



Special Commission of Inquiry into LGBTIQ hate crimes  
Statement of Kathryn Lockery  
6 July 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. This statement has been prepared from my own knowledge and also from perusing the records of the Inquiry. The statement is true to the best of my knowledge and belief.

1. My name is Kathryn Lockery. My address is known to the Special Commission of Inquiry.
2. I am employed as a Principal Solicitor by the Special Commission of Inquiry into LGBTIQ hate crimes.
3. In the course of my duties, I have reviewed and conducted inquiries in relation to the death of Robert Malcolm, who died on 29 January 1992 at Royal Prince Alfred Hospital. The information contained in this statement is true based on my own knowledge, and from documents in the possession of the Inquiry relevant to Mr Malcolm.

Request for coronial file

4. On 15 June 2022, the Inquiry issued a written request to the Registrar of the Coroners Court of NSW at Lidcombe (**the Coroners Court**) to obtain the coronial file in relation to the death of Mr Malcolm, among others.
5. On 4 July 2022, the Coroners Court provided Mr Malcolm’s coronial file to the inquiry.
6. Further inquiries were made with the Coroners Court to obtain the records from the committal hearing held at the Coroners Court of NSW at Glebe on 3 – 4 August 1992. Certain committal records were located and provided to the Inquiry on 16 March 2023, however the material did not include a transcript or sound recording of the committal hearing.
7. On 15 June 2023, the Coroners Court provided a letter to the Inquiry outlining the searches undertaken for the transcripts and sound recordings, a copy of which is included in the tender bundle (SCOI.83994).

Summons for police files and documents

8. On 18 May 2022, the Inquiry issued a summons to the NSW Police Force (**NSWPF**) for all documents relating to investigations of the death of Mr Malcolm, and other listed persons (summons NSWPF1). The summons noted that such documents would include, *inter alia*, all

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running sheets, all intelligence and crime information reports, all police notebook and duty book entries, all photographs and all sketch plans.

9. In response to summons NSWPF1, a hardcopy file was produced on 8 June 2022.
10. On 25 August 2022, the Inquiry issued a summons to the NSWPF for all records in relation to, *inter alia*, Strike Force Parrabell (summons NSWPF12). This material was produced in tranches between 9 September 2022 and 18 November 2022. Certain documents produced in response to this summons were relevant to the death of Mr Malcolm.
11. On 11 October 2022, the Inquiry issued a further summons to the NSWPF, seeking specific documents in relation to Mr Malcolm that had not been produced pursuant to summons NSWPF1 (summons NSWPF29).
12. On 24 October 2022, the NSWPF produced a number of documents responsive to summons NSWPF29. Correspondence between the NSWPF and the Inquiry of the same date with respect to items unable to be produced summons NSWPF29 is included in the tender bundle (SCOI.83961).
13. On 9 May 2023, the Inquiry issued a summons to NSWPF requesting the physical exhibits collected during the investigation into Mr Malcolm's death (summons NSWPF102). On 18 May 2023, the NSWPF responded via letter, a copy of which is included in the tender bundle (SCOI.83309).
14. On 30 May 2023, the Inquiry issued a further summons to the NSWPF for further documents created in the course of the investigation into Mr Malcolm's death (summons NSWPF113).
15. On 5 June 2023, in response to summons NSWPF113, the NSWPF produced over 1,500 pages of material.
16. On 9 June 2023, the Inquiry issued a further summons to NSWPF for the fingerprint file and records regarding Percy Alexander Strong (summons NSWPF121). On 15 June 2023, material was produced in response to this summons.
17. On 14 June 2023, the Inquiry issued a further summons to the NSWPF seeking photographs referred to in the statement of Constable Lyle Van Leeuwen (summons NSWPF125). On 20 June 2023, the Inquiry received 61 photographs in response to this summons. A selection of these photographs have been included in the tender bundle (SCOI.84071 and SCOI.84072).
18. On 21 June 2023, the Inquiry received a further 1,827 documents, which the NSWPF indicated were produced pursuant to summons NSWPF1. A copy of the covering letter from the NSWPF to the Inquiry is included in the tender bundle (SCOI.84214).
19. On 5 July 2023, the Inquiry received a further four documents from the NSWPF responsive to summons NSWPF1.
20. The Inquiry also issued various summonses to the NSWPF seeking criminal histories and intelligence records in relation to certain persons. These records were produced to the Inquiry.

