file in which he appeared to acknowledge lying about his mental health. For example, in a Justice Health Note dated 3 November 2010, Dr Elliot is reported to have recorded that Mr Kellie “now denies hearing AH (auditory hallucinations) and appeared to indicate he said this only to convey his distress re court.”¹³⁴
217. Nonetheless, police acknowledged some of the observations of Mr Kellie in September and October 2009 could be seen as indicators of mental health issues, including not dressing according to the weather, shouting at people for no apparent reason, and muttering to himself.¹³⁵ Indeed, [1359]’s own account of the robbery, according to which Mr Kellie began yelling at him incoherently with no provocation, may be seen as indicative of some degree of poor mental health on the part of Mr Kellie. Similarly, on the police case, Mr Kellie was responsible for the assault of [1361], which bore hallmarks of paranoid and irrational behaviour.
218. Moreover, the explanation of the 17 January 2010 interview which gives it the highest probative value as an admission, being that Mr Kellie was conflating and switching between describing interactions with [1359] and Mr Cawsey (or interactions with other men who propositioned him for sex), is itself an indication of seriously disordered thinking.
219. *Psychiatric Report of Dr Jonathan Adams, 15 June 2011.*¹³⁶ Dr Adams prepared a psychiatric report in connection with Mr Kellie’s sentencing proceedings in relation to the robbery of [1359]. The report was prepared following a clinical interview and a review of Mr Kellie’s health records since being in custody, as maintained by Justice Health.
220. This report was commissioned at the request of the sentencing Judge, his Honour Judge Finnane. The comment in the statement of DSC Staples that the report was “commissioned by Defence and is sympathetic to [Mr Kellie’s] purposes” is inaccurate.¹³⁷
221. Dr Adams summarises the reports of signs and symptoms of psychotic illness contained in his mental health file. From that summary, it appears that while Mr Kellie was not initially treated by mental health services in custody, in July 2010 Mr Kellie began reporting auditory hallucinations and was placed on antipsychotic medication.¹³⁸ In about November 2010, Mr Kellie was transferred to the Mental Health Accommodation Area within the custodial facility.

¹³⁴ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [205] (SCOI.10464.00009).

¹³⁵ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [196] (SCOI.10464.00009).

¹³⁶ Psychiatric report of Dr Jonathan Adams, 15 June 2011 (SCOI.10486.00231).

¹³⁷ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [204] (SCOI.10464.00009).

¹³⁸ Psychiatric report of Dr Jonathan Adams, 15 June 2011, pp 7-9 (SCOI.10486.00231).

Special Commission of Inquiry into LGBTIQ hate crimes

222. Dr Adams opined that Mr Kellie’s account “was in keeping with symptoms of a psychotic disorder, with associated mood disturbance and post traumatic features.”¹³⁹ Dr Adams did not express an opinion of Mr Kellie’s mental state at the time of the robbery on [1359] noting that there was no available collateral information of his presentation prior to incarceration.

223. *Psychiatric Reports of Dr Danny Sullivan, 17 September 2017 and 8 December 2017.*¹⁴⁰ Dr Sullivan provided a report to the Coroner dated 17 September 2017 in relation to Mr Kellie’s mental state at the time of police interviews (including, most significantly, the interviews of 17 October 2009 and 17 January 2010), and also during his time in custody. He provided a short supplementary report after reviewing Dr Adams’ report of 4 December 2017, dated 8 December 2017.

224. In his report dated 17 September 2017, Dr Sullivan opined that in each police interview conducted with Mr Kellie, there was “no clear evidence of mental illness.” He stated:

“He appeared oriented and alert. His answers were cogent and appropriate. There was no indication that at the times of the interviews he was experiencing auditory hallucinations or other perceptual abnormalities. His statements and demeanour did not suggest that he was suspicious or held grandiose ideas. His cognitive abilities and intellect did not appear in any way compromised.”¹⁴¹

225. In relation to whether Mr Kellie’s behaviour in custody disclosed a mental illness, Dr Sullivan observed that the evidence of mental illness was largely supported by Mr Kellie’s self-report rather than behavioural observations. Dr Sullivan referred to two occasions, recorded in Mr Kellie’s mental health records, where he acknowledged being untruthful about his history because he considered this would help his court case.¹⁴²

226. Dr Sullivan did not assess Mr Kellie in person. On the basis of his review of the materials, Dr Sullivan expressed his view as follows:

“[...] I cannot be confident that Mr Kellie does clearly suffer from a psychotic illness. The possibilities are that he has a genuine psychotic illness; or that he has feigned psychosis for various secondary gains, including sentencing advantages, benefits within the correctional system, and/or obtaining sedative medication...

