



New South Wales

Special Commission of Inquiry into LGBTIQ hate crimes

Statement of Mark Matthew Kelly

5 June 2023

This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give to the Special Commission of Inquiry into LGBTIQ hate crimes (“the Inquiry”) as a witness. The statement is true to the best of my knowledge and belief.

1. My name is Mark Kelly.
2. I am 64 years old.
3. From December 1984 to September 1986, I was employed as a solicitor in the Office of the Director of Public Prosecutions (“ODPP”). As part of my role at the ODPP, I was the solicitor with carriage of various prosecutions relating to indictable offences.
4. I am making this statement in relation to the death of Robert Malcolm. At the time of making this statement, I have been shown the following documents: Master Tape History Sheets for the committal hearing (SCOI.11290.00072 and SCOI.11290.00077), the witness statement made by James Smith (SCOI.83029), the three witness statements made by Sharon Murphy (SCOI.83025, SCOI.83038 and SCOI.10939.00083) and a file note dated 3 August 1992 in my handwriting. I have an independent recollection of some aspects of this case and have also refreshed my memory using these documents.
5. On 3 and 4 August 1992, I appeared for the ODPP at a committal hearing in relation to persons charged in relation to the death of Robert Malcolm. These persons were:
 - a. Anthony Stanley Hookey (charged with murder);
 - b. Kirk Anthony Phillips (charged with murder); and
 - c. Richard John Green (charged with accessory after the fact to murder).
6. The committal hearing was held at the Coroners Court at Glebe before Magistrate Hand on 3 and 4 August 1992 with 13 witnesses called.
7. During the lunch adjournment on 3 August 1992, a witness named James Smith, who was still in examination in chief, indicated to the Officer in Charge, Detective Sergeant Gary Phillips, that he was no longer sure about his evidence. My review of notes made at the time suggest that Mr Smith was no longer sure about the day on which Mr Hookey told him that he had “just rolled someone”.
8. Additionally, a key witness did not appear at court on 3 August 1992. The matter was adjourned to the following day for the purpose of finding that key witness and a warrant was issued for the

arrest of the witness. I recall that the witness was located in Kings Cross by police on the evening of 3 August 1992 and appeared drug affected.

9. The witness gave evidence at the committal on 4 August 1992. I remember trying to elicit the evidence to connect the accused persons to the crime, without success. I recall there being many objections during the evidence of this witness. It is possible that I tried to put the police statements made by the witness to her, which caused the objections.
10. My recollection was that the key witness I am discussing above at [8] – [9] was a man, but having looked at the court records, I believe this key witness was a woman named Sharon Murphy, as she was the only person to give evidence on 4 August 1992.
11. My recollection is that Sharon Murphy and perhaps more of the witnesses did not come up to proof at the committal hearing and accordingly, there was insufficient evidence to support the charges in relation to the death of Mr Malcolm. The three accused persons were discharged on 4 August 1992.
12. I have a particular recollection of this case because it was rare to have defendants discharged at committal, and I recall feeling sad for family members of Mr Malcolm who were in attendance at the hearing.

Signature: 

Name: Mark Matthew Kelly

Date: 5 June 2023