Other summonses issued

21. On 21 June 2022, the Inquiry issued a summons to the Office of the Director of Public Prosecutions (ODPP) to obtain, *inter alia*, the materials held by the ODPP in relation to the prosecution of certain persons for the death of Mr Malcolm (summons ODPP1).

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22. On 12 July 2022, the ODPP produced the relevant case file.
23. On 6 June 2023, a summons to the Commissioner of Correctives Services NSW (**CSNSW**) was issued for material held by CSNSW in relation to Percy Alexander Strong (CSNSW20). On 9 June 2023, CSNSW advised that only one document could be located, and produced this index card (SCOI.83960).

Summons to the Registry of Births Deaths and Marriages

24. On 16 September 2022, the Inquiry issued summons BDM3 to the NSW Registry of Births, Deaths and Marriages (**BDM**) for the death certificates of persons including Kirk Anthony Phillips and Richard John Green. Death certificates for Mr Phillips and Mr Green were provided by BDM on 20 September 2022 (SCOI.73941 and SCOI.73938).
25. On 30 September 2022, the Inquiry issued summons BDM4 to the BDM for the death certificate of James Frederick Smith. A death certificate was provided on 6 October 2022 (SCOI.73934).
26. On 8 May 2023, the Inquiry issued summons BDM30 to the BDM for the death certificate of Gary Thomas Phillips. A death certificate was provided on 9 May 2023 (SCOI.83551).
27. On 21 June 2023, the Inquiry issued summons BDM43 to the BDM for the death certificate of Percy Alexander Strong. A death certificate for Percival Alexander Strong was provided on 22 June 2023 (SCOI.84205).

Attempts to locate Dianne McGuinness

28. The Inquiry made numerous attempts to locate Dianne McGuinness.
29. As part of these attempts, the Inquiry issued summonses for records to Births Deaths and Marriages and to the NSWPF, which returned no relevant documents. Through interagency cooperation, extensive checks were also conducted across state and federal databases to attempt to identify and locate Ms McGuinness. No records of a person matching the details of Ms McGuinness were returned.

Forensic material

30. By letter dated 30 May 2023, the Inquiry requested that Forensic & Analytical Science Service (**FASS**) conduct forensic analysis in relation to the exhibit samples held in cold storage.
31. On 13 June 2023, Michele Franco of FASS provided an expert statement outlining the results of the analysis and other matters. The expert statement is included in the tender bundle (SCOI.83957).
32. On 26 May 2023, the Inquiry wrote to the NSWPF and requested that the NSWPF Forensic Evidence and Technical Services Command conduct fingerprint examinations and analysis.
33. On 5 June 2023, Senior Constable Paul Hubrechtsen-Yung of the NSWPF provided a statement in relation to fingerprint examinations, which is included in the tender bundle (SCOI.83526).

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Professional opinion obtained

34. By letter dated 30 May 2023, the Inquiry briefed forensic psychiatrist Dr Danny Sullivan to provide an expert report regarding the psychology of Mr Malcolm's killer, and whether Mr Malcolm's death may be the consequence of an LGBTIQ hate crime.
35. The Inquiry received an expert report from Dr Sullivan on 7 June 2023, which is included in the tender bundle (SCOI.83635).

Witness conferences

36. On 5 May 2023, the Inquiry held a conference with Mark Kelly, who appeared for the prosecution at the committal hearing on 3 – 4 August 1992. Mr Kelly subsequently provided a statement dated 5 June 2023, which is included in the tender bundle (SCOI.83437).
37. On 26 May 2023, the Inquiry held a conference with Richard Yannakis, who was the officer in charge of the initial police investigation into Mr Malcolm's death. Mr Yannakis was unable to provide any information beyond what was contained in the NSWPF case file. Mr Yannakis had no recollection as to whether the NSWPF made contact with Dianne McGuinness.
38. Having reviewed the material received from NSWPF on 5 June 2023, the Inquiry attempted to contact a witness recorded as NP243. This name was determined to be an alias. On 22 June 2023, a member of the Inquiry's Investigations Team spoke with the person believed to be NP243 and he declined to assist the Inquiry.

Contact with family members

39. The Inquiry has been in contact with Mr Malcolm's siblings, Graham Malcolm and Lynette Elias (previously Lynette Malcolm). Ms Elias has provided witness statement dated 21 June 2023 which is included in the tender bundle (SCOI.84073).

Signature: 

Name: Kathryn Lockery

Date: 6 July 2023