¹³⁹ Psychiatric report of Dr Jonathan Adams, 15 June 2011, p 9 (SCOI.10486.00231).

¹⁴⁰ Psychiatric report of Dr Danny Sullivan, 17 September 2017 (SCOI.10488.00012); Psychiatric report of Dr Danny Sullivan, 8 December 2017 (SCOI.10488.00016).

¹⁴¹ Psychiatric report of Dr Danny Sullivan, 17 September 2017, [60] (SCOI.10488.00012)

¹⁴² Psychiatric report of Dr Danny Sullivan, 17 September 2017, [62] (SCOI.10488.00012).

Special Commission of Inquiry into LGBTIQ hate crimes

Given the uncertainty about whether Mr Kellie had any confirmed mental illness, and based upon observing the ERISP interviews, I cannot find evidence for any clear impediment to his cognitive abilities or his ability to answer questions responsively, truthfully, or reliably.”

227. Psychiatric Reports of Dr Jonathan Adams, 4 and 8 December 2017.¹⁴³ Dr Adams, who assessed Mr Kellie in 2011, provided a report to the Coroner dated 4 December 2017, in which he addressed the same topics as Dr Sullivan. He provided a supplementary report dated 8 December 2017 after being provided with and reviewing Dr Sullivan’s report dated 17 September 2017.
228. Similarly to Dr Sullivan, Dr Adams noted the absence of any overt or manifest signs of mental illness during the 17 January 2010 interview. He was “not able to conclude that Mr [Kellie] was clearly suffering from symptoms of a mental illness at the time of these interviews.”¹⁴⁴
229. However, Dr Adams added the following important qualification:
- “It is important to note, however, that these police interviews were not formal psychiatric evaluations. Although in my view it is reasonable to conclude that there was no clear evidence of Mr [Kellie] experiencing symptoms of a major mental illness during these interviews given his behaviour and responses, that is not to say that he was not experiencing underlying symptoms of mental illness.”¹⁴⁵
230. In relation to Mr Kellie’s presentation in custody, Dr Adams commented that Mr Kellie had been assessed by several different mental health clinicians since his arrest in 2010, and had regularly been observed to be experiencing symptoms consistent with a psychotic illness.¹⁴⁶
231. Dr Adams referred to the areas of concern regarding the reliability and consistency of Mr Kellie’s account. Dr Adams stated that, in the absence of a further evaluation of Mr Kellie in person in which to explore these issues, he had “no reason to alter” his diagnosis in 2011 of a psychotic disorder, in the absence of a further assessment of Mr Kellie in person.¹⁴⁷
232. Analysis: While Mr Kellie’s mental health presentation is complex and contested, at least two forensic psychiatrists who examined Mr Kellie in 2011, Dr Clark and Dr Adams, concluded that he suffered from a psychotic illness. This is consistent with evidence that he was diagnosed with and treated for mental illness while in custody, notwithstanding some comments that he had exaggerated or lied about some symptoms. It is also congruent with his presentation while living in Centennial Park.

¹⁴³ Psychiatric report of Dr Jonathan Adams, 4 December 2017 (SCOI.10488.00017); Psychiatric report of Dr Jonathan Adams, 8 December 2017 (SCOI.10488.00019).

¹⁴⁴ Psychiatric report of Dr Jonathan Adams, 4 December 2017, p 9 (SCOI.10488.00017).

¹⁴⁵ Psychiatric report of Dr Jonathan Adams, 4 December 2017, p 9 (SCOI.10488.00017).

¹⁴⁶ Psychiatric report of Dr Jonathan Adams, 4 December 2017, p 10 (SCOI.10488.00017).

¹⁴⁷ Psychiatric report of Dr Jonathan Adams, 4 December 2017, 10 (SCOI.10488.00017).

