

The Special Commission of Inquiry  
into LGBTIQ Hate Crimes

**TENDER BUNDLE HEARINGS OF 26 AND 27 JUNE 2023**  
**Concerning the deaths of Anthony Cawsey, Barry Jones and**  
**Peter Baumann**

*Submissions on behalf of the Commissioner of Police*

**Introductory**

1. These submissions are prepared on behalf of the Commissioner of Police in response to the submissions made by Counsel Assisting on 26 and 27 June 2023 in relation to the deaths of Anthony Cawsey, Barry Jones and Peter Baumann.
2. None of these deaths were among those reviewed by Strike Force Parrabell.

**Anthony Cawsey**

***Circumstances of death***

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

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

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

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

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

### ***Adequacy of police investigations***

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

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

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

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

<sup>6</sup> ERISP Transcript of Moses Kellie dated 17 January 2010 (SCOI.10469.00004).

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

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

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

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

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

***Anti-LGBTIQ bias***

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

***Manner and cause of death and recommendations***

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



## Barry Jones

### *Circumstances of death*

22. On the morning of Monday, 27 September 1976, Mr Jones was found dead in the grandstand in Five Dock Park. Mr Jones likely died after 10pm on Sunday, 26 September 1976 (CA, [2]).
23. Mr Jones had been stabbed at least 53 times in the back, underside of the left arm, right side of his chest and stomach area. In addition, one large wound in the left side of his chest had been caused by further repeated knife blows. Mr Jones also suffered cuts to his throat.<sup>10</sup>
24. Mr Jones was last seen by various patrons at Western Suburbs Soccer Club on the evening of Sunday, 26 September 1976. It is apparent that he was heavily intoxicated that evening. Mr Jones had a blood alcohol level of 0.350 at the time of his death.<sup>11</sup>
25. There was no positive evidence that Mr Jones was gay. If he was gay, he was not openly so (CA, [17]). There is evidence that Five Dock Park had been used as a beat up until about mid-1975.<sup>12</sup>
26. Mr Jones was fully dressed when he was found. He had a watch and \$2.26 in coins on him.<sup>13</sup>
27. On the day Mr Jones was found, Dr William Brighton examined his body at the scene. Later that day, Dr Brighton conducted a more detailed post-mortem examination at the mortuary. He concluded that:
  - a Mr Jones died as a result of haemorrhage and respiratory failure, as a result of multiple stab wounds to the chest and abdomen.<sup>14</sup>
  - b Mr Jones had no defensive cuts on his hands, although there was a single stab wound near the left wrist.<sup>15</sup>
  - c Several of the injuries suffered by Mr Jones were inflicted after his death, including the massive wound to the left chest area, slashing of the throat and two wounds to the front thoracic area.<sup>16</sup>
28. Investigating police took samples of Mr Jones' fingerprints.<sup>17</sup> Police located fingerprints in

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

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

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

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

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

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

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

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

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

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

### ***Adequacy of police investigations***

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

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

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

<sup>20</sup> Inquest into the death of Barry Jones— Findings dated 26 January 1978 (SCOI.10495.00002).

<sup>21</sup> Statement of DS McCusker dated 6 December 1977 (SCOI.10495.00027).

<sup>22</sup> Statement of DS McCusker dated 6 December 1977 at [10] (SCOI.10495.00027).

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

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

#### **Retention of exhibits**

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

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

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

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

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

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

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



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

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

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

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

<sup>32</sup> Report of Robert Goetz dated 5 November 1976 (SCOI.10495.00028).

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

43. In two statements provided to the Inquiry dated 2 May 2023 and 22 May 2023, Assistant Commissioner Conroy has set out in detail the developments to NSWPF's exhibits management practice since the 1970s and 1980s, including in respect of the handling, recording and storage of exhibits. For the reasons set out in those statements, particularly in relation to the development and operation of the Exhibits Forensic Information and Miscellaneous Property System, to the extent the exhibits were lost as opposed to consumed during testing, it is highly unlikely that a similar issue would occur today.
44. Counsel Assisting suggest that there is no record indicating that police ever sought to obtain fingerprints from the knife found in Mr Jones' chest (CA, [53]). The available material indicates that the knife, amongst various other exhibits, was provided to the Health Commission of New South Wales for forensic examination.<sup>33</sup> Further, DS McCusker's statement indicated that<sup>34</sup>:

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

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

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

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



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

#### **Information from Patrick Syron in 1998**

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

#### **Information from Allan Adair in 2018**

52. In 2018, Allan Adair provided a statement to New Zealand Police that gave the following account<sup>36</sup>:
  - a He recalled attending the Five Dock Hotel on a Saturday before the murder with his father (Robert Adair Sr), his brother (Robert Adair Jr), and three of his father's friends:
  - b Two men then walked into the pub: "one was short and squat with black hair, and the other was taller and skinnier with long blonde hair". They were younger than Mr Adair.'

