

The Special Commission of Inquiry
into LGBTIQ Hate Crimes

TENDER BUNDLE HEARINGS OF 28 AND 29 JUNE 2023
Concerning Gilles Mattaini, Ross Warren and John Russell

Submissions on behalf of the Commissioner of Police

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A. Introductory

1. These submissions are prepared on behalf of the Commissioner of Police in response to the submissions made by Counsel Assisting on 28 and 29 June 2023 in relation to the deaths or suspected deaths of Gilles Mattaini, Ross Warren and John Russell (**together, the Bondi Deaths**).
2. The Commissioner has separately filed submissions on 28 June 2023 in respect of the issues addressed in Public Hearing 2 (**PH2 Submissions**). The PH2 Submissions include a detailed consideration of a range of issues relating to Strike Force Neiwand and the investigation of the Bondi Deaths, as well as the issues relating to Strike Force Parrabell.
3. The Commissioner of Police repeats and relies upon the PH2 Submissions, in particular those made at *Part D: Strike Force Neiwand*. Some specific aspects of Counsel Assisting's submissions are otherwise addressed below.

B. Summary of Each Case

4. To the extent necessary, matters arising from Counsel Assisting's summary of each case are addressed at Parts H and J below.

C. The Original Investigations

Gilles Mattaini

5. There was no investigation into Mr Mattaini's death at the outset. Mr Mattaini was never reported missing to police.¹

Ross Warren

6. It is accepted that, on the available evidence, there appears to have been a total failure to respond appropriately to the disappearance of Mr Warren.
7. Among other things, the apparent failure to provide a brief to the Coroner was completely unsatisfactory. The apparently false assertions of DS Bowditch in respect of various aspects of the investigation he purportedly conducted are extraordinary (see CA, [75]).

¹ Statement of Katherine Morieson, 30 March 2003, [4] (SCOI.02752.00186).

8. While it is unlikely that any of these issues could be satisfactorily explained by DS Bowditch, it nevertheless bears mentioning that it does not appear that he has been asked to provide evidence or otherwise afforded the opportunity to be represented in these proceedings. It is submitted that serious allegations of the type advanced by Counsel Assisting require that DS Bowditch be afforded each of these opportunities.²

John Russell

9. A number of officers, including Crime Scene Officers DS Cameron and Detective Rivera, attended the scene of Mr Russell's death, examined his body, took photographs and gathered evidence, including the hair adhering to the area around Mr Russell's left index finger.³
10. A range of follow-up inquiries were made to seek to identify Mr Russell's last movements⁴ and inquiries were made in response to information police received in respect of the possibility that a member of the public had heard a "commotion" at some stage around the time of Mr Russell's death.⁵
11. Investigating police clearly contemplated the possibility that violence may have played a part in Mr Russell's death, and inquiries were made in relation to assaults committed against gay men in the area. That PCC Dunbar conducted an analysis of the records relating to such assaults demonstrates that she considered the possibility that homicide may have been involved.⁶ As part of that process, she conferred with a Bondi Intelligence Officer, the Bondi Police Youth Liaison Officer and a Waverley Intelligence Officer.
12. In relation to those inquiries, PCC Dunbar observed that:

"Though the south end of Bondi Beach falls within Waverley Police Station's patrol there have been no incidences reported that may assist with this brief.

I am of the opinion that though the number of reported incidents are low this does not give a true indication. I feel that victims of these type of assaults are

² *Minister for Immigration and Border Protection v SZSSJ* [2016] HCA 29 at [82] - [83]

³ See Statement of Constable Barrett, [6] – [10], (SCOI.02744.00073); Statement of Adrian Ingleby, 7 June 2023, [9] (SCOI.83543).

⁴ Statement of Constable Barrett, [13] – [16], (SCOI.02744.00073).

⁵ See Statement of Sgt Ingleby, [10] – [11], (SCOI.02744.00075).

⁶ NSWPF, 'Assault incidences in the Bondi area with attackers believing their victims to be homosexuals' 21 December 1989 (SCOI.02752.00107).

reluctant to report the attacks due to their belief they may be ridiculed in the proceedings following the report.

The South end of Bondi is a known 'Beat' for homosexual activity These activities are normally carried out discreetly however rumors [sic] have Police to believe that there are more assaults than statistics show.

Constable GLEESON has been spoken to and he states that though the hoodlem [sic] element in Bondi are aware that the south end of Bondi is frequented by homosexuals he believes that may participate in some attacks but due to vague descriptions no Police action can be taken.

Operations have been carried out by Police to have officers in Plainclothes however no incidences were reported or there any suspicious activity to be reported.⁷

13. The statement of Sgt Ingleby records that he conducted inquiries in relation to an assault and robbery committed on a gay man identified as "DM" in the area.⁸ Sgt Ingleby's statement also records his knowledge of other assaults and his view that the level of unreported assaults against gay men in the area would be "extremely high".⁹
14. Constable Barrett's statement similarly recorded that he considered that foul play could not be ruled out. On 1 December 1989, he observed:

"At this point ther[e] is no evidence to indicate one way or the other whether the deceased slipped from the edge or was pushed".¹⁰
15. For her part, PCC Dunbar observed that there was no evidence to suggest Mr Russell died by suicide, noted that there were no signs of violence on his body, and indicated that Mr Russell's personal property was located on his person. Accordingly, she concluded that he likely fell.¹¹

⁷ Ibid.

⁸ See Statement of Sgt Ingleby, [12] – [14], (SCOI.02744.00075).

⁹ Ibid, [16].