Special Commission of Inquiry into LGBTIQ hate crimes

233. In the opinion of Dr Adams, the lack of outward signs of psychosis during a police interview cannot exclude that Mr Kellie was experiencing symptoms of psychosis. Further, even assuming Mr Kellie was not affected by psychosis at the time of the 17 January 2010 interview, any psychotic illness may only manifest periodically. It cannot exclude Mr Kellie having been affected by psychosis at the time of the robbery of [1359], and his paranoid interpretation of the events at the time colouring the account he provided to Police.
234. Dr Sullivan’s opinion, which casts the most doubt on Mr Kellie’s diagnosis, puts it no higher than that he cannot be confident that Mr Kellie suffered from a psychotic illness, and that a *possibility* existed that he feigned psychosis. Dr Sullivan did not himself examine Mr Kellie, which Dr Adams considered to be a necessary step before commenting “conclusively as to the reliability of Mr Kellie’s account.”¹⁴⁸
235. In the expert report of Dr Kerry Eagle dated 17 February 2023, obtained by the Inquiry, Dr Eagle comments that it is “not unusual” for individuals with mental illness to exaggerate or falsely deny symptoms of mental illness, for a variety of reasons, and that she would not be able to exclude a psychotic illness on that basis. Further, Dr Eagle refers to information to suggest “more than just self report” to suggest Mr Kellie had a mental health condition, including a deterioration in function resulting in itinerancy.
236. It is submitted that, having regard to the whole of the psychiatric evidence as well as observations of Mr Kellie from 2009, it is likely that he was mentally unwell at the time of the robbery of [1359].
237. More significantly, even if one were to assume that Mr Kellie was not affected by psychotic illness at the time of the interviews or the robbery of [1359], many of the issues identified above with relying upon the interview of 17 January 2010 as an admission to the murder of Mr Cawsey remain.
238. It remains the fact that Mr Kellie did not unambiguously describe an encounter with Mr Cawsey. Indeed, to accept the 17 January 2010 interview as a reliable admission with substantial probative weight would require the walking of a fine line between establishing that Mr Kellie’s mental state was sufficiently impacted that he would confuse or conflate two separate events, but not so impacted that he could be confabulating or misperceiving some details.
239. In short, it is submitted that the new psychiatric evidence obtained at the coronial inquest does not substantially change the treatment that should be given to Mr Kellie’s interview on 17 January 2010 as a purported admission.

¹⁴⁸ Psychiatric report of Dr Jonathan Adams, 4 December 2017, p 10 (SCOI.10488.00017).

Special Commission of Inquiry into LGBTIQ hate crimes

(g) Expert report of Dr Duflou in relation to the knives possessed by Mr Kellie

240. In 2009, Police seized six knives that were found in Mr Kellie's possession: one was seized at the time he was arrested for the assault on [REDACTED 1360], the remaining five were seized from a backpack in his campsite. Each of these knives had previously been forensically tested for blood, with negative results.¹⁴⁹

241. On 1 November 2017, Dr Johan Duflou, forensic pathologist, provided an opinion to the Coroner as to whether any of the six knives found in Mr Kellie's possession were capable of causing the stab wound inflicted upon Mr Cawsey.¹⁵⁰

242. Dr Duflou set out clear limitations on the ability to infer the size or shape of a blade from the nature of the wound. Dr Duflou considered comments of the likelihood of a specific knife causing an observed injury to be "inherently unreliable", and that "often at best only various knives can be excluded."¹⁵¹ In relation to the limitations, Dr Duflou commented:

- a. With extremely few exceptions, knives do not have unique characteristics which allow an examiner to determine that a specific knife caused an injury to the exclusion of all others;
- b. Parts of the human body are elastic and deformable, with the effect of making a wound on the surface of the skin appear either smaller or larger than the width of the blade;
- c. The depth of a wound is only an approximation, and the knife may have entered the body for a longer or shorter distance, depending on variables such as the position of the deceased and his internal organs at the time of the stabbing, the position of the organs when lying on the mortuary table, whether the deceased was exhaling or inhaling at the time of the stabbing, and any possible compression of the chest by the weapon;
- d. An altercation is not a static event, such that the weapon may not have entered "cleanly";
- e. A knife may be thrust into the body to the hilt, or may enter the body for only part of the blade length.¹⁵²

243. In relation to five of the six knives, Dr Duflou stated that while it was reasonably possible that they could have caused the injury, it was also entirely possible for another knife with similar dimensions to have caused the stab wound. He added that it was also reasonably possible for a knife which has

¹⁴⁹ Certificate of analysis of Lisa-Ann Wedervang, 18 April 2016 (SCOI.10465.00005).

