

SPECIAL COMMISSION OF INQUIRY INTO LGBTIQ HATE CRIMES
Reply submissions on behalf of Mr Michael Willing APM as to Terms of Reference

- 1 We set out below Mr Willing's response to the submissions of Counsel Assisting dated 7 July 2023.
- 2 Mr Johnson was not the victim of a gay hate crime. That on sentence such a factor was not found beyond reasonable doubt does not mean that the possibility remains open on some lesser standard of proof. Mr White was gay and had so told a number of people including undercover police. He and Mr Johnson went to North Head, a gay beat, together. Mr Johnson ultimately was naked. The DPP did not suggest this was a gay hate crime. The evidence does not allow a finding that Mr Johnson was the victim of a gay hate crime, notwithstanding which standard of proof is applied. The fact that it was not inconsistent with the facts is irrelevant [CA 42]. Not being inconsistent with something does not mean that it is established to any requisite degree.
- 3 The TOR submissions made on behalf of Mr Willing are not limited to the crime being solved. They do not rest on that assertion [CA 8]. The fact that Mr Johnson was not the victim of a gay hate crime is also important.
- 4 The submission that the death of Mr Johnson 'remains unsolved' is untenable. The causal connection of gay hate referred to by Counsel Assisting is, with respect, irrelevant to the question of whether or not a crime has been solved. A person was charged. He pleaded guilty. Additionally, the manner and cause of death has been established, both beyond reasonable doubt. Mr Johnson was punched and fell down the cliff edge. The injuries sustained caused his death. The reference to gay hate in the TOR does not permit the Special Commission to regard the death as open in any way [CA 37]. Further, there was no gay hate aspect to this offence in any case. It matters not that every last detail, as referred to by Beech-Jones J, is not known. That is very frequently the case on a plea of guilty, especially when the offender does not give oral evidence on sentence. The absence of evidence in relation to every issue is not the test for determining whether or not a crime has been solved. Further still, as we understand it, there has not been any evidence adduced which addresses any remaining unknown issues into the death of Mr Johnson. Certainly, none were pointed to in CAS.
- 5 We interpret the phrase in the TOR, 'have regard to', differently to the judgment of 6 December 2022. We have not overlooked that judgment [CA 10].
- 6 What has been said at the Special Commission in Openings or otherwise does not help define what the TOR, in fact, authorises [CA 23]. Extensive work undertaken by the Special Commission has no relevance to the determination of whether or not that work falls within the TOR [CA 30].

- 7 Paragraph F does not provide free rein to the Special Commission to make findings which are otherwise outside the specific TOR. Such an interpretation would render the TOR otiose.
- 8 We note that the submissions of Counsel Assisting do not address the concerns raised in our submissions regarding prejudice to extant criminal proceedings and how the TOR should therefore have been applied.

M. Thangaraj SC
Forbes Chambers

11 July 2023