¹⁰ Statement of Constable Barrett, [18] (SCOI.02744.00073).

¹¹ Statement of PCC Dunbar

16. Neither Cst Barrett, nor PCC Dunbar's views have been explored with them by the Inquiry. Unlike that of Cst Barrett, PCC Dunbar's statement was made after the analysis of Mr Russell's blood revealed an extremely high level of alcohol (being 0.255g per 100ml of blood).¹²
17. Nevertheless, there continued to be at least some consideration of the possibility of homicide subsequent to the receipt of this analysis. In his statement on 26 February 1990, Sgt Ingleby made the following observations regarding his views as to the likely cause of Mr Russell's death:
- "From enquiries so far I am unable to say what caused Mr Russell to fall from the cliff top. It is known that he had consumed alcohol on the night before the body was located. Some of the homosexuals who frequent the area sit near the edge of the cliff top; but it is not known if Mr Russell did so. It appears Mr Russell was in a normal state of mind which would rule out suicide. Crimes of violence on the homosexual element in the area is prevalent, as it is in many other areas of Sydney frequented by the homosexual community. I believe there would be a great number of 'unreported' crimes of violence in this area. There is no direct evidence available at this stage proving foul play. The possibility of a dispute between Mr Russell and ~nether homosexual person is another potential hypothesis."¹³
18. An Inquest was conducted on 2 July 1990 before Deputy State Coroner Derrick Hand. DSC Hand concluded that Mr Russell:
- "Died of the effects of multiple injuries sustained then and there when he fell from a cliff to the rocks below, but whether he fell accidentally or otherwise the evidence does not enable me to say."¹⁴
19. While it certainly appears that the investigation was not as detailed or extended as one would have expected in case of a potential homicide, there is no indication that DSC Hand regarded the investigation conducted by police as deficient (having regard to the standards of the time), or that his Honour considered that further inquiries could be usefully conducted at that time.¹⁵

¹² Division of Analytical Laboratories Certificate (SCOI.02752.00102).

¹³ Statement of Sgt Ingleby, [17] (SCOI.02744.00075).

¹⁴ Coronial Findings, 2 July 1990 (SCOI.02752.00123).

¹⁵ See Statement of John Russell, 6 March 2023, [9] (SCOI.83423).

20. Again, it should be noted that Sgt Ingleby aside, none of the police officers involved in the investigation (including PCC Dunbar, Crime Scene Officers, or the “Bondi detectives” referred to at CA [113]) have been called to give evidence. Similarly, it does not appear that any of those officers have been afforded the opportunity to seek to appear or be represented at the Inquiry. It may be, for example, that some or all of those officers conducted more extensive canvassing than is apparent from the contents of the available statements (cf CA, [112]).

Exhibits

21. Setting aside the investigative steps taken at the time of Mr Russell’s death and thereafter, it is accepted that the loss of hairs is manifestly unacceptable (CA, [83], [98]).
22. This is so notwithstanding Sgt Ingleby’s evidence that, as at November 1989, he was not aware of the existence of DNA profiling.¹⁶ Officers may not have conceived of the possibility that DNA testing might one day become available, but the hairs could nevertheless have been usefully employed in other ways (for example, by way of a visual comparison with the hairs on Mr Russell’s head, or that of a suspect identified through other means).
23. Sgt Ingleby’s recollection is that there were “definitely two strands of hair possibly three”.¹⁷
24. It should be noted that CA [91] is apt to give a mistaken impression of the evidence provided by Peter Russell in relation to the hairs. The evidence of Peter Russell that the hairs were “too long and the wrong colour” was not given at the time of his attendance at the morgue or, indeed, at any time prior to the statement he provided to the Inquiry on 6 March 2023. Accordingly, this evidence must be approached cautiously. Peter Russell did not raise the hairs in any of his previous three statements, including the statement of 15 June 2001 in which he gave evidence of attending the Glebe Morgue to identify Mr Russell’s body.¹⁸ Similarly, he did not give evidence in relation to his impressions of the hairs during the Taradale Inquest in 2003, notwithstanding the fact that he was asked about the identification of Mr Russell’s body¹⁹ and engaged in an exchange with Deputy

¹⁶ Ibid, [79].

¹⁷ Ibid, [24].

¹⁸ Statement of Peter Russell, 15 June 2001, [4] (SCOI.02744.00191).

¹⁹ Transcript of Peter Russell’s evidence, T20.41 (SCOI.84024).

State Coroner Milledge about Mr Russell's hair.²⁰ Indeed, he gave evidence that he was never told about the presence of the hairs.²¹

25. These observations should not be taken as a criticism of Peter Russell; a very long period of time has elapsed, and human memory is inherently fallible.

D. Operation Taradale and the Milledge Inquest

26. The submissions at CA, Part D substantially replicate those advanced by Counsel Assisting in Part D of the submissions made by Counsel Assisting in respect of Public Hearing 2 (**CA PH 2 Submissions**).
27. Accordingly, the Commissioner of Police repeats and relies upon the submissions made at Part D of the PH 2 Submissions.

DS McCann investigations (CA, [115] – [119])

28. DS McCann's investigations are addressed at [245] – [246] of the PH 2 Submissions.

Operational Taradale and the Milledge Inquest (CA, [120] – [146])

29. Operation Taradale and the Inquest conducted by Deputy State Coroner Milledge are addressed at [247] – [251] of the PH 2 Submissions.