¹⁵⁰ Pathology report of Dr Johan Duflou, 1 November 2017 (SCOI.10488.00020).

¹⁵¹ Pathology report of Dr Johan Duflou, 1 November 2017, [14]-[16] (SCOI.10488.00020).

¹⁵² Pathology report of Dr Johan Duflou, 1 November 2017, [14] (SCOI.10488.00020).

Special Commission of Inquiry into LGBTIQ hate crimes

“different appearances altogether” from the six that he examined to have been used to inflict the fatal stab wound.¹⁵³

244. This evidence is neutral as to Mr Kellie’s possible involvement in the stabbing of Mr Kellie.

2018: The DPP declines to prosecute Mr Kellie following the coronial referral

245. On 16 November 2018, Mr Peter McGrath SC, Deputy Director of Public Prosecutions, advised DSC Staples that the ODPP would not be further prosecuting Mr Kellie in relation to the death of Mr Cawsey. Mr McGrath SC noted that, in light of the previous direction that there be no further proceedings on 6 September 2016, consideration was given to whether there was “significant new evidence to warrant the reversal of that direction.” Mr McGrath continued:

“The case against Mr Kellie is a circumstantial one. Upon an assessment of the new evidence arising since the discontinuance of the previous proceedings, this Office considers that there remains no reasonable prospect of conviction and that the new evidence does not overcome the previously identified difficulties in the prosecution of this matter. In particular, the newly obtained medical opinions as to Mr Kellie’s mental health do not overcome difficulties with the reliability of ‘admissions’ and statements alleged to be ‘lies as consciousness of guilt’.”¹⁵⁴

246. It may be observed that the reasons provided by Mr McGrath SC, while brief, are consistent with the analysis provided above as to the probative value of the new evidence.

Conclusions in relation to Mr Kellie

247. A finding of guilt on the balance of probabilities, while a serious finding that calls for stronger evidence, could be made consistently with there being insufficient evidence to prove Mr Kellie’s guilt beyond reasonable doubt. Nevertheless, the tribunal of fact must “feel an actual persuasion” before making such a finding: *Briginshaw v Briginshaw* (1938) 60 CLR 226 at 361.

248. While there is a plausible argument that Mr Kellie was responsible for the death of Mr Kellie, such that a Coroner was persuaded to refer the case to the ODPP, it is submitted that the evidence is insufficient to establish conclusively, on the balance of probabilities, that Mr Kellie was responsible for inflicting the stab wound suffered by Mr Cawsey.

¹⁵³ Pathology report of Dr Johan Dufflou, 1 November 2017, [18] (SCOI.10488.00020).

¹⁵⁴ Letter from Peter McGrath SC to Magistrate Paula Russell, 16 November 2018 (SCOI.10483.00062).

Special Commission of Inquiry into LGBTIQ hate crimes

Gay hate motivation on the part of Mr Kellie?

249. Notwithstanding the above conclusion, on the basis that Mr Kellie is the only person of interest and that a Coroner considered that there was evidence capable of satisfying a jury beyond reasonable doubt that Mr Kellie had committed an indictable offence, an opinion was sought from Dr Eagle as to whether there was evidence that Mr Kellie was motivated by LGBTIQ hate or bias, on the assumption that:
- a. Mr Kellie’s interview on 17 January 2010 related to interactions between Mr Kellie and Mr Cawsey, rather than [1359], and
 - b. Mr Kellie stabbed Mr Cawsey.
250. Dr Eagle considered that there was insufficient information to reliably determine the motivation for Mr Kellie’s behaviour.¹⁵⁵
251. In Dr Eagle’s opinion, it is plausible that, if Mr Kellie had a chronic psychotic illness, symptoms of psychosis could have impaired his judgment and resulted in a misinterpretation of Mr Cawsey’s behaviour, contributing to the violence.¹⁵⁶ This would “complicate the interpretation of this offence as a hate crime.”¹⁵⁷
252. Possible motivations for Mr Kellie’s response to Mr Cawsey’s alleged advances include:
- a. “a reactive albeit excessive response to a persecutory misinterpretation of Mr Cawsey’s intentions”,
 - b. “poorly controlled anger at Mr Cawsey for propositioning him sexually but not necessarily motivated by hate (arising from problems with anger management rather than hatred towards a specific group due to prejudice)”, or
 - c. “anger motivated by hatred due to prejudice towards a specific group.”¹⁵⁸
253. The third of these motivations would bring Mr Kellie’s response to Mr Cawsey within the definition of an LGBTIQ hate crime, as adopted by this Inquiry.¹⁵⁹ Mr Cawsey’s sexuality, as perceived by Mr Kellie, would have been a factor in the commission of the stabbing.