<sup>35</sup> COPS Event E49993 dated, 8 May 1998, 1 (SC01.11032.00002).

<sup>36</sup> Statement of Allan Adair dated 4 February 2018 (SC01.62862).

- c The two men saw Mr Jones sitting underneath the windows and they kept saying "that bastard he's a queer, he's a poof."
  - d The blonde man took a knife out of his jeans and said that it would be no good for slashing but would be really good for stabbing. Mr Adair described the knife as having "a handle shaped like a deer's hoof at the end".
  - e Mr Adair found out about the murder when his father came home and told the family. Some time later, Mr Adair saw a newspaper article about the murder with an accompanying photograph of the murder weapon. He believed that the weapon was the knife that he described the blonde man as having. When he raised this with his father, his father said, "no, you didn't bloody see nothing, you didn't hear nothing". He did not report the information at the time as a result of these comments made by his father to him.
53. Upon receipt of this information, Detective Sergeant Peter Costello (**DS Costello**) of the NSWPF reviewed the relevant materials. DS Costello concluded that, despite extensive canvassing of patrons who were at the Five Dock Hotel on 25 September 1976, there was no mention of:
- a Allan Adair being present at the Hotel on that occasion.
  - b Any person being in possession of a knife.
54. DS Costello therefore reasoned that if Mr Adair did see Mr Jones at the Five Dock Hotel, it was two or more weeks before the murder.<sup>37</sup> Regardless, DS Costello tested Mr Adair's account of events during a telephone interview. Mr Adair accepted that aspects of his recollection must be muddled — he claimed that he had moved to New Zealand in June 1976, three months before the murder.<sup>38</sup> Also, Mr Adair was not able to provide any more detailed description of the knife or the two men. It is potentially noteworthy that details of the murder weapon appear to have been shown on televised news in November 1976.<sup>39</sup>
55. Mr Adair was unable to identify anyone who was alive and could corroborate his account, except his brother, Robert Adair Jr. DS Costello provided Mr Adair with his contact details and advised him to contact him or the Unsolved Homicide Team if he had any further

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

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

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

information.<sup>40</sup>

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

***Anti-LGBTIQ bias***

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

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



***Manner and cause of death***

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

**Peter Baumann*****Circumstances of disappearance***

66. Mr Baumann has not been seen since 1983. His remains have never been found.
67. Mr Baumann was a gay or bisexual man.<sup>41</sup> He was in a homosexual relationship with Allan Smyth at the time of his disappearance. He previously had two known relationships with women in Australia, including having married Cherie Foster in June 1982. He was divorced in June or July 1983.<sup>42</sup>
68. The last known sighting of Mr Baumann appears to have been when he 'walked off duty' from his work at the ABC at about 11.30am on 27 October 1983.<sup>43</sup>
69. Sharmalie Seneviratne (now Sharmalie Kotoga) (**Ms Seneviratne**),<sup>44</sup> who was a previous girlfriend of Mr Baumann, stated that<sup>45</sup>:
- a During a telephone conversation with Mr Baumann, "the telephone went dead in his mid sentence". Ms Seneviratne tried to ring Mr Baumann back "a number of times but the line was dead".
  - b She drove to Mr Baumann's house because she was worried something had happened to him. She noted that Mr Baumann's house was "very untidy" and it "looked as though there had been a struggle in the room". She also noticed that a

<sup>41</sup> Missing Persons Unit Investigation Plan dated 11 March 2006 (SCOI.34221).

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

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

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

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

small cushion had been burnt in the shower recess.

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

#### **Availability of records regarding initial investigation**

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

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

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

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

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

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

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

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

#### **Adequacy of initial police investigation**

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

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

<sup>53</sup> See Statement of Glen Browne, 22 May 2023, [64].