E. The years from 2005 to 2015 (CA, [147] – [158])

30. The submissions at Part E again substantially replicate submissions already advanced by Counsel Assisting in Part D of the CA PH 2 Submissions.
31. The Commissioner of Police therefore repeats and relies upon the submissions made in Part D of the PH 2 Submissions at [252] – [284].

F. Strike Force Neiwand generally (CA [159] – [205])

32. In Part F of their submissions, Counsel Assisting set out a summary of a range of submissions made throughout the CA PH 2 Submissions (including particularly at a [572] – [608], [642] – [648] and [662] – [698]).

²⁰ Ibid, T28.24-45.

²¹ Ibid, T30.56 – 31.1.

33. In response, the Commissioner of Police repeats and relies on the submissions advanced in Part D of the PH 2 Submissions as a whole, but particularly at [285] – [331], [371] – [373] and [386] – [404] of the PH 2 Submissions.

G. Strike Force Neiwand – as to each of the three cases (CA [206] – [257])

34. Consistent with the above, the submissions of Counsel Assisting at Part G summarise submissions already made in Part D of the CA PH 2 Submissions.
35. The Commissioner of Police repeats and relies upon the submissions made in Part D of the PH 2 Submissions, and in particular those advanced at [405] – [439].

H. Strike Force Parrabell (CA [258] – [283])

Gilles Mattaini (CA [258] – [264])

36. The BCIF in relation to Mr Mattaini’s case includes a detailed consideration of a range of factors that were potentially relevant to the question of whether bias played a role in his death, including a consideration of the fact that Mr Mattaini was gay.
37. It is not clear whether the comment at CA [259] is meant critically. The conclusion expressed in relation to the “Drawings, Markings, Symbols, Tattoos, Graffiti” indicator states simply (and accurately):

“The body of MATTAINI has never been located nor has the exact location of his death been revealed. It is not known if any bias related drawing, markings, symbols or graffiti were left at the scene of MATTAINI'S death.”²²

38. The officer who completed the BCIF was clearly alive to the presence of youth gangs in the area. They were also alive to the fact that the available evidence suggested that the youths that may have been involved in the death of Mr Warren and/or Mr Russell would have been too young at the time of Mr Mattaini’s death (cf, CA, [260]). The BCIF includes the following:

Strike Force Taradale identified a number of youth gangs who were prolific in their involvement in assault and robbery offences around Marks Park and Tamarama in the period 1989 til 1990 targeting homosexuals. Evidence suggests a level of animosity existed between the suspects and homosexual

²² BCIF, p. 7 (SCOI.74972).

males with motives including prejudice and homophobia, group initiation, proving masculinity, proving they are not gay, entertainment, robbery, alpha male syndrome, a belief that gay men are soft targets (who will not fight back or complain to authorities), and increasing standing by attacking those viewed as less legitimate. Deputy State Coroner MILLEDGE stated during Inquest in 2005 that she " ... cannot make a finding that Mr MATTAINI met his death at the hands of another person or persons. The persons of interest that may have been responsible for the death of Mr WARREN (34) and Mr RUSSELL (36) would have been far too young at the time of Mr MATTAINI'S disappearance in August 1985"²³

39. SF Parrabell placed Mr Mattaini's death in the "insufficient information" category. The academic reviewers reached the same conclusion. That categorisation was entirely appropriate; there is absolutely no concrete evidence that Mr Mattaini's death was a homicide, let alone evidence that would allow any judgment to be made as to the motivations of any perpetrator responsible for it.

Ross Warren (CA [265] – [275])

40. Counsel Assisting raises the observation addressed at [37] above regarding Mr Mattaini in relation to the "Drawings, Markings, Symbols, Tattoos, Graffiti" BCIF prompt. Consistent with the above response, the observation made by SF Parrabell in respect of the relevant prompt in Mr Warren's case is accurate and, one would think, uncontroversial:

"The body of WARREN has never been recovered nor has the exact location of his murder been revealed. It is not known if any bias related drawing, markings, symbols or graffiti were left at the scene of WARREN'S murder."

41. It may have been appropriate, consistent with the entry in relation to the "Location" prompt, for the "Previous existence of Bias Crime Incidents" prompt to have been marked "Evidence of Bias Crime" (CA, [268]). The reasoning behind this decision has not been explored with the officer/s who completed the BCIF. In any event, the difference in categorisation would not have had any impact on the overall determination in respect of Mr Warren's case.

²³ BCIF, p. 3 (SC01.74972).

42. Counsel Assisting has not explained why the conclusion that Mr Warren's death was a "suspected bias crime" was inappropriate. The categorisation of Mr Warren's death as a suspected bias crime is consistent with the findings of Deputy State Coroner Milledge, which were made on the balance of probabilities only, and did not reach a conclusion as to the cause and manner of death, or the identity of the perpetrator of the homicide.
43. It is of further note in this respect that, as identified at [405] – [406] of the PH2 Submissions, the very experienced Counsel Assisting to DSC Milledge, who shortly thereafter took silk and became a District Court Judge, submitted that an open finding should be reached in Mr Warren's case. That submission was advanced on the basis that while there was a "real suspicion" of foul play "there is no reliable evidence that this conclusion can firmly be drawn".²⁴

John Russell (CA [276] – [283])