¹⁵⁵ Expert report of Dr Kerry Eagle, 17 February 2023 (SCOI.83375).

¹⁵⁶ Expert report of Dr Kerry Eagle, 17 February 2023, [82.2.1] (SCOI.83375).

¹⁵⁷ Expert report of Dr Kerry Eagle, 17 February 2023, [82.3.1] (SCOI.83375).

¹⁵⁸ Expert report of Dr Kerry Eagle, 17 February 2023, [82.2.3] (SCOI.83375).

¹⁵⁹ Transcript of the Inquiry, 2 November 2022 (TRA.00003.00001).

Special Commission of Inquiry into LGBTIQ hate crimes

254. However, in respect of the first two motivations, Mr Cawsey's sexuality *per se* would not have played a factor in the commission of the offence, as opposed to Mr Kellie's perception of, and/or reaction to, Mr Cawsey's "forced"¹⁶⁰ sexual advances.
255. Accordingly, even on the assumption that Mr Kellie stabbed Mr Cawsey following an interaction that was described by him in his interview of 17 January 2010, it is not possible to conclusively determine that the killing of Mr Cawsey was an LGBTIQ hate crime.

Possibility of a gay hate attack by another person

256. Police investigating Mr Cawsey's death considered the possibility that Mr Cawsey was the subject of gay-hate violence by a person other than Mr Kellie. DSC Staples provided the opinion that Mr Cawsey's death "was not a targeted 'gay-hate' attack", on the basis of the following factors:
- a. "[T]he murder itself is not indicative of it being hate crime related". This assertion was principally based on an email received from forensic psychologist Ms Kim Ora (see below);
 - b. The area of Snake Bank and Busby's Pond was not known as being a place for male sexual activity, which would make it unlikely that persons intent on committing violence against men would choose to focus on this area;
 - c. There are no police or internet records indicating that gay-hate offending was occurring in the Centennial Park area during 2009.¹⁶¹

257. Each of these factors is considered below.

258. In relation to the **first** factor, that the "murder itself is not indicative of it being hate crime related", Police principally relied upon an email received from Ms Kimberley Ora dated 17 February 2015, in which she stated, among other things, that:

"primarily the absence of excessive violence against the victim in this case would be the main factor that does not support this as being a hate crime..."¹⁶²

259. It is necessary to appreciate that Ms Ora's email, which was tendered at the inquest into Mr Cawsey's death, was not an expert report. Ms Ora, appropriately, qualified her opinion as preliminary ("From what I have read so far...") and not based on a thorough review of the materials ("In the next few weeks I will review the case material more thoroughly..."). Despite Ms Ora stating that she would "put

¹⁶⁰ See above at [165].

¹⁶¹ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [130] (SCOI.10464.00009)

¹⁶² Email from Kimberley Ora to Melanie Staples, 17 February 2015 (SCOI.10472.00151).

Special Commission of Inquiry into LGBTIQ hate crimes

some of these thoughts into a report for you”, no report was ever prepared or tendered at the coronial inquest.

260. In any event, while it may be accepted that excessive violence can indicate an “emotion based motive” consistent with anger, rage and hate, it does not necessarily follow that its absence can serve as a basis to *exclude* a hate crime.
261. Dr Eagle, in commenting on Ms Ora’s preliminary opinion as expressed in the email, considered that the absence of excessive violence does not contribute to the issue of whether this is or is not a hate crime. She explained:
- “Indicators, much like risk factors, are circumstances that have been associated in the literature with specific types of outcomes (such as offences). It would not be reliable, in my view, to extrapolate from an indicator derived from the literature, a conclusion as to a certain fact such as motivation.”¹⁶³
262. In relation to the **second** factor, police relied upon the evidence of park rangers and security guards to the effect that sexual activity within Centennial Park principally occurred in two areas: first, along Carrington Drive in the north of the park (principally used by gay men), and secondly, at Lachlan Swamp.¹⁶⁴ These areas were indicated with the letter “b” in the map marked by park ranger Colin Cheshire on 24 June 2015.¹⁶⁵
263. This was corroborated by information on the website www.cruisinggays.com, accessed by DSC Staples and quoted in her statement.¹⁶⁶
264. Accepting this information to be true reduces the likelihood of a planned LGBTIQ hate attack. However, it does not exclude the possibility of an opportunistic attack on Mr Cawsey, or Mr Cawsey being followed from a known beat location to the location where he was ultimately killed.
265. In relation to the **third** factor, on 20 December 2016 a Request for Assistance was sent to the Bias Crimes Unit seeking further information about whether there existed any evidence of gay hate offending within the Centennial Park area between 1 January 2008 and 31 December 2010.
266. In response to the request, Acting Sergeant Corbett of the Bias Motivated Crimes Unit within Operational Programs prepared a document setting out each “sexual preference prejudice incident”