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

85. However, there is at least some reason to doubt the accuracy of Ms Binney's recollection (as she is the only person who appears to assert a firsthand recollection) of the presence of the word 'AIDS' is correct.
86. There is no mention in the contemporaneous material (albeit the material appears incomplete) which suggests that NSWPF were informed that Mr Bauman was gay or that the word 'AIDS' had been written on his mirror. Indeed, the material that is available (being the initial missing person report from Ms Binney<sup>54</sup> and a handwritten file note Mr Gover dated 7 November 1983<sup>55</sup> which referred an attendance at Mr Baumann's apartment after his disappearance) is the kind of material that would be expected to have included reference to the word 'AIDS' had it been present.
87. Further, it is notable that the following statements provided by witnesses during the investigation between 1992 and 1994 do not contain any mention of the words 'AIDS' written on a mirror (or anywhere else) in Mr Baumann's apartment:
  - a Statements of Ms Seneviratne dated 26 August 1993 and 27 April 2007. Ms Seneviratne described attending Mr Baumann's apartment twice in what is apparently the immediate aftermath of his disappearance. Ms Seneviratne did not make any reference to the words 'AIDS' written in the apartment.<sup>56</sup>
  - b Statement of Allan Smyth dated 16 November 1993. Mr Smyth described attending Mr Baumann's flat at least once,<sup>57</sup> and possibly twice,<sup>58</sup> after Mr Baumann disappeared. While it is possible that Mr Smyth attempted to minimise his involvement in the matter in light of the letter which Ms Seneviratne says that she found, there is no apparent reason why he would admit to attending the property but omit any reference to the words AIDS being on the mirror.
  - c Unsigned statement of Ms Seneviratne's sister, who described attending a room with Ms Seneviratne.<sup>59</sup> If it was Mr Baumann's unit, she made no reference to the word 'AIDS' being on the mirror, or to Ms Seneviratne informing her that she observed it

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

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

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

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

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

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

written.

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

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

### **MPU investigation**

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

<sup>60</sup> Statement of Hamish Pears dated 13 April 2007 (SCOI.10850.00028).

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

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

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<sup>62</sup> Statement of Cherie Kim Foster dated 14 September 1994 (SCOI.10850.00025).

<sup>63</sup> Statement of John Pauperis dated 11 April 2007 (SCOI.10850.00026).

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

<sup>65</sup> NSWPF Running Sheet dated 26 May 1994 (SCOI.34256).



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

- a It is likely that any forensic value in the guitar and the knife would have diminished in the 10 or so years before it was seized, especially noting that the items were transferred from Mr Baumann's apartment to Ms Binney's house. It is not clear whether the items would have been transported and stored in a manner which preserved any forensic value.
- b There is no suggestion in the material that either the guitar or the knife contained any overt signs of involvement in Mr Baumann's disappearance (for example, the presence of bloodstains).
- c The failure to retain these items must be considered in context. DNA testing was a relatively novel phenomenon as at 1993. Indeed, the *Crimes (Forensic Procedures Act) 2000* (NSW), which introduced a regime for conducting forensic procedures on suspects in order to gather DNA for testing did not commence until 1 January 2001. It is important to ensure that the assessment of the investigating police officer's actions is not infected by hindsight bias.

102. Fourth, Counsel Assisting identify that there is evidence to suggest that by June 1994, there was tension between Senior Constable (**SC**) Gribble and SC Emery about the NSWPF response to Mr Baumann's disappearance, including about the fact that it had apparently taken over 10 years to notify Mr Baumann's family that he had been reported missing (CA, [33]). Counsel Assisting refer to an exchange between SC Gribble and SC Emery in which SC Emery is recorded as having indicated the following:

- a "Waverly Dets were satisfied that all avenues of inquiry have been exhausted and Waverly Dets would not make any further inquiries".<sup>66</sup>
- b "every attempt to locate Peter Baumann" had been made.<sup>67</sup>

103. The Commissioner agrees with Counsel Assisting's comment that it is both notable and laudable that SC Gribble continued to agitate for this case to be reinvestigated as recently as 2016 (CA, [33]). However, it is appropriate to record that the Inquiry has not sought to explore with SC Emery the basis on which he held the belief he did regarding the adequacy

<sup>66</sup> NSWPF Running Sheet dated 26 May 1994 (SCOI.34256).

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

of the investigation.

***Anti-LGBTIQ bias***

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

***Manner and cause of death***

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

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



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10 July 2023

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