44. Again, Counsel Assisting has not sought to explore the "anomalies" it identifies at CA [277] – [278] with the officer/s responsible for completing the BCIF, or with the more senior reviewing officers.
45. The concern raised with the fact that the "Drawings, markings, Symbols, Tattoos, Graffiti" indicator is difficult to understand (CA, [277]). As observed by Counsel Assisting, the reviewing officer identified that men who attended beats with the intention of engaging in sexual activity would rattle keys or loose change in their pockets to indicate interest.²⁵ However, as noted by the reviewing officer, there was no evidence that these were deliberately placed around the body of Mr Russell and "[n]o bias related drawings, markings, symbols or graffiti were left at the scene or were seen on the POI".²⁶ That being so, "No evidence of bias crime" was an appropriate response to that prompt.
46. In any event, the conclusion that Mr Russell's death was a Suspected Bias Crime was entirely appropriate. No perpetrator or evidence as to the precise circumstances surrounding Mr Russell's fall from the cliff was identified. Deputy State Coroner Milledge undoubtedly carefully considered the events leading to Mr Russell's death but, with respect, her Honour's conclusion that he was "thrown" from the cliff onto rocks was

²⁴ Exhibit 6, Tab 323 (SCOI.02751.00159).

²⁵ BCIF for John Russell, p. 7 (SCOI.32191).

²⁶ Ibid, p. 6.

nevertheless speculative; even accepting her Honour's conclusion that another person was involved, the mechanism of the fall remains entirely unexplained.

Overall

47. In the cases of Mr Warren and Mr Russell the academic review team's finding differed from that of SF Parrabell. The academic reviewers concluded there was "insufficient information" where SF Parrabell had found the cases to be "Suspected Bias Crimes". This provides further evidence of what should, by now, be abundantly clear: SF Parrabell was in no way designed to "refute" the incidence of anti-LGBTIQ homicides. Counsel Assisting has paid no heed to such evidence in submitting that police deliberately set out to minimise homicidal violence against LGBTIQ persons (cf CA PH2 Submissions, [817]).
48. Broadly speaking, the conclusions urged by Counsel Assisting, and the basis on which they are propounded, align with the assessments of SF Parrabell.

I. Steps undertaken by the Inquiry and their outcomes (CA [284] – [342])

49. The Inquiry's summary of its investigative steps suggests that, with the exception of DS Morgan, none of the officers subject to criticism in Counsel Assisting's submissions have been notified of their potential interest in the subject matter of the proceedings, afforded the opportunity to respond to the criticisms in evidence, or invited to seek leave to appear and be represented during the proceedings.
50. It is extraordinary that criticisms of the type levelled by Counsel Assisting have been advanced in the absence of such steps,²⁷ particularly in view of the terms of s. 12(2) of the *Special Commissions of Inquiry Act 1983*. As will be addressed further at the appropriate time, these failures create a marked procedural unfairness not only for the officers who have not been called, but also for DS Morgan and the Commissioner of Police.

²⁷ See *Minister for Immigration and Border Protection v SZSSJ* [2016] HCA 29 at [82] - [83]; *Saeed v Minister for Immigration and Citizenship* (2010) 241 CLR 252, 259 [14]-[15] (French CH, Gummow, Hayne, Crennan and Kiefel JJ); *Kioa v West* (1985) 159 CLR 550 at [38], citing *Kanda v Government of Malaya* (1962) AC 322 at 337 cited with approval in *Applicant VEAL of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 72 at [15].

J. Submissions as to the evidence now available (CA [343] – [3])

Gilles Mattaini (CA [344] – [403])

The timing and location of Mr Mattaini's disappearance

51. The available material suggests that Mr Mattaini was probably last seen on 15 September 1985. Exactly when he died is unclear. Similarly, it is not known where he died. His body has never been found.
52. According to Mr Musy, Mr Mattaini was last seen walking in Bondi on the morning of 15 September 1985 by a neighbour identified only as "Terry". The neighbour described him as looking "aloof".²⁸ There is no indication in Mr Musy's account of this event as to what Mr Mattaini was wearing at the time (i.e. the evidence does not indicate whether or not he was wearing the yellow spray jacket that Mr Musy identifies as missing from their apartment).
53. There is nothing that would allow a reliable conclusion to be drawn in relation to the proximity between this sighting and the actual time of Mr Mattaini's death.
54. Indeed, there is a degree of imprecision attending some of the relevant dates. Mr Musy did not arrive in Australia until 24 September 1985 and so did not have the conversation with "Terry" until at least that date.²⁹ Additionally, Terry did not use the date "15 September" when telling Mr Musy when he saw Mr Mattaini; in that respect, Mr Musy's evidence was:

"...and discussing that disappearance he would have said "Oh I saw him last Thursday" or whatever day it was and he looked like this and we sort of worked out – work out that it is the day he disappeared, the morning of the day he disappeared."³⁰
55. While there may be some doubt associated with the timing of Terry's sighting of Mr Mattaini, there is some additional evidence to assist in determining the date of Mr Mattaini's disappearance.

²⁸ Exhibit 6, Tab 159, Statement of Jacques Musy, 3 August 2002, [23] (SCOI.02744.00381).

²⁹ See Statement of Heather Thompson regarding travel of Mr Musy, p. 2 (SCOI.2744.00386).

³⁰ See Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003. T54.43 (SCOI.82371).