¹⁶³ Expert report of Dr Kerry Eagle, 17 February 2023, [82.3.3] (SCOI.83375).

¹⁶⁴ Statement of Colin Cheshire, 24 June 2015 (SCOI.83386); Statement of Lee Doull, 4 November 2015 (SCOI.10467.00125); Statement of David Nelson, 20 November 2015 (SCOI.10467.00133); Statement of Juliet Johnson, 2 February 2016 (SCOI.10467.00127).

¹⁶⁵ Statement of Colin Cheshire, 24 June 2015, annexure (SCOI.83386).

¹⁶⁶ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [123] (SCOI.10464.00009).

Special Commission of Inquiry into LGBTIQ hate crimes

for each month between January 2008 and May 2009. No incidents in the Centennial Park area were identified.¹⁶⁷

267. In an email to DSC Staples dated 9 December 2016, Sergeant Steer set out the following limitations of the data that could be provided:
- a. First, in June 2009 the Bias Crimes Unit was disbanded, and no bias crime capability existed within the NSWPF from then until September 2012. (This is a matter which has been the subject of evidence in public hearings of the Inquiry.) As a result, there was no available data from May 2009, and none in the months preceding Mr Cawsey's death;
 - b. Secondly, in the opinion of Sergeant Steer, hate crimes were underreported by the community, and "police especially back then either didn't flag the associated factor to identify it or didn't identify the crime as a hate crime."¹⁶⁸
268. Bearing those limitations in mind, the data produced by the Bias Motivated Crimes Unit can at most be taken as qualified evidence for there being no readily identifiable cluster of "sexual preference prejudice incidents" occurring in Centennial Park.
269. Each of the above factors is relevant to an assessment of the probability of Mr Cawsey being the target of a LGBTIQ attack. However, in the absence of a known person responsible for Mr Cawsey's death, they cannot exclude the possibility of the stabbing of Mr Cawsey being an LGBTIQ hate crime.

2023: Forensic testing

270. The Inquiry arranged for further forensic analysis in relation to a number of exhibits that were assessed to be of particular forensic significance. The results in relation to this analysis is as follows.
271. Section of "rollie" cigarette butt: As set out above at [21.a], during the crime scene examination, two cigarette butts and a cigarette lighter were located next to Mr Cawsey. Previous testing of the cigarette butt revealed a mixed DNA profile that could have originated from unknown males A and B: above at [23.a].
272. Further testing conducted in 2023 utilised the latest "deconvolution" software to separate the profiles in the mixture by determining the probabilities of likely allele combinations from the contributors.

¹⁶⁷ Bias Motivated Crimes Unit, Data on Gay Hate Offending 2008-2010, 22 December 2016 (SCOI.83355).

¹⁶⁸ Email from Sergeant Steer to DSC Staples, 9 December 2016 (SCOI.83365).

Special Commission of Inquiry into LGBTIQ hate crimes

Partial DNA profiles were obtained. Those profiles were uploaded to the NSW database on 14 February 2023, with no matches.¹⁶⁹