56. In particular, a copy of a calendar for the month of September 1985 has the date 15 September 1985 marked as "OFF", suggesting that Mr Mattaini was not working that day.³¹ Marc Hubert, who worked with Mr Mattaini at the Menzies Hotel, recalled that Mr Mattaini was rostered off the day after Mr Hubert last saw him and then rostered on the following day (a shift he did not attend). Additionally, Antony Wyszynski stated in 2003 that he recalled being told by Vincent Ottavione on about 19 September 1985 that Mr Mattaini had not turned up for work on the preceding two or three days.³²
57. This suggestion that Mr Mattaini went missing on 15 September 1985 finds some further support in Mr Wyszynski's observation that he spoke to Mr Mattaini on "around" 15 September (though it must be noted that Mr Wyszynski's evidence in that respect was given in 2003 and was expressed in approximate terms).
58. It is also possible, if Terry's recollection as to the day on which he last saw Mr Mattaini is inaccurate, that the last time Mr Mattaini was seen or spoken to was when he left work on the evening of his last shift with Mr Hubert (i.e. likely 14 September 1985). This raises the possibility that Mr Mattaini disappeared that night.
59. The location of Mr Mattaini's disappearance is similarly uncertain. As to where Terry saw Mr Mattaini, Mr Musy stated:
- "...between my unit at the corner of Ramsgate and [Campbell] Parade and his unit, Terry's unit which was like three houses up towards the Bondi Diggers so it would be like 100, around 1 or 200 hundred metres away from our house".³³
60. It appears that "Terry" did not speak with Mr Mattaini and there is nothing to indicate where he might have been going.

Mr Mattaini's psychological state

61. Mr Mattaini had attempted suicide on two occasions, some years prior to his disappearance.
62. Contrary to the evidence of DS Page extracted by Counsel Assisting at CA, [136], these attempts did not occur in Mr Mattaini's "early teens"; the first suicide attempt occurred when

³¹ SF Neiwand Case Summary for Mattaini, Exhibit 6, Tab 172, [21] (SCOI.74881).

³² Statement of Antony Wyszynski, [7] (SCOI.02744.00382).

³³ See Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003. T55.4 (SCOI.82371).

Mr Mattaini was 17 or 18³⁴ and the second attempt likely took place two or three years later.

63. In that respect, during the Taradale Inquest, Mr Musy gave evidence that the second attempt occurred after their relationship had commenced (which was 1978) and may have been driven by a desire to avoid military service rather than a genuine wish to end his life.³⁵ His initial statement regarding that attempt (which did not raise the suggestion that it might have merely been an attempt to escape the military) read as follows:

“National Service in France is typically for 12 months, and I know that Gilles was put into a military hospital after he tried to take his life. Gilles later told me he took a number of tablets to try and take his life. My recollection was that Gilles was dismissed from the Army after this incident.”³⁶

64. Given Mr Musy's evidence that Mr Mattaini was conscripted about a year after the commencement of their relationship³⁷, it is likely that the second suicide attempt took place sometime in 1979. Mr Mattaini would therefore have been 20 or 21 at the time.³⁸
65. In light of the extract from Musy's statement extracted above, Counsel Assisting's submission that the second suicide attempt was “more likely” a device to bring an end to his conscription rather than a genuine attempt to end his life (CA, [212]) does not flow from the evidence. Consistent with this, elsewhere in his evidence Mr Musy noted “I am not to[o] sure if it was to terminate his life or if it was to get out of the army”.³⁹ If the attempt was not motivated by a genuine desire to end his life, it is suggestive of a significant degree of recklessness and/or a preparedness on Mr Mattaini's part to impulsively put his life at risk. Either way, the second suicide attempt is of significant relevance to the assessment of the ultimate manner and cause of Mr Mattaini's death.
66. More generally, Mr Musy states that prior to the commencement of their relationship, Mr Mattaini “had sort of a kind of frame of mind where he was somebody who was more attracted to death than life”. Mr Musy noted, however, that “meeting me show him life in a

³⁴ Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003. T48.45 (SCOI.82371).

³⁵ Ibid, T49.19-21.

³⁶ Exhibit 6, Tab 159, Statement of Jacques Musy, 3 August 2002, [5] (SCOI.02744.00381).

³⁷ Ibid, [5].

³⁸ Mr Mattaini was born on 25 October 1958: Statement of Katherine Morieson, 30 March 2003, [5] (SCOI.02752.00186).

³⁹ Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003. T48.35 (SCOI.82371).

different way and he had a very fulfilling relationship with me and he was commenting often that he was really happy and how stupid he had been before to sort of want to die because there was much more to life than what he thought there was"⁴⁰.

67. At the time of Mr Mattaini's disappearance, however, Mr Musy, had been overseas for about three weeks. Mr Musy states that "whilst I was away I formed the impression that Gilles was lonely but he was enjoying being on his own and spending money buying things for our unit".⁴¹
68. For his part, Mr Wyszynski's recollection was that when he spoke to Mr Mattaini he was "very happy and he was looking forward to my visit".⁴²
69. Perhaps in contrast to this, Mr Wyszynski stated that Mr Mattaini's mother (who spoke to Mr Mattaini approximately one week before he disappeared⁴³) "was not surprised of Gilles disappearance. She believed that he had committed suicide."⁴⁴
70. At the outset (and seemingly for many years thereafter), Mr Musy similarly believed that Mr Mattaini had died by suicide.⁴⁵
71. Mr Mattaini's visa had expired, which was a source of some concern to him. Mr Musy described his level of worry as follows⁴⁶:

"Worried to a point where he was I think seeing the future as trouble because of that and we knew of different – I don't know what's the term in English where several times in the past there was some kind of decision from the Government to ask the people who were illegal to present themselves and legalise them...

Q. Moratorium?

⁴⁰ Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003. T49.8013 (SCOI.82371).

⁴¹ Exhibit 6, Tab 159, Statement of Jacques Musy, 3 August 2002, [22] (SCOI.02744.00381).

⁴² Statement of Antony Wyszynski, [6] (SCOI.02744.00382).

⁴³ Interpol response to request for assistance (SCOI.02752.00189).

⁴⁴ Statement of Antony Wyszynski, [15] (SCOI.02744.00382).

⁴⁵ Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003. T56.25 (SCOI.82371).

⁴⁶ Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003. T49.44-58 (SCOI.82371).

Yeah that sort of thing so he was thinking of that but it was worrying him not to be in the law, like he was like illegal but I mean it was a thought but it was not something which was really sort of weighing on him constantly not at all."⁴⁷

72. Mr Hubert gave evidence that Mr Mattaini felt "uncomfortable" and "trapped" as a result of his visa situation.⁴⁸ Mr Musy agreed that this evidence was accurate.⁴⁹
73. Mr Musy had also told Mr Hubert that he and Mr Mattaini were "having problems with their relationship." In that respect, Mr Hubert stated "this may have related to the visa situation but I don't know".⁵⁰
74. Mr Musy confirmed that he and Mr Mattaini were having some problems in their relationship.⁵¹ He indicated that those problems were in part associated with Mr Mattaini's visa issues but noted also:

"...we were not having as much relationship – I'm talking physically there – sexual relationship as much as before and that was just like after seven years, like normal sort of thing but that was a bit of a worry for both of us as well and it was not something which was really a big issue because we were very very much in love..."⁵²

75. As noted above, it appears that Mr Hubert may have been the last person to speak with Mr Mattaini in person (or, potentially, at all). He described that interaction as follows (emphasis added):

"In the week prior to Jacques arriving back in Australia from France I remember Gilles working with me at the Menzies one night shift. During the shift Gilles approached me and told me that he was not feeling well and asked if he could leave early. I would guess that would have been around 9pm or 10pm. He did not elaborate on his illness and at the time I was running a function and probably had twenty other waiters working for me. I allowed Gilles to leave early but asked

⁴⁷ Ibid, T49.46-59.

⁴⁸ Statement of Marc Hubert, [12] (SCOI.02752); Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003. T52.18 (SCOI.82371).

⁴⁹ Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003. T52.18 (SCOI.82371).

⁵⁰ Statement of Marc Hubert, [12] (SCOI.02752).

⁵¹ Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003. T53.51 (SCOI.82371).

⁵² Ibid, T53.55-54.5.

him to finalise the liquor sheet for that function. I remember Gilles coming to my office with the liquor sheet and at that time he asked me for a cigarette, which I found very strange because he did not smoke. I remember saying, "Are you smoking now?" to which her replied, "No I feel like one now I am feeling very stressed ." Gilles then left and went home.

Later that evening I found a discrepancy in the liquor sheet and I telephoned Gilles at home. I spoke to Gilles on the telephone. I guess that would have been around midnight or later. We clarified the discrepancy on the telephone and I told him I would see him next time he was to work. My recollections are that Gilles was rostered *off* the next day and was rostered to work the day after, I think that was an evening shift, I sure it wasn't a morning."⁵³

Anti-LGBTIQ bias violence as at 1985 in Bondi

76. Mr Mattaini's death occurred some 4 years before those of Messrs Russell and Warren. The youths known to have been involved in assaults of gay men in the Bondi area in 1989 – 1990 would, as noted by Deputy State Coroner Milledge, have been "far too young" at the time of Mr Mattaini's disappearance to have played a part in it.⁵⁴
77. As recorded by Counsel Assisting, there were no reported assaults or gay hate deaths around Bondi in 1985 (CA, [399]).
78. There is, however, some evidence of violence at Marks Park in 1985; Mr Wyszynski, for example, states that he was told as much by men who had been bashed and robbed but were too scared to report the attacks to police.⁵⁵ Mr Wyszynski himself witnessed a group of men chasing men in the park on an occasion sometime between 1986 and 1989.⁵⁶
79. All told, however, evidence regarding the nature and extent of the attacks on gay men in the Bondi-Tamarama area as of 1985 is, as acknowledged by Counsel Assisting, at least somewhat "unclear" (CA, [402]).

⁵³ Statement of Marc Hubert, [13] – [14] (SCOI.02752).

⁵⁴ Exhibit 6, Tab 161, Inquest Findings, p. 14 (SCOI.02751.00021).

⁵⁵ Statement of Antony Wyszynski, [10] (SCOI.02744).

⁵⁶ *Ibid*, [11].

Possibility of swimming

80. There is some evidence that Mr Mattaini would often frequent the beach, and was a good swimmer.⁵⁷ Other evidence, however, suggests that Mr Mattaini was too scared to go into the ocean.⁵⁸
81. Information from Interpol provided in 2002 recorded the following:
- “Mrs. Mattaini told us that the person WYSZNSKI advised her of the disappearance of her son. He apparently told her that his friend Gilles had advised him that day that he was going swimming in the sea.”⁵⁹
82. As noted by Professor Brander, it seems unlikely that Mr Mattaini would have chosen to go swimming between 15 and 17 September 1985 due to the prevailing air and sea temperatures.⁶⁰ In the event that he did, it is relevant to note Professor Brander’s evidence that ocean conditions would have been challenging; ocean wave heights were higher and wave periods were longer than normal, particularly on 17 September 1985. Rip currents were likely present.⁶¹
83. It might be thought – though admittedly highly speculatively – that Mr Wyszynski’s comment to Mrs Mattaini regarding the possibility that Mr Mattaini had gone swimming was designed to spare her the additional grief potentially associated with her view that Mr Mattaini had died by way of suicide.
84. Overall, the possibility that Mr Mattaini deliberately went swimming and drowned cannot be ruled out. It is, however, a relatively unlikely prospect, having regard to the weather conditions.