273. Black underpants: As set out above at [21.b], Mr Cawsey was wearing, among other items of clothing, a black g-string. Previous testing revealed that the DNA recovered was a mixture that originated from two individuals, Mr Cawsey and unknown male C: above at [23.b].
274. At the request of the Inquiry, the original profile obtained was “upgraded” using the latest DNA typing system used by FASS. The upgraded typing system, known as PowerPlex 21, increases the amount of loci on the chromosome tested from 10 to 21. This enhanced profile has been uploaded for searching on the NSW and National database, however remains unidentified.
275. Penis swab: A penis sample was taken from Mr Cawsey post-mortem. Previous testing revealed that a partial DNA profile recovered matched Mr Cawsey.¹⁷⁰ Further testing by FASS in 2023 was unable to yield any further information, with again a weak partial DNA profile consistent with Mr Cawsey being obtained.¹⁷¹
276. Black hood and black glove: On 17 October 2009, police seized several items of clothing from Mr Kellie’s campsite on the shoreline of Busby Pond (campsite 2). Among these were a black hood and a black glove. Previous testing had been negative to blood, and testing for trace DNA was not carried out.¹⁷² Mr Edgington described a man, believed to be Mr Kellie, wearing a hood on the morning of Mr Cawsey’s murder.¹⁷³
277. Notwithstanding the absence of blood, the Inquiry considered that any trace DNA from Mr Cawsey would be of forensic significance as it could indicate an interaction between the two men.
278. A total of 43 tape lifts were taken from the inside and outside of the hood in order to exhaustively sample the item. DNA testing of these samples yielded the following results:
- a. Testing was “unsuccessful” on 26 swabs. That is, either a DNA profile was not obtained or the amount of DNA in the sample was below the threshold for detection;
 - b. In relation to 13 swabs, DNA was recovered but was too weak for meaningful comparison with reference samples;

¹⁶⁹ Certificate of analysis of David Bruce, 23 June 2023 (SCOI.84130).

¹⁷⁰ Certificate of analysis of Lisa-Ann Wedervang, 18 April 2016, item 16 (SCOI.10465.00005)

¹⁷¹ Certificate of analysis of David Bruce, 23 June 2023 (SCOI. 84130).

¹⁷² Certificate of analysis of Lisa-Ann Wedervang, 18 April 2016, items 46 and 47(SCOI.10465.00005)

¹⁷³ See above at [87].

Special Commission of Inquiry into LGBTIQ hate crimes

- c. In swabs recovered from one area of the hood, a partial unknown female DNA profile was returned (unknown female E);
 - d. In swabs recovered from another area on the hood, an unknown male DNA profile (unknown male D) was returned. Mr Kellie and Mr Cawsey were excluded as contributors;
 - e. In swabs recovered from another area of the hood, a partial DNA profile was recovered. Mr Kellie was not excluded, although further work is required to confirm or verify that result.¹⁷⁴
279. A total of 10 tape lifts were taken from the interior and exterior surfaces of the glove. DNA testing of each tape lift yielded partial profiles matching Mr Kellie.
280. Mr Kellie's DNA would be expected on both the hood and the glove, given that it was believed to belong to him. The results are otherwise of no forensic significance to the investigation of Mr Cawsey's death.
281. Left and right Puma shoes belonging to Mr Kellie: On 17 October 2009, police seized Puma-brand shoes worn by Mr Kellie, which he later admitted to wearing on the date of Mr Cawsey's murder.¹⁷⁵ Previous testing of the left shoe had received a partial DNA profile; however, due to the low level of DNA, further interpretation was not carried out.¹⁷⁶ DNA testing was unsuccessful in relation to the right shoe.
282. As with the hood and glove, the Inquiry considered that any trace DNA from Mr Cawsey would be of forensic significance.
283. A swab of the left shoe as part of the forensic testing in 2023 revealed a mixed DNA profile too weak for further interpretation. DNA testing of the right shoe is ongoing, and supplementary submissions will be filed in relation to any results.¹⁷⁷
284. Wallet of Mr Cawsey: During the crime scene examination, a small wallet containing Mr Cawsey's driver's license was located in his trackpants. Previous testing had revealed trace DNA from at least one other individual, but at levels too low for further interpretation.¹⁷⁸
285. Although DSC Staples would ultimately conclude that there was no evidence of any property being stolen from Mr Cawsey,¹⁷⁹ investigations had revealed that he had withdrawn \$650 from his bank

¹⁷⁴ Certificate of analysis of David Bruce, 23 June 2023 (SCOI.84130).

¹⁷⁵ ERISP Transcript, 17 October 2009, Q737-744 (SCOI.10468.00075-6).

¹⁷⁶ Certificate of analysis of Lisa-Ann Wedervang, 18 April 2016, item 50 (SCOI.10465.00005)

¹⁷⁷ Certificate of analysis of David Bruce, 23 June 2023 (SCOI.84130).