Suicide

⁵⁷ Statement of Glen Lehman, [15] (SCOI.83531).

⁵⁸ Mattaini Case Summary, Exhibit 6, Tab 172, [45] (SCOI.74881).

⁵⁹ Interpol response to request for assistance (SCOI.02752.00189).

⁶⁰ Report of Professor Brander, [123] (SCOI.83529)

⁶¹ Report of Professor Brander, [13] – [14] (SCOI.83529)

85. Counsel Assisting refers to DS Page's opinion as to the features of Mr Mattaini's case that might point against suicide. No exploration as to the basis on which DS Page might be qualified to give that evidence is conducted. His evidence in that respect appears to be entirely speculative.
86. If expert evidence were sought, it would no doubt make clear that previous suicide attempts and ideation are a very robust predictor of future suicide attempts.⁶² It would also likely make clear that (consistent with common knowledge), persons close to those who die by suicide are often 'taken by surprise'.⁶³
87. Of additional note, Counsel Assisting has not adduced evidence in relation to the relative probabilities of different causes of death.
88. Mr Mattaini was 26 years old at the time of his death. Data for the years 2019 – 2021 reveals that in both the age group 15-24 and the age group 25-44, suicide was – by far – the most prevalent cause of death.⁶⁴ For comparison, there were 2,693 deaths by suicide in persons aged 25-44 in the relevant period but only 181 deaths caused by assault; suicide deaths were almost 15 times more likely than those occasioned by homicide. For persons aged 15 – 24, there were 974 deaths by suicide (being 37.4% of all deaths), but only 74 caused by an assault (i.e. a ratio of more than 13 to one).⁶⁵
89. There may, of course, have been some shift in patterns and causes of death between 1985 and 2021, though it appears that suicide rates among men were slightly higher in 1985 than in 2021 (i.e. 19.1 per 100,000 versus 18.2 per 100,000).⁶⁶
90. Despite this, Counsel Assisting submit that it is "quite unlikely" that Mr Mattaini died by suicide (CA, [398], [401]). For the reasons considered below, together with the matters regarding Mr Mattaini's frame of mind outlined at [61] – [75] above, that characterisation significantly understates the possibility that the cause of Mr Mattaini's death was suicide.

⁶² See, for example: Suicide Attempt as a Risk Factor for Completed Suicide: Even More Lethal Than We Knew, J Michael Botswick, M.D. et al, *The American Journal of Psychiatry*, Vol. 173 (11). Available at: <https://ajp.psychiatryonline.org/doi/10.1176/appi.ajp.2016.15070854>.

⁶³ See also evidence at T2163.46, T2286.40, T2287.9.

⁶⁴ See Data Tables: Deaths in Australia: <https://www.aihw.gov.au/reports/life-expectancy-death/deaths-in-australia/data>

⁶⁵ Ibid.

⁶⁶ <https://www.aihw.gov.au/suicide-self-harm-monitoring/data/deaths-by-suicide-in-australia/suicide-deaths-over-time>

91. First, the evidence suggests it is unlikely that Mr Mattaini used the Marks Park beat.⁶⁷ In any event, assuming Terry (and not Mr Hubert) was the last person to see Mr Mattaini alive, he was walking in the opposite direction of Marks Park at the time he was last seen.
92. Second, the evidence tends against a conclusion that Mr Mattaini was likely to have been out walking late at night in a way that made him more susceptible to attack. In that respect:
- a) Mr Hubert states that Mr Mattaini “frequently took the coastal walk” though he “thought it was mostly during the day that Gilles took the coastal walk”.⁶⁸
 - b) Mr Musy – who no doubt had a clearer understanding of the timing of Mr Mattaini’s walks – said he would take them “during daylight hours and early evening”.⁶⁹
 - c) Mr Wyszynski states that Mr Mattaini was a “timid person” who was “scared of the dark”.⁷⁰
93. Third, while it is true that Mr Musy gave evidence that Mr Mattaini was “very, very happy”, he (and other witnesses) observed that the two were having some relationship troubles and that Mr Mattaini was concerned about his visa issues, which caused him to feel “trapped”.
94. Fourth, Mr Musy had been overseas for approximately three weeks, and indicated that Mr Mattaini was “lonely”.
95. Fifth, Mr Mattaini had attempted suicide on two prior occasions.
96. Sixth, both his mother and Mr Musy took the view that Mr Mattaini had died by suicide in the wake of his disappearance.
97. Seventh, the last person known to have spoken with Mr Musy in person (and quite possibly at all, depending on the accuracy of Mr Wyszynski’s estimate as to their phone call) reported that Mr Musy:
- a) felt unwell and asked to leave work;
 - b) did not elaborate on his illness;

⁶⁷ Exhibit 6, Tab 159, Statement of Jacques Musy, 3 August 2002, [13] (SCOI.02744.00381); Statement of Marc Hubert, [23] (SCOI.02752); Statement of Antony Wyszynski, [8] (SCOI.02744.00382).

⁶⁸ Statement of Marc Hubert, [23] (SCOI.02752).

⁶⁹ Statement of Jacques Musy, [13] (SCOI.20744.00381).

⁷⁰ Statement of Antony Wyszynski, [9] (SCOI.02744.00382).