¹⁷⁸ Certificate of analysis of Lisa-Ann Wedervang, 18 April 2016, item 66 (SCOI.10465.00005)

¹⁷⁹ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, [132] (SCOI.10464.00009).

Special Commission of Inquiry into LGBTIQ hate crimes

account on the Thursday prior to his death (i.e. 24 September 2009).¹⁸⁰ The Inquiry considered that an investigative lead could arise from identifying the individual who deposited the trace DNA identified by earlier testing.

286. Consistent with the original testing, re-analysis of a swab from the wallet revealed a mixed DNA profile, with the major profile matching Mr Cawsey and the minor profile being too weak for interpretation.¹⁸¹
287. In short, none of the forensic testing yielded new lines of enquiry nor advanced any theory as to who may have been responsible for the stabbing of Mr Cawsey.

Submission as to bias

288. Notwithstanding the factors that, in the opinion of investigating police, make it unlikely that Mr Cawsey was the victim of a “gay-hate attack”, it is difficult to ignore the confluence of features of Mr Cawsey’s death that make it likely that his sexuality (or at least his sexual conduct) played a role in his death. This includes:
- a. His purpose for attending Centennial Park, namely, to engage in a sexual act with another man, as evidenced by the message left on the Mediatel service;
 - b. Centennial Park’s reputation as a beat;
 - c. The evidence that he engaged in mutual masturbation over the phone not long prior to his death; and
 - d. The positioning of his clothing when his body was located.
289. While the circumstance of Mr Cawsey’s death remain unknown, it can be inferred that Mr Cawsey was engaged in an expression of his sexuality in the period preceding his death, and would have been seen to be doing so by any offender. This gives rise to a distinct possibility that Mr Cawsey was the target of an attack on the basis of the expression of his sexuality.
290. However, while the identity of Mr Cawsey’s killer remains unknown, there is no sufficient basis for a conclusion as to whether or not his murder involved LGBTIQ bias.
291. If Mr Kellie is assumed to have killed Mr Cawsey following an encounter in which Mr Cawsey was perceived to have propositioned him for sex, this excessive hostility is open to being interpreted as

¹⁸⁰ Statement of Detective Senior Constable Melanie Staples, 24 February 2017, p 23 (SCOI.10464.00009).

¹⁸¹ Certificate of analysis of David Bruce, 23 June 2023 (SCOI. 84130).

Special Commission of Inquiry into LGBTIQ hate crimes

anger motivated by prejudice against LGBTIQ people. However, interpretation of Mr Kellie's version of events is significantly complicated by his psychotic illness and traumatic experiences, and there is insufficient information to reliably determine the motivation for his behaviour. In any event, the hypothesis that Mr Kellie killed Mr Cawsey cannot be demonstrated on the evidence.

Submission as to manner and cause of death

292. It is submitted that a finding by the Inquiry in the following terms is open:

“Anthony Cawsey died on 26 September 2009 at Centennial Park, Sydney, New South Wales. The cause of his death was Haemopericardium as a result of a stab wound to his left chest. The person who inflicted the stab wound is unknown.”

Submissions as to recommendations

293. Counsel assisting proposes the further recommendations for future investigations:

- a. Request that FASS takes steps to:
 - i. Further enhance the profiles of unknown male A, unknown male B and unknown male C as technological developments allow;
 - ii. Run the unidentified profiles against state and national DNA databases on a regular basis, so that the NSWPF will be notified in the event that there is an individual or familiar match with any profile.

James Emmett SC

Senior Counsel Assisting

Kathleen Heath

Counsel Assisting

Special Commission of Inquiry into LGBTIQ hate crimes

**Annexure A
Map of Centennial Park**

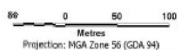


**MURDER OF ANTHONY CAWSEY
AND SITES ASSOCIATED WITH MOSES KELLIE WITHIN CENTENNIAL PARK**



caveat: This document is the property of the NSW Police Force. Unauthorised possession, use, copying, distribution, communication or distribution of this document and/or any of its contents, by any means whatsoever, is strictly prohibited.

Data provided and reproduced with permission of:
- Land & Property Management Authority
- NSW Police Force, SEC, Homicide
For further information contact:
Spatial Technology (OJA) 4th 27816



Reference Number: 8285
Version: 0.03
Date Produced: 21/07/2010



NSW Police Force