- c) asked for a cigarette, despite not smoking; and
 - d) when asked if he smoked, responded: "No, I feel like one now I am feeling very stressed".⁷¹
98. In light of the foregoing evidence, Counsel Assisting's preparedness to discount suicide as a cause of death is surprising.
99. Having regard to the material considered above, the total absence of any evidence positively pointing towards homicide, and the enormous statistical disparity between suicides and homicides, the conclusion that suicide is significantly more likely to have been the cause of Mr Mattaini's death than homicide is inescapable.

LGBTIQ bias

100. In view of the above considerations, and factoring in the possibility (albeit relatively remote) of misadventure, it is unlikely (though not impossible) that Mr Mattaini's death was caused by anti-LGBTIQ bias.
101. It is noteworthy, having regard to the submissions advanced by Counsel Assisting in the CA PH2 Submissions, that:
- a) the features considered by Counsel Assisting to be indicative of LGBTIQ bias (being the potential location of Mr Mattaini's disappearance (CA, [396]), and the existence of prior gay hate assaults in the Bondi area (CA, [399], [402])), are identified as matters for consideration under the BCIF (and were in fact considered);
 - b) the ultimate conclusion reached by Counsel Assisting is consistent with the view reached by SF Parrabell that the case falls into the Insufficient Information category.

Manner and cause of death

102. The Commissioner of Police agrees that a formal finding in the following terms proposed by Counsel Assisting would be appropriate (CA, [395]):

Gilles Jacques Mattaini died on or about 15 September 1985 in Sydney. The cause and manner of his death remain undetermined.

⁷¹ Statement of Marc Hubert, [13] – [14] (SCOI.02752).

Ross Warren (CA [404] – [458])Manner and cause of death

103. At [404] – [408] Counsel Assisting set out a consideration of Mr Warren’s last known movements and at [409] – [415] detail the circumstances surrounding the making of an initial missing persons report and the location of Mr Warren’s car.
104. Counsel Assisting then set out a summary of the abhorrent violence suffered by gay men around the time of Mr Warren’s death at [426] – [439]. No issue is taken with this summary.
105. Nor is any issue taken with the summary of the report of Dr Iles or that of Professor Brander (see CA, [440] – [454]).
106. None of that material amounts to positive evidence of homicide. Counsel Assisting’s reasoning is somewhat opaque, but it appears that the conclusion that Mr Warren was killed is predicated on a combination of the paucity of evidence of other causes of death, and the elevated levels of violence against gay men (including by way of gang-related assaults) in the relevant period.
107. In those circumstances, while no issue is taken with the finding reached by DSC Milledge in 2005, it was entirely reasonable for Counsel Assisting the Inquest to submit that the appropriate finding was an open one.⁷²
108. In turn, as explored at [405] – [414] of the PH2 Submissions, SF Neiwand’s conclusion that the cause of Mr Warren’s death could not be determined was not unreasonable.

LGBTIQ bias

109. As noted above, SF Parrabell concluded that Mr Warren’s death was a Suspected Bias Crime. For the reasons explored at [42] – [43], that conclusion was an appropriate one.
110. Again, it is appropriate to note that the matters leading Counsel Assisting to the conclusion that “the evidence is sufficient to establish that Mr Warren’s death was a gay hate crime”, being the likely location of his disappearance and death at a beat, and the existence of previous bias crime incidents, were matters contained within the BCIF and which SF Parrabell officers considered in concluding that Mr Warren’s death was a Suspected Bias Crime.⁷³ Once again, Counsel Assisting failed to acknowledge such alignment in

⁷² Exhibit 6, Tab 323 (SCOI.02751.00159)

⁷³ Ross Warren BCIF, SCOI.45406.

submitting that police intentionally sought to minimise the incidence of LGBTIQ bias crime (CA PH2 Submissions, [817]).

John Russell (CA [459] – [485])

Manner and cause of death

111. Regarding the evidence concerning the circumstances surrounding Mr Russell's death, the Commissioner of Police repeats the observations made at [415] – [423] of the PH2 Submissions.
112. Overall, the Commissioner of Police accepts that the finding made by DSC Milledge in 2005 remains appropriate. It is open to the Inquiry to conclude that:

“John Alan Russell died at Marks Park near Bondi between 22 and 23 November 1989. The cause of death is multiple injuries sustained when he was thrown onto cliffs by a person or persons unknown.”

LGBTIQ bias

113. The Commissioner of Police agrees that the Inquiry could properly conclude that Mr Russell's death was a gay hate crime (CA, [483]).
114. Again, the matters identified by Counsel Assisting as buttressing such a finding (CA, 484]) closely align with those identified in the course of the SF Parrabell process and recorded in the BCIF.⁷⁴ Again, this has not been acknowledged in Counsel Assisting's submission that SF Parrabell set out to “refute” the incidence of anti-LGBTIQ hate deaths (cf CA PH2 Submissions, [817]).

Conclusion

115. Much as they do in relation to the matter of Scott Johnson, the findings of SF Parrabell in relation to the deaths of Mr Mattaini, Mr Warren, and Mr Russell proceed on the basis of an acceptance of the Coronial findings in the matter. That fact alone should be sufficient to dispel the notion propounded by Counsel Assisting that SF Parrabell was part of a coordinated process directed to refuting the incidence of gay-hate homicide (cf CA PH2 Submissions, [635] – [641], [817]).

⁷⁴ John Russell BCIF (SCOI.32191).

116. For the reasons set out above, it is open to the Inquiry to conclude that the deaths of Messrs Warren and Russell were gay-hate homicides. Mr Mattaini's death does not, however, appear to have occurred in the same